



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

January 14, 2014

Dr. Steven L. Walts
Superintendent
Prince William County Public Schools
Office of the Superintendent
P.O. Box 389
Manassas, VA 20108

RE: OCR Complaint No. 11-13-1210
Letter of Findings

Dear Dr. Walts:

This letter is to inform you of the disposition of the above-referenced complaint that was filed on May 2, 2013, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR). The complaint was filed by a parent (the Complainant) on behalf of her son (the Student) against Prince William County Public Schools (the Division). The Complainant alleged that the Division discriminated against the Student on the basis of his disabilities (XXXX) when it failed to properly evaluate the Student, i.e., that it did not consider the medical information provided by the Complainant and did not tailor the evaluation process to meet the Student's needs.

OCR has completed its investigation of the allegations. In investigating and making a determination concerning the allegations, OCR obtained information from the Complainant and the Division. We reviewed, among other documents, the Student's educational record as well as Division policies and procedures regarding evaluating students for disabilities. We also conducted interviews with the Complainant as well as with Division staff.

OCR's RESPONSIBILITIES

OCR is responsible for enforcing, among other civil rights statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance (FFA) from the Department. Additionally, OCR has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act (Title II) and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The Division is a recipient of FFA from the Department and a public entity; therefore, it is subject to the provisions of these laws. Thus, we determined that OCR had jurisdiction over the complaint.

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

BACKGROUND

<XXXX Paragraph Redacted XXX>

LEGAL STANDARD

Section 504 requires school systems to provide students with disabilities with a free appropriate public education (FAPE), that is, regular and/or special education and related aids and services that are designed to meet these students' educational needs as adequately as the school system meets the educational needs of students without disabilities. OCR's investigation of an allegation that a school system has failed to provide a student with FAPE is normally limited to ensuring that the school system has complied with the process requirements of Section 504 relating to educational setting, evaluation and placement, and procedural safeguards.¹ We interpret Title II as imposing similar requirements.

ANALYSIS

The Complainant alleged that the Division failed to consider medical information and tailor an evaluation to address the Student's needs when evaluating the Student. The Division first became aware of the Student's disability related needs in XXXX XXXX when the Student was referred for an evaluation to address concerns related to XXXX. On XXXX, the team reviewed the results of evaluative data and "found the Student ineligible for special education because he did not meet the criteria for XXXX XXXX." The team noted that the Student has XXXX XXXX and is XXXX XXXX.

In XXXX, the School Principal ". . . met with the [Complainant] to discuss advance planning for accommodating the Student's XXXX for the 2013-2014 school year." As agreed to by the Complainant and the Principal, the Complainant submitted detailed documentation of the Student's XXXX to the School on XXXX.

On XXXX, the Complainant contacted the Division's 504 Coordinator and the Principal of the School notifying them of her request for a Section 504 Plan for the Student due to his XXXX XXXX. On XXXX, the Intervention Team met to review the Complainant's request for a Section 504 Plan. Based on our review of the documentation, OCR concludes that this meeting, which included the Student, was attended by individuals knowledgeable of the Student, the evaluative data, and the placement options. Additionally, OCR concludes that the team reviewed information from a variety of sources, including the medical information provided by the Complainant on XXXX and the Student's current HTP. The prior written notice (PWN) of the meeting documents that the Student has XXXX which is information that the Division was aware of as early as XXXX.² The PWN does

¹ In cases involving life-threatening medical conditions, OCR may investigate the substance of individual placement and other educational decisions made by a school system under the "extraordinary circumstances" provision of the Section 504 regulation. However, we need not determine whether "extraordinary circumstances" exist in this case because of our finding that the Division failed to evaluate the Student, and there are consequently no placement or other decisions to investigate.

