



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

August 5, 2016

Mr. Theodore Alejandre
County Superintendent of Schools
San Bernardino County Superintendent of Schools
601 North E Street
San Bernardino, California 92415-0020

(In reply, please refer to docket number 09-14-5002.)

Dear Superintendent Alejandre:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of a compliance review initiated by OCR of the San Bernardino County Superintendent of Schools (the County) and its community and court schools on June 4, 2014. This investigation examined the County's policies, procedures and practices as they relate to the provision of a free appropriate public education (FAPE) for students with disabilities who are enrolled in the County-run court and community schools.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity, the County is subject to these laws.

Specifically, OCR's investigation included the following issues:

- A. Whether the County failed to identify and conduct timely evaluations and periodic reevaluation of students who, because of disabilities, need or are believed to need special education or related services, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.35 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).
- B. Whether the County failed to provide qualified students with disabilities with a FAPE tailored to meet their unique needs after following appropriate evaluation

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

and placement procedures, as required by Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

- C. Whether the County failed to implement the Individualized Education Programs (IEPs)/Section 504 plans of qualified students with disabilities, thereby violating students' rights to a FAPE, as specified in Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33-36 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).
- D. Whether the County failed to establish and implement, a system of identification, evaluation, or educational placement of students who, because of disability, need or are believed to need a Section 504 plan to provide them with accommodations, modifications, aids, special instruction or related services and a system of procedural safeguards that includes notice and an impartial hearing with opportunity for participation by the students' parents and representation by counsel, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.36 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and/or related aids and services that are designed to meet the individual and unique needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Provision of a FAPE includes implementation of regular or special education and related aids and services that are designed to meet the individual needs of the student as adequately as the needs of non-disabled students are met. 34 C.F.R. § 104.33. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2). The Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. Under 34 C.F.R. § 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being

used. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. The educational placement of a student with disabilities must be individually determined.

Background

San Bernardino County is the largest county in the United States by geographic area with 20,164 square miles. The San Bernardino County Superintendent of Schools (the County) provides programs for students within its jurisdiction and support to the 33 local school districts in the county.

The County's Student Services division operates the community and court schools (collectively, alternative education program) and the County's special education program. It also serves as the administrator for the county's three multi-district Special Education Local Plan Areas (SELPA) and as a member of the SELPA because it provides special education services to students in the court and community schools. According to the 2013-2014 Civil Rights Data Collection (CRDC), 16% of students enrolled in the County's community schools and 26% of students in its court schools were identified as students with disabilities.¹

The County operates 14 community schools, which are grouped under one of three regions: East Valley, West End, and Desert Mountain. The regions correspond geographically to the three SELPA.² Students may be placed by a District in a community school after following specific procedures for reasons which include expulsion, truancy, and/or parent referral. In the 2013-14 academic year, the community schools enrolled 645 students. According to the County's data, about 80% of students remain at community schools for fewer than 90 days, and about 42% are enrolled for fewer than 30 days.

The County also operates two juvenile court schools: Central Juvenile Court School (Central JCS), including the Gateway Regional Youth Education Center (Gateway) for adjudicated males 16-18 years of age, which is located at Central Valley Juvenile Detention and Assessment Center (CVJDAC), and High Desert Juvenile Court School

¹ Information about accessing the 2013-2014 CRDC is available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html>.

² San Bernardino County includes six SELPA. Three SELPA are single-district entities. The Superintendent of SBCSS serves as the Board Chair for all six SELPA.

(High Desert JCS), which is located at High Desert Juvenile Detention and Assessment Center (HDJDAC). The county Probation Department operates the facilities and most of the programming at Central JCS and High Desert JCS. Male and female students may be detained or incarcerated at one of the two juvenile court facilities. Central JCS enrolls students from both East Valley and West End regions, and High Desert JCS enrolls students from the Desert Mountain region. Gateway is a court school and is part of the CVJCS and has a one-classroom school in a probation-run facility located adjacent to the CVJCS facility. Students enrolled in Gateway are enrolled from six months to one year.

In the 2013-14 academic year, 238 students were enrolled in the court schools (Central JCS, including Gateway, and High Desert JCS). The County provided data showing that over 80% of students remain in its court schools for fewer than 30 days, and only 2% remain for more than 90 days. Although students are often enrolled at the court schools for only short periods of time, students may return to the site multiple times for short periods of incarceration.

Investigation

OCR requested and reviewed documentation from the County about its court and community schools. Based on factors including the number of court and community schools (16), the geographic size of the county, the number of students with disabilities at school sites, and the settings available for such students, OCR conducted on-site visit at nine representative community schools, three schools in each region, and the two principal court schools, High Desert JCS and Central JCS.

During its site visits, OCR interviewed school site principals, general and special education teachers and paraeducators, counselors, probation officers, office specialists, and other support staff. OCR interviewed a total of five principals, two counselors, 31 teachers (general education and special education who are referred to as specialized academic instructors by the County), 16 paraeducators, five office specialists, one mental health manager, one nurse, and three probation officers. In addition, OCR interviewed the Assistant Superintendent for Student Services, the Director for Student Services, the Coordinating Principal, the County psychologist, and the County office specialist.

OCR reviewed all of the special education files, including but not limited to IEPs and Section 504 plans and evaluations, at Central JCS and 20% of those at High Desert JCS. OCR reviewed all of the special education files for all the community schools in the Desert Mountain and West End regions and many of the files at the East Valley region community schools. Overall, OCR reviewed special education files for 40.5% of the total population of students with disabilities at the time of the visit from the nine community schools and two court schools visited.

