



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

November 7, 2013

Dr. Eric J. Beccoats
Superintendent
Durham Public Schools
511 Cleveland Street
Durham, North Carolina 27702

Re: OCR Complaint No. 11-13-1181
Letter of Findings

Dear Dr. Beccoats:

This letter is to notify you of the disposition of the above-referenced complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on April 19, 2013, against the Durham Public Schools (the District), in particular, XXXX (the School) alleging that the School discriminated against the Student on the basis of disability (attention deficit hyperactivity disorder) by denying the Student a free appropriate public education. Specifically, the Complainant claimed that the Student's teachers failed to implement the Student's 504 Plan during the 2012-2013 school year.

OCR conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance (FFA), and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public educational systems. The District is a public entity and a recipient of FFA and therefore is subject to the provisions of Section 504 and Title II.

In reaching a determination on this complaint, OCR reviewed documentation submitted by the Complainant and the District. During the course of its investigation, OCR identified compliance concerns. OCR entered into the enclosed resolution agreement (the Agreement) with the District to address the compliance concerns identified, which OCR will monitor. A summary of OCR's legal authority and a more detailed discussion of our findings are set forth below.

Legal Standard

The regulations implementing Section 504 at 34 C.F.R. § 104.4(a), state that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of,

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

or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. The Section 504 regulation, at 34 C.F.R. §104.33(a) and (b), requires that a recipient provide each qualified person with a disability in its jurisdiction a free appropriate public education (FAPE). An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual needs of a student with a disability as adequately as the needs of students without disabilities are met. Implementation of an appropriately developed plan is one means of meeting this requirement. We interpret Title II as imposing similar requirements.

Facts and Analysis

The Complainant alleged that the District, specifically XXXX (the School) discriminated against the Student on the basis of disability by denying the Student a FAPE. Specifically, the Complainant claimed that the Student's teachers failed to implement the Student's 504 Plan during the 2012-2013 school year.

The Student was identified as being eligible for a Section 504 Plan on XXXX, when he was a fifth grade student at a District elementary school. The resulting plan included the following instructional modifications, among others: the Student will be allotted an extra 10 minutes prior to dismissal at the end of classes to organize materials and teacher will provide student opportunities for a short "movement break" in order to regain focus. In fall 2012, the Student began attending sixth grade at the School. The District acknowledges that his teachers did not fully implement the Student's Section 504 Plan, as they believed that some of the modifications (including those mentioned above) were not feasible in the middle school setting. The District also acknowledges that the School did not comply with District procedures or the requirements of Section 504 and Title II in that the School did not convene a Section 504 meeting to review and revise the Student's Plan in response to the teachers' concerns.

The record reflects that the Student struggled academically during his sixth grade year. Notes from a November 15, 2012, parent conference reflect that the Student was missing several assignments, struggled with classwork and staying focused, was "very disorganized," and did not bring materials to class. He failed two core classes in the fall semester and received a D in a third. Another meeting was held on January 31, 2013, including several of the Student's teachers, at which the teachers agreed to implement several new interventions, including XXXX and arranging for the Student to meet with the School Counselor to assist with organizational skills. These interventions were not formalized in a Section 504 Plan. Though the District reported to OCR that the interventions resulted in improvements in the Student's performance, the Complainant said that he was on track to fail at least two core courses in the third quarter and his March 6, 2013 Math Academic Progress reports includes a note that "[the Student] is rarely on task with the class."

The Complainant withdrew the Student from the District in mid-April 2013. <XXXX Sentence Redacted XXXX>

OCR has entered into the enclosed resolution agreement with the District to address the failure to fully implement the Student's Section 504 Plan during the 2012-2013 school year. OCR will monitor the Agreement to ensure that the compliance issues are addressed.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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. The complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be aware that the District may not harass, coerce, intimidate, or discriminate against you because you filed a complaint or participated in the complaint resolution process. If this happens, you may file another complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, feel free to contact Judy Briggs, Senior Investigator at 202-453-5902 or via e-mail at judy.briggs@ed.gov.

Sincerely,

Robin C. Murphy
Team Leader, Team II
District of Columbia Office
Office for Civil Rights