In summary: With respect to Issue A outlined above, OCR found that the County lacked an adequate system to identify students with suspected disabilities in violation of

Section 504 and Title II and their implementing regulations. OCR's investigation of Issue A also raised a concern with respect to the lack of a consistent record keeping system at the County to track and ensure that students are timely identified, evaluated, reevaluated and provided a FAPE. With respect to both Issues B and C, OCR found sufficient evidence to support a finding of a violation of Section 504 and Title II and their implementing regulations. With respect to Issue D, OCR noted areas of concern regarding a lack of adequate training and knowledge about how to identify, evaluate and serve students with disabilities under Section 504. The County has agreed to resolve the violations and concerns identified by OCR with regard to Issues A, B, C, and D in the attached Resolution Agreement (Agreement). The bases for our determinations are outlined below.

Factual Findings

Issue A: Whether the County failed to identify and conduct timely evaluations and periodic reevaluation of students who, because of disabilities, need or are believed to need special education or related services, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.35 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

Identification and Student Records at Community Schools

In interviews with community school staff and administrators, OCR learned that the community schools identify students with disabilities through several methods. One means is through a referral form that the sending district completes which includes information about the student's education history, including whether he or she is eligible for special education. Notably, the referral form does not include a requirement for the sending district to identify students who have Section 504 plans. In addition, the site office specialists check a database called "DA" that is used by the local SELPA and school districts in the county that contains IEPs for students. DA does not include Section 504 plans. Lastly, some of the County general education teachers explained to OCR that they will conduct their own intake interview of newly enrolled students to determine whether or not the student has an IEP or Section 504 plan to confirm the information in the student's file.

The site office specialists are responsible for obtaining new students' records, including existing IEPs or Section 504 plans. Office specialists interviewed by OCR stated that while there are occasional delays in getting student files from the sending districts, in most cases, information is either provided with the district's referral or promptly upon request of the County. Office specialists reported having good working relationships with local school districts, which they told OCR helped to facilitate prompt receipt of records. Although office specialists and administrators expressed confidence that records were generally received promptly for students, OCR was unable to objectively confirm whether records were timely requested and received. The community schools lack a uniform system for requesting records and do not have a system for tracking the request and receipt of student records. None of the witnesses identified a specific time

within which to request records or follow up if records are not received, and the County has no delineated process for following up when there are delays in receiving records from referring school districts.

Records for students who are moving from one of the County's alternative education program sites to another are obtained through the same process. According to administrators and office specialists, for such intra-County school transfers, the new community school must make a formal records request to the former community school site, as if the student were coming from an outside school district. There is no process in place to forward the students' records when they move to a new site within the County's alternative education programs. Student records are kept at the local administrator office for that region's school sites. Information is available electronically through the student information system (PROMIS) used by the County and DA. However, the County's staff members told OCR that the data systems are cumbersome and confusing, and are not easily accessible to staff who need to know about a student's education status. Staff in two regions told OCR that they maintained the student files for at least the academic year, in case a student returns within the year. After a year, the file is put into inactive status in the instance that the student may return to the community school.

Site administrators and other staff at the community schools interviewed by OCR stated that the process for notifying teachers of a newly-enrolled special education student varies by community school site. Some schools have the office specialist inform the Specialized Academic Instruction (SAI) teacher and/or the general education teacher and provide the IEP or 504 Plan; others stated the office specialist informs the principal who then informs the SAI teacher. The office specialist notes that the student receives special education in PROMIS, and places a copy of the records in the student's file.

These processes at the community schools focus on ensuring that incoming students who already have IEPs or Section 504 plans in place are identified; however, OCR did not find evidence of any systems for identifying students suspected of having disabilities. In this regard, teachers, paraeducators, and the County psychologist noted that the use of Student Success Teams (SSTs) was inconsistent or nonexistent at community schools. At the time of OCR's on-site, the County psychologist was in the process of developing an SST meeting schedule for sites.

Identification and Student Records at Court Schools

Like the community schools, the court schools have several different means of identifying students with disabilities. The county Probation Department, which operates the juvenile court sites, is the first point of contact for an incoming student. The Probation Department gathers initial data about the student and places the student on the daily roster. SAI teachers check the names on the roster against PROMIS and inactive files to determine if the student had previously been enrolled with a special education plan. In addition, the enrollment packet for the court school includes a "Mandatory Questionnaire of Special Education and Special Needs," commonly known

as a “blue form” by court school personnel. A blue form is completed when the student enters the court school, during a meeting including the student and the general teacher or paraeducator for that classroom. According to court school staff, the blue form must be completed every time a student is enrolled, regardless of the number of times a student returns to the court school. The blue form is first completed in the juvenile detention center’s intake unit, and any student who is detained long enough to be placed in a different living unit (after the initial intake unit) has a second blue form completed. The blue form includes questions to help ascertain whether the student has received special education or other supports (e.g., the questionnaire asks whether the student has ever gone to another classroom to get help from another teacher). The completed blue forms are sent to the court school office specialist, and if a blue form indicates that the student may have an IEP or a 504 plan, the office specialist initiates a records search and contacts the student’s prior district(s). If a current IEP or 504 Plan for a student with disabilities is not found in the records search, the court school updates the special education plan within thirty days if the student remains enrolled in the court school. Hard copies of IEPs are scanned using FileMaker Pro, a database used only by the court schools, not the community schools.

The SAI offices at each court school maintain all inactive files when a special education student dis-enrolls. If that student returns, the file is updated and reactivated. OCR’s review of student files at the court schools showed there was no consistent documentation for students regarding when a records request was made and when records were received. Most student files contained some copies of dated record request forms, but generally did not document when the records were received.

Similar to what OCR found in the community schools, court school staff interviewed by OCR stated that students with disabilities are not always identified through these processes, and therefore they will sometimes conduct their own intake interview of the student to verify the information in the file regarding their disability status. According to staff interviews, if a student who has not been identified as having a disability manifests a suspected disability, such as appearing to be very low functioning or showing other classroom concerns, the court school site staff notifies the court school SAI teachers in the special education office and a records request is initiated. While a search for records is initiated, classroom teachers may implement other steps to assist the student, such as allowing additional time on assignments, seating reassignment, and other supplemental supports.

Initial Evaluations and Reevaluations at Both Community and Court Schools

At both community and court schools, evaluations and reevaluations pursuant to IDEA and Section 504 are conducted by a psychologist from the County special education program. According to school site staff, anyone can refer a student with a suspected disability for evaluation, and the SAI teacher is responsible for completing the evaluation form and obtaining the parent’s consent. General education teachers and paraeducators at the community schools reported that they had referred students to the SAI teacher for an evaluation. The SAI teachers told OCR that there can be delays in

getting the consent forms signed by the parent, and students often moved from the alternative education program before the evaluation can be started by the County psychologist. This is a particularly common occurrence at the court schools. The principals, SAI teachers, and the County psychologist said that they believed that initial and periodic evaluations were being completed in a timely manner for students in the alternative education program. However, the County does not have a systemic method for tracking requests for evaluations and their completion, or for identifying the need for periodic evaluations, such as triennials. When students leave the alternative education program, according to the SAI teachers and County psychologist, the documents/assessments are either forwarded with the student, if they know where the student is going, or would be sent once they receive a records request from the new placement. These witnesses noted, however, that there have been instances when a student leaves the site and the school is not certain where to forward the document. Given the lack of consistent tracking systems for referrals and evaluations, OCR could not objectively determine whether or not evaluations or re-evaluations were being completed in a timely manner or the impact of student transience on the completion or timeliness of evaluations.

Analysis

In interviews with OCR, the County's staff at the community and court schools stated their belief that the identification, initial and periodic evaluation, and placement of students with disabilities were usually completed in a timely manner. However, OCR found that the County did not have a system to track the request and receipt of records and information regarding special education status, evaluation, services, and placement at the community and court schools, such that staff could not provide reliable and consistent documentary support for their belief. Compounding the problem, while community and court schools are under the umbrella of the County's alternative education program, the databases used for tracking student information are not consistent between the schools. In addition, the County's staff members told OCR that the multiple data systems are cumbersome and confusing. Due to the County's lack of a consistent tracking system, the County could not determine whether students were evaluated and reevaluated in a timely manner and may not be timely identifying students with disabilities, and maintaining their records to ensure the continuity of special education and related services and provision of FAPE.³

Due to the lack of effective data tracking systems related to identification, record requests and receipt, and evaluation, to complete its investigation and determine whether students were properly and timely identified, evaluated and served, OCR would need to conduct further interviews with students, staff and potentially parents. While this is an area of concern, OCR did not reach a noncompliance determination regarding this issue. Prior to the completion of its investigation, the County stated its interest in resolving this concern pursuant to section 302 of OCR's Case Processing Manual. To

³ Due to high suspension rates discussed further in relation to Issue B, OCR's investigation also raised concerns that students with special needs who were experiencing a significant change in placement due to school removals may not be receiving a timely reevaluation and, as needed, services.

address the concerns raised, the County has agreed to adopt a consistent tracking system for identifying students with disabilities, timely obtaining their records, and maintaining special education records and evaluation information to improve the County's ability to provide a FAPE to each student with a disability.

Overall, OCR found that the community and court schools lacked adequate procedures to identify students with suspected disabilities. The County's efforts regarding identification were focused on ensuring that students who already had IEPs (and, at the court school, Section 504 plans) were identified, but OCR found that the systems for identifying students who had suspected disabilities were inadequate or non-existent. While there were reports by teachers and paraeducators that students have been identified and referred, there was limited documentation and information on when or how students were identified and evaluated. For these reasons, with respect to this specific issue, OCR found that the County was in violation of Section 504, Title II, and their implementing regulations. As part of the enclosed Agreement, the County will develop procedures to identify and refer students with suspected disabilities.

Issue B: Whether the County provides qualified students with disabilities with a FAPE tailored to meet their unique needs after following appropriate evaluation and placement procedures, as required by the Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

OCR examined the County's process for reviewing existing plans for providing accommodations, aids, services and placements for students with disabilities entering its schools, and the evaluation and placement procedures for ensuring that each student with a disability and an existing special education plan receives a FAPE in the community and court schools.

Implementation of Existing Placements at Community Schools

Students with disabilities entering the community schools have two placement options. They may receive services in a general education classroom through a Special Academic Instruction (SAI) program or be placed in a special day class (SDC).⁴ At the time of OCR's on-site visit, out of the 14 community schools, SDC placements were

⁴ Specialized Academic Instruction as described by the County is the primary service provided to students who qualify for special education at the court and community schools. The County stated that depending on the particular needs of the student, SAI includes either direct instruction by the special education teacher and/or consultation between the special education teacher and general education teachers to assist with providing instruction, assessment and behavioral modifications, which allow students with special needs to benefit from their general education classes. In secondary schools, Resource Specialist Program (RSP) could be provided either through support services in general education classes or through separate classes in which the student enrolled for less than half of the school day. A student enrolled in separate classes for more than 50% of the day was considered a Special Day Class (SDC) student. In interviews with OCR, the County's staff refer to separate classes for students with disabilities as "SDC" and services provided by the SAI teachers as either SAI or RSP.

available at three community schools, one in the West End region, and two in the East Valley region. There were none in the Desert Mountain region.

Community school principals and SAI teachers stated that when a student with an IEP that requires an SDC placement is enrolled in one of the community schools without an SDC, the community school site will engage with the home district to transfer the student to one of the community school sites with an SDC. The SAI teachers and principals reported that some districts refer students with SDC placements to community school sites where SDCs are not available. The SAI teachers believed this occurs because the County charges districts higher fees for SDC placements than for SAI, and districts are unwilling to pay the additional costs. SAI teachers stated that some referring districts are also unwilling to provide transportation to the community schools that offer an SDC. Community school SAI teachers further stated that in the East Valley region, parents are sometimes unwilling to send students to the SDC because it is located in a neighborhood that parents feel is unsafe.

The Desert Mountain region does not have an SDC; any community school students who require an SDC must instead be referred to an SDC program operated by another division of Student Support Services, in the County's special education program. The SAI teacher in that region stated that districts have referred students with SDC placements to the community schools. She has at times attempted to provide services for the student; sometimes she is successful. She has had instances where she has had to inform home districts that the community school program is not an appropriate placement for SDC students and has asked them to refer the student to the SDC program operated by the County's special education program.

Implementation of Existing Placements at Court Schools

At the court schools, students with IEPs requiring an SDC placement are automatically placed in general education classrooms. No SDC placements are available at either Central JCS or High Desert JCS. Data provided by the County for the 2013-14 for the Civil Rights Data Collection (CRDC) showed that all court school students spent 80% or more of their time in the regular or general education classroom.

According to some witnesses at the court schools, in the past, each juvenile detention site had an SDC. However, because of the large number of students whose IEPs required an SDC placement, the special day classes at Central JCS were too large. The County therefore set additional limitations on SDC enrollment: (1) students having a functional level above 3rd grade would not qualify; and (2) students who had been placed in an SDC previously for behavior reasons only would not qualify. The court school SAI teachers and general education teachers stated that after the criteria were put into place, the classes became too small. In 2013, when the SDC teacher at Central JCS retired, the County closed the Central JCS SDC. By this time, most of the teachers employed at the court schools had special education credentials in addition to their original regular education credentials, which the County's administrators asserted

met the needs of all students with disabilities in the general education classroom setting.

Court school staff also stated that it was logistically difficult to provide SDC placements at the court schools. They explained that students are usually educated on their living units, but because the SDC-enrolled students were located in different living units, the integration of students across living units required the support of the Probation Department, who had to escort the students from different units to the classroom, and had security concerns about certain students being in the same classroom, e.g. rival gang members.

At the time of OCR's on-site visit, 13 out of the 14 classroom teachers (including the SAI teachers) at Central JCS and 6 out of 7 teachers (including the SAI teacher) at High Desert JCS held special education credentials. One of the SAI teachers stated that because all classroom teachers at Central JCS (except one) are dual-credentialed, there are no more than 20 students per class, and each class has a paraeducator assigned, "every class is like an SDC." One of the SAI teachers felt that this placement met the needs of students entering with a full-time SDC placement. However, at least one teacher stated that she could not support the needs of some of the students who required an SDC, but were not receiving one. An SAI paraeducator at a court school told OCR that she was frustrated that the classroom teachers— including those teachers who were dual-credentialed – did not provide adequate differentiation in instruction and modified materials for students with disabilities. Instead, she stated that many classroom teachers relied on the SAI paraeducators to provide all disability-related services.

Placement Determinations

OCR also assessed amendments or changes to special education plans upon students' enrollment at the County's community and court schools. Witnesses told OCR that when a student enrolls in a community or court school with an IEP and the placement is not in an SDC, the County amends the IEP to reduce the SAI service minutes. OCR found through its review of records and interviews with witnesses that this amendment generally results in a uniform set of service minutes and is regularly made regardless of whether the IEP is current, often without an IEP meeting or following proper procedures, and without assessing whether the reduction meets the unique needs of the student. As discussed, if the student has an SDC or Non-Public School placement, that placement is automatically removed and the same uniform set of predetermined service minutes is included on the IEP.

Community Schools

The SAI teachers in the East Valley and Desert Mountain community schools stated that the amendment changes the number of service minutes to 120 minutes weekly (typically twice a week, one hour each time) with the SAI teacher, regardless of the student's prior placement and service minutes at the home district. Students in the

West End region automatically receive 60 minutes of SAI services per week, without regard to consideration of unique or individualized need. The community school principals, SAI teachers, and SAI paraeducators in all three regions described the number of minutes of SAI services at the community schools as fixed.

Community school SAI teachers stated that the students' parents are often informed of the reduction in service minutes after the fact and asked to sign off on the change that has already been implemented. The SAI teachers and paraeducators responsible for coordinating the change in service minutes stated that while students' files should include an IEP amendment, the official number of minutes of services is reduced when the student enters a community school, whether or not the IEP is officially amended and without observation of the individual student.

OCR's review of files confirmed the witnesses' assertion that service minutes are uniformly reduced. Regardless of the disabilities and what prior services and placement was provided for students at their home district, the amendment almost uniformly called for either 60 or 120 minutes of SAI per week, with the uniform number of minutes dependent solely on the school site location. For example, OCR reviewed the IEPs of seven students at Barbara Phelps Community School (Barbara Phelps) who had previously been enrolled in the home district with between 150 and 250 minutes *per day* of SAI instruction, generally in a separate classroom for students with disabilities. Six of these students had IEP addenda completed at Barbara Phelps calling for 120 minutes *per week* of SAI instruction. Several of the IEPs stated, in substantially identical language, that:

[t]he team agrees that [student] has had good attendance, no notable behavior problems, and is succeeding in his classes. Therefore, the team recommends that he continue in the current setting with the current services.

The seventh student, who had previously been enrolled in 200 minutes per day of SDC services, received 240 minutes per week of "collaborative" SAI. The community school principal informed OCR that this student's parent had opposed an SDC placement and that the service minutes had been agreed to after some discussion. She described this situation as "very rare" and noted that she did not know how the SAI teacher would have time to provide the service.

Court Schools

The SAI teachers stated that at Central JCS, 90% of the students who enter the program will have their SAI minutes automatically reduced to 120 minutes per week with the amendment. Witnesses at the court schools stated that the amendment was usually made during a teleconference call that only involved the SAI teacher, the parent, and sometimes student input. The court school SAI teachers stated that parents are told the court school site does not have an SDC, that all teachers are dual-credentialed (even though not all teachers are dual-credentialed), and that most students do well with two hours of SAI per week provided by a paraeducator. At least one teacher at the court

school stated that she could not support the needs of some of the students who required an SDC. One court school witness stated that the practice of reducing SAI minutes to 120 minutes per week has been in place for many years, and originated at the County's administrative level. At least two knowledgeable witnesses stated that the reduction was based on resources.

Almost every IEP reviewed from Central JDC – including those for students who had previously received SDC placement at the County's community schools – placed the student in a classroom with non-disabled students and 120 minutes of SAI services. All or most of the IEPs justified the placement with identical language, noting that the student "is placed in a highly structured classroom with low numbers and low student-staff ratio," that "instruction is differentiated when necessary to meet student needs," and that the team agrees that 120 minutes of SAI weekly "will be sufficient to insure that the student has the opportunity to succeed in the classroom." The County's administrators informed OCR that the rationale for not placing students in an SDC class, was that the County seeks to place students in the least restrictive environment.

Suspension Rates

OCR reviewed publicly available School Accountability Report Cards (SARCs) and noted that at many of the County's alternative education program schools, the suspension rates exceeded both the county-wide and statewide rates for the 2012-2013 and 2013-2014 school years.⁵ For the County's programs overall, the rate for suspensions was 7.1⁶ in the 2012-2013 school year, and 8.5 in the 2013-2014 school year. The suspension rates reported from West End community schools, many East Valley community schools, High Desert JCS, and Central JCS all significantly exceeded the county-wide rates in the 2012-2013 and 2013-2014 school years. CRDC suspension data for 2013-14 at the court schools also raised concerns. At Central JCS, 70% of the students enrolled and 3% whom were students with disabilities received an out of school suspension at least once. At High Desert JCS, 62% of the students enrolled received an out of school suspension at least once, with 6% of whom were students with disabilities.

Analysis

OCR found that the County's determination of what constitutes appropriate services for each individual student enrolled at both court and community schools is not based on the individualized or unique needs of the student, but rather on a determination by the County to limit resources to such students. This was demonstrated by the lack of SDC settings for students whose prior placement required more than 50% of their school time outside of the general education setting and the routine reduction of service minutes in

⁵ This data is provided in the School Accountability Report Cards for each school or region, available at <http://www.sbcss.k12.ca.us/index.php/student-services/alternative-education>.

⁶ The suspension rate is calculated by dividing the total number of incidents by the total enrollment times 100.

IEPs upon enrollment, regardless of unique need. The County's justification for the change in the provision of service minutes at its court and community schools was, in most cases, identical. Witnesses told OCR that the decisions were standardized for all students, particularly as to the number of minutes of instructional services provided at each school site. Witnesses from court and community schools also stated that the decisions were often made without the required placement meeting being held, procedures being followed, or student data or assessments reviewed.

With respect to community schools specifically, OCR found that, where SDC placements were available, students with the highest educational needs were placed in those classes. Where an SDC was not available, the County's staff attempted to convince the referring school districts and parents to move students who needed such services to community school sites where they were available. However, where parents or districts objected to the cost or location of an existing SDC, students were placed in a setting where some of the teachers believed they could not serve them.

If community school students with disabilities were not placed in SDCs, they received only either one hour (in the West End region) or two hours (in the East Valley and Desert Mountain regions) of SAI services *per week*. In many cases, students arrived with IEPs requiring one to four hours of SAI services *each day*. Regardless of the IEP requirements, hours of service were reduced to match the fixed instructional minutes being allotted in a region's SAI program rather than the unique, individualized needs of the student.

At the County's court schools, OCR found similar practices, except that no designated SDC settings were available for students at these schools, regardless of incoming special education plan requirements. The County's administrators told OCR that almost all of the court school teachers are dually-credentialed, which allows the court schools to provide the required support for students. However, the dual-credentialed status of its court school teachers does not address the legal deficiency that the County is not making an individualized determination about the appropriate placement for its students with disabilities and does not ensure that there is a continuum of placement options available for those students for whom a properly convened IEP or Section 504 team agrees that the general education classroom is not appropriate. OCR's review of the court school student files and interviews with court school staff revealed that there was no consideration of whether, for a particular student, being placed in a classroom with a mixture of non-disabled students and students with disabilities, with a dual-credentialed teacher and a paraeducator, was either appropriate or comparable to the student's prior special education setting.

Further, the IEPs of each of the court school students were revised to require 120 minutes per week of SAI services, even if they had previously been enrolled in a school district or community school SDC, a Non-Public School, or had more minutes of SAI in a prior setting. In most cases, this change in placement at the court school was justified through nearly identical statements about the ability of a classroom with a dual-credentialed teacher to meet students' educational needs, regardless of the individual

background or disability of the student. While the County contends that this change in placement is appropriate, at least one teacher stated that she could not support the needs of some students who required an SDC.

The County told OCR that one of its reasons for not continuing a student's placement in an SDC is that it is placing students in the least restrictive environment. OCR's review of records and interviews with witnesses at the community and courts schools, however, did not support that student placements and services were being made for this reason or because such an environment would meet the unique needs of the student after following required procedures regarding evaluation and placement. In this regard, OCR notes that if placement in a more integrated setting does not meet the student's individualized education needs, this can also deny the student a FAPE.

In sum, while a properly constituted placement team, consisting of individuals knowledgeable about a student might have determined that a student may require fewer services in the context of a court or community school program, OCR concluded that, the community and court schools did not make such an individualized determination about its students. For these reasons, OCR found that the County was not in compliance with Section 504, Title II, and their implementing regulations.

In addition, OCR's review of publicly available suspension data raised a potential concern that the high rates of suspensions in community and court schools may suggest that students with disabilities or suspected disabilities are not receiving the services and supports they need to address disability-related behavioral, social, and emotional issues. With respect to this concern, the agreement reached with the County requires an analysis of this data and the development of a system(s) to ensure that students with disabilities are not referred for discipline, removed, suspended or expelled on the basis of disability.

Issue C: Whether the County failed to implement the IEPs and Section 504 plans of qualified students with disabilities, thereby violating their right to a FAPE, as specified in Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33-36 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

OCR investigated how and whether the County implemented the special education plans for students at its community and court schools, including who provided direct services and how the provision of services was monitored.

Implementation of SAI Services at Community Schools

According to documentation provided by the County regarding the implementation of SAI services at the community schools, SAI teachers are responsible for implementing the instructional minutes in students' IEPs and for working with general education teachers to implement those instructional service minutes, including any related services, such as speech therapy. Community school SAI teachers are also required to monitor students through appointments, weekly progress reports, and/or school-to-

home communication. OCR interviewed all of the County's community school SAI teachers who were employed at the time of its on-site visit. SAI teachers are region-based and serve multiple school sites within the region.

Each region has SAI teachers who provide SAI services to students in the community schools. The provision of SAI services varies by region and by the caseload of each SAI teacher. The SAI teacher for West End is responsible for providing SAI services to three community schools. He stated that because one of the larger school districts stopped referring students to the West End community schools, he could provide more direct pull-out or push in services for the students in the West End community schools. The SAI teacher for Desert Mountain is responsible for six schools. She reported that she also provided direct pull-out or push in services, however, she stated that if she had a higher caseload, she would need the assistance of a paraeducator. The SAI teacher for the East Valley region is responsible for providing SAI services to students at four community school sites. She reported that she provides direct services to students at two sites, and that a paraeducator who works under her direction provides services at the other two sites. This SAI teacher, the SAI paraeducator, the general education teachers, and the County's psychologist reported that the size of this SAI teacher's caseload restricts her ability to provide direct services to all students who require SAI and, at the same time, to perform the required administrative tasks.

The County did not provide evidence to demonstrate that it had a system to monitor the provision of SAI services, including the monitoring of any make-up minutes for missed services. The three community school principals and many general education teachers, staff and administrators told OCR that they did not know how SAI teachers in their region documented the services implemented for each student. The SAI teacher for Desert Mountain presented OCR with an Excel spreadsheet that she used to document the service minutes she provided as required in the IEPs. However, the spreadsheet did not include if any missed minutes were made-up. In the East Valley region, some community school staff stated that because the SAI teacher was assigned to several sites and SAI paraeducators provided some of the SAI services, they did not know who provided the instructional minutes and how the minutes were tracked. In the West End region, community school staff voiced the same concerns about not knowing when the provision of SAI services would be provided, because of lack of knowledge of the SAI's teacher's schedule for providing services on their campus.

With regards to the interaction between the SAI teachers and the general education teachers, there were differing perspectives about the level of communication between the SAI teacher and the general education teachers about students with special education plans. Generally, the difference in the frequency of communication between the teachers depended on the caseload of the SAI teacher. Overall, general education teachers at the community schools stated that they interacted with the SAI teacher in their region on a regular basis to consult about proper modifications and/or that they met with the SAI teacher at least once per week. However, general education teachers at multiple sites also stated that when there is a high volume of students, it was not

possible for the SAI teachers to work with the general education teachers at the community schools on a regular basis.

Several community school administrators, teachers, and classroom paraeducators noted that the small class sizes and highly structured activities at the community schools met the needs of students with disabilities, even with the limited SAI services available to the students. However, several SAI teachers at the community schools also stated that they were unable to effectively meet the needs of students who had previously been served in an SDC setting and who were placed in general education classrooms.

Several community school general education teachers and paraeducators expressed concerns about the provision of services by paraeducators and SAI teachers for a fixed number of hours per week, regardless of the number of students in the classroom. They stated that as a result of this practice there could be very little one to one provision of services for students due to the size of the classroom. Moreover, teacher witnesses raised concerns about the provision of services at the community schools by paraeducators in general education classrooms with teachers who may not be dual credentialed.

In addition, community school general education teachers told OCR that there was a lack of training and support from the County's special education program and their only interaction with the special education program was through the SAI teacher.

Implementation of SAI Services at Court Schools

According to the County's documentation, there are a total of three SAI teachers at the court schools (two at Central, one at High Desert), with two paraeducators at Central and one paraeducator at High Desert. The SAI teachers and paraeducators are to work with the general classroom teachers to develop an appropriate educational program for students. The SAI teachers are also required to monitor students' progress through appointments, weekly progress reports, and/or school-to-home communication.

At the court schools, the classroom teachers and paraeducators stated that direct SAI services required in IEPs were entirely provided by the SAI paraeducators. The classroom teachers stated that because of the large number of special education students and the transient nature of the students at the court schools, the SAI teachers spent most of their time completing and tracking the students' paperwork rather than actually providing services required in IEPs. Court school classroom teachers and some SAI teachers stated that only a few of the paraeducators who provide direct SAI services have sufficient training to work with the special education students; many have received on-the-job training.

Court school staff told OCR that they believed the small class sizes with the mostly dual-credentialed teachers allowed the classroom teachers to meet the needs of the students, especially since there are special education students who did not want to be

pulled out for services and sometimes refused to leave the classroom. For example, one SAI teacher told OCR that most of the non-disabled students are reading at a 5th or 6th grade level in court schools (although the students should be at a higher grade level given their age), so the teachers tend to teach at the lower grade level and this is also appropriate for the students with disabilities.

Implementation of Related Services at Both Community and Court Schools

The County reported that related services, also sometimes called designated instructional services in California, are provided by staff in the County special education program, including speech and language, occupational, and physical therapy. Court and community school principals and teachers do not have a system to monitor the provision of related services to students.

Witnesses at the community schools stated that services, such as speech therapy, are provided by the County's special education program staff or by home districts. One staff member at a community school stated that home districts were supposed to provide the related services; however, the staff member told OCR that a home district provider, the speech pathologist, did not come to the school to provide services consistent with the frequency specified in the IEP during the student's enrollment; specifically, the provider only came twice to provide services for a student whose IEP required weekly sessions. Several general education teachers and paraeducators at the community schools stated that the amount of related services specified and required in students' IEPs were not being provided.

At the court schools, the court school principal and the classroom teachers were not aware of how the SAI teachers monitor the provision of related services. A classroom teacher stated that the speech/language provider sometimes did not show up for two to three weeks in the 2013-14 school year, and this resulted in service delays. The classroom teacher noted that related service providers do not give the teachers the dates and times when the related service providers are at the court school, so the classroom teachers do not know if students are being served. The witness stated, "[n]o one knows if students are getting speech here."

The special education student files from court and community schools that were reviewed by OCR confirmed what was revealed in staff interviews: The files contained very limited, if any, information about implementation of special education and related aids and services. Except in the High Desert JCS, there was no documentation of when school staff, including the SAI teacher, was first notified that a new special education student was enrolled, and there was limited, if any, information about the date that services began for individual students or when services were provided. For the High Desert JCS, the County provided SAI case note logs which showed the length of provision of services, the date the service was provided, the date of entry, and included notes about the material or subject matter covered during the session. As a consequence, other than at the High Desert JCS, there was no evidence to show that students with special education plans began receiving services in a timely manner and

that services were provided consistent with the special education plan after they began.⁷

Analysis

Through interviews conducted and documents reviewed, OCR found that because of the large number of students with disabilities in the County's court and community schools, in particular in East Valley, and the frequent transfer of students in and out of the schools, there were not enough SAI teachers to conduct all required administrative work and also provide direct instructional services to all students who either needed or required them. OCR also determined that SAI instructional minutes were delivered to students in the court schools, and to many students at the East Valley region community schools, exclusively through paraeducators. While most court schools and community school paraeducators stated that they were in regular contact with the SAI teacher to receive guidance, in many cases at the community schools, the paraeducators provided SAI instruction to students, without any direct supervision by the SAI teacher. In the court schools, such paraeducators always (unless the paraeducator was temporarily not available), provided the instructional minutes, however, witnesses reported that the paraeducators did not have sufficient training to provide direct specialized academic instruction required by IEPs. OCR's investigation raised a concern as to whether paraeducators who are not credentialed teachers have the requisite qualifications to provide "instruction", specialized or otherwise.

The evidence also showed that the County has not developed or implemented sufficient policies, procedures or a system to ensure that special education instruction and related aids and services are provided in accordance with the frequency and duration delineated in the IEPs of students with disabilities. In most cases, at both court and community schools, the monitoring of the required minutes of SAI services is left to the SAI teacher. In some cases, school principals at the community school did not know what days the SAI teachers would be on campus or the number of minutes of services they were providing to individual students. Moreover, when students miss SAI sessions because of the temporary unavailability of the SAI teacher or otherwise, the County does not have a system to ensure that they receive make-up services. Both community and court school classroom teachers expressed concerns as to whether students who required related services, including speech therapy, were receiving the services required in their IEPs. None of the student files reviewed by OCR included logs or records of the related services provided to students consistent with their IEPs.

In sum, OCR determined that the lack of sufficient certificated special education staff, and the absence of a consistent or reliable system for monitoring the provision of special education and related aids and services, significantly interfered with the

⁷ OCR reviewed an Excel spreadsheet used by the community school SAI teacher in the Desert Mountain region, in which the SAI teacher tracked the number of minutes provided to students but did not include information about the type of instruction provided and how it related to the IEP goals. In addition, this information was not included in any student files to reflect the services provided.

County's ability to provide students with disabilities the services required in their IEPs. For these reasons, OCR found that the County failed to take adequate steps to ensure that services were provided in accordance with IEPs and in violation of Section 504 and Title II and their implementing regulations.

Furthermore, OCR's investigation revealed that there is limited support, coordination and consultation with the County's special education program even though, like the community and court schools, the special education program falls under the County's Student Services division. Based on discussions with community and court school staff, special education teachers and paraeducators are not provided training or support from the County's special education program. Specifically, SAI teachers expressed concerns about their ability to identify and evaluate the needs of students with disabilities, and to direct the activities of the paraeducators who assist them in providing services, without a closer relationship with the County's special education program. As such, OCR's investigation raised a concern that increased coordination and interaction between staff serving students with disabilities at the community and court schools and the special education program is needed to ensure consistent provision of special education services in these settings overall; the County has agreed to address this issue in the enclosed Agreement.

Issue D: Whether the County failed to establish and implement, a system of identification, evaluation, or educational placement of students who, because of disability, need or are believed to need a Section 504 plan to provide them with accommodations, modifications, aids, special instruction or related services and a system of procedural safeguards that includes notice and an impartial hearing with opportunity for participation by the students' parents and representation by counsel, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.36 and 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii).

OCR found that very few students enrolled in the County's alternative education program received services pursuant to a Section 504 Plan. The 2013-14 CRDC data showed that at the community schools, there were eight students identified under Section 504 compared to 92 students with IEPs. At the court schools, there were four students identified under Section 504 compared to 58 students with IEPs.⁸

In interviews with OCR, witnesses, including general education and SAI teachers, stated that they were not aware of Section 504, how to identify a student under Section 504, or develop a Section 504 plan. Community school and court school staff members were unfamiliar with the specific requirements of Section 504, to the extent that they differ from those of the IDEA. The County's administrators acknowledged that Section 504 had not been an area of focus prior to the initiation of OCR's review. Teachers and paraeducators stated they had received an initial training on Section 504 shortly before OCR's on-site visit. Even after receiving the training provided by the County, one SAI teacher told OCR that s/he did not know if Section 504 plan implementation was one of

⁸ See, CRDC 2013-14.

his/her responsibilities and stated that if s/he received a Section 504 plan, s/he would provide the general education teacher with a copy of the plan.

However, in interviews with OCR, several SAI teachers and general education teachers who had served students with an existing Section 504 plan stated that they had been able to implement the plan as written, by modifying the student's seating, providing extra time for assignments, and making other required accommodations.

While OCR reviewed files of students with Section 504 plans that had been developed at referring school districts, OCR did not find any examples of Section 504 plans that were developed at court and community schools. Although some community and court school staff members were aware of the Section 504 plans of students who had them when they enrolled, they were unable to describe a process for identifying students who might need such plans. They were also unable to describe how Section 504 plans were developed and implemented while students were enrolled in the County's court and community schools or the types of procedural safeguards that would be provided to parents, if such plans were developed.

Since OCR's on-site, the County has taken steps to provide training to community and court school staff on Section 504. In February 2015, the County began implementing a web-based Section 504 program, which enables authorized staff across the community and court school sites to access the records. The County has held several trainings for staff on the web-based program and has provided various levels of access to the program to different County administrators and staff.

Analysis

Prior to OCR's on-site, community and court school staff had limited knowledge of Section 504, how to identify a student under Section 504, or develop a Section 504 plan. Since that time, the County has taken steps to provide training to staff regarding Section 504 and to implement a web-based Section 504 program. To reach a compliance determination, OCR needed to further investigate whether any students who should have been identified and evaluated, were not identified and evaluated and whether those who had Section 504 plans received the required services. However, prior to the conclusion of OCR's investigation into this issue, the County agreed to enter into the enclosed Agreement, which is intended to address any deficiencies with the County's implementation of Section 504.

Conclusion

In early 2016, the County provided OCR with updated information about its court and community schools, including steps it has already taken to address the concerns and violations identified by OCR. In addition to the implementation of the new data system discussed above, the County initiated a tracking system for requests and receipt of special education records from referring school districts. The County also provided data on the initial evaluations and triennial IEPs it conducted during the 2014-15 school year,

which demonstrated that the County has already commenced taking steps to ensure students with disabilities and suspected disabilities are properly and timely identified. As such, in developing the enclosed Agreement, OCR incorporated the improvements identified by the County that are already in progress. On August 3, 2016, the County signed the enclosed Agreement which, when fully implemented, is intended to remedy the violations and concerns identified during OCR's compliance review investigation. The Agreement requires that the County:

- Implement a standard record keeping and tracking system and process for timely provision of records for students entering and exiting the facility and proper file maintenance to ensure procedural requirements related to timely identification, evaluation, reevaluation, placement, and service implementation are met;
- Identify and appropriately place students with disabilities in accordance with Section 504;
- Hire a qualified Program Manager to work with the County to develop a needs assessment and action plan for addressing the issues identified with implementation of IEP/Section 504 plans, related service and instruction delivery by qualified staff, record keeping, and provision of appropriate placements to meet students' individualized needs;
- Review existing IEPs of current students to assess whether IEP/Section 504 plans were changed without following proper procedures and making an individualized determination, resulting in a reduction in needed services, and convene a placement team meeting to assess provision of compensatory education services to address any needs identified;
- Monitor to ensure that proper procedures are in place for students entering the County's community and court schools to provide an individualized determination in each case regarding placement and services;
- Develop a comprehensive monitoring and assessment system for special education and related services placement and service delivery in the County's community and court schools in coordination with the Program Manager;
- Revise policies and procedures as needed to comply with the Agreement, and disseminate the revised policies and procedures to staff ;
- Hold an annual meeting with the County's community and court school administrators, teachers, SAI teachers, and SAI paraeducators and the special education division program administrators and staff to review and discuss the special education services being provided at the alternative education program sites;
- Develop training for paraeducators related to their roles and responsibilities pursuant to Section 504 and IDEA; and
- Regularly report to OCR regarding implementation of the above and of key data items.

Monitoring

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation phase of this compliance review as of the date of this letter. When fully implemented, the Agreement is intended to address the compliance violations and

concerns raised in this investigation. OCR will monitor the implementation of the Agreement until the County is in compliance with the statutes and regulations at issue in this review.

OCR's determination in this matter should not be interpreted to address the County's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the County may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the complaint resolution process. If this happens, such individuals may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Kana Yang, at (415) 486-5382, or Laura Welp, at (415) 486-5577.

Sincerely,

/S/

Laura Faer
Acting Regional Director