² During the XXXX evaluation of the Student, it was determined that the Student did not qualify for special education services as a student with a XXXX XXXX; however, there is no indication that the team considered information that it had regarding the Student's XXXX to determine whether he would qualify as a student with a disability due to his XXXX.

not document any team determinations regarding eligibility; however, in their response to the allegation, the Division states that the team “recommended an evaluation consistent with the [Division] policy and manual,³ and the [Complainant] refused the evaluation.” The PWN does not indicate which assessments the team recommended be conducted, but it does indicate that the parents wanted to speak with the Division’s 504 Coordinator prior to consenting to an evaluation. In an interview with the Complainant, she confirmed that she requested to speak with the Division’s 504 Coordinator to clarify her understanding that the Student would have to undergo an evaluation under the Individual with Disabilities Education Act (IDEA) prior to being considered eligible under Section 504.

On XXXX, the team reconvened to “discuss the instruction/behavioral needs of the [Student],” and to “discuss referral for evaluation/reevaluation.” OCR reviewed the documentation provided by the Complainant and the Division. The parents were invited to the XXXX meeting, but the Complainant did not attend the meeting because she did not want to pursue the IEP process. Notwithstanding, on this date, the team (the Special Education Teacher, School Psychologist and an Administrator) met and recommended that the team initiate the evaluation/eligibility process. Form 25-05b, *Referral for Evaluation, Review of Existing Data, and Parental Consent*, indicated that evaluations and information provided by the parents of the Student were considered. The form further indicates that, “additional data are needed to determine whether the student is or continues to be a student with a disability and to determine the student’s educational needs.” The team recommended that the following assessments be conducted: academic and/or communicative performance, cognitive ability and processing, health/medical, vision and hearing. The PWN does not indicate why the team required the recommended assessments other than to state that, “according to [the Division’s] regulations an IDEA evaluation must be completed before a 504 referral.” To date, the Complainant has not consented to the additional recommended assessments and the Division has not continued its evaluation of the Student either under the IDEA or Section 504.

School systems are obligated to conduct evaluations of students who may qualify as a student with a disability in need of special education or related services. Evaluations must gather information relevant to the suspected disability and its effects on the student, and the data must be valid and reliable. This must be done before a school system develops an initial plan for a student with a disability, and before a school system significantly changes a student's placement. School systems must ensure that a group of persons knowledgeable about the student, the evaluation data and placement options meets and makes decisions about placement and services for the student. Placement decisions must be based on evaluation data from a variety of sources and this information must be documented.

Based on the aforementioned, OCR finds that the evidence presented, at both the XXXX and XXXX team meetings, indicates that the team considered the medical information provided by the Complainant, which included: documentation of the Student’s XXXX and the steps that could be taken to ensure a safe environment in the School. However, the Division failed to consider whether this information supported the need for a 504 Plan, regardless of whether the Student needed to be assessed for services under the IDEA. This is reflected in the team’s recommendation that additional

³ *Section 504 Procedural Manual 4-3-12* states that “when a disability under Section 504 is suspected, the [Division’s] Section 504 process is initiated by first determining eligibility under IDEA. If the student does not meet criteria under IDEA, eligibility under 504 may be considered. Students cannot be eligible under Section 504 and IDEA at the same time. Parents cannot refuse eligibility under IDEA and request eligibility under Section 504.”

cognitive and other assessments (unrelated to his XXXX) be conducted under the Division’s policy, rather than making a determination based on the individualized needs of the Student (XXXX).

We note that, in the Division’s XXXX letter, it asserted that the XXXX “. . . intervention team recommended an evaluation consistent with the PWCS policy and manual, and the student’s mother refused the evaluation.” Additionally, as indicated in the Division’s “Prior Written Notice” for the XXXX meeting, “. . . PWCS advised the parents that according to PWCS regulations an IDEA evaluation must be completed before a 504 referral.” Although OCR has indicated that school systems may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA, we find that, in this case, even though the Complainant refused consent for the additional assessments, the Division had enough information to evaluate the Student’s eligibility as a student with a disability who may be in need of services under Section 504.⁴ Indeed, even under the Division policy, the Division had enough information in XXX to determine that, while the Student did not need services under the IDEA, he may have needed related services for his XXXX under Section 504. Thus, OCR has a concern with the Division’s failure to continue with the 504 evaluation process, using the existing data (medical information and current HTP), for the purposes of determining whether the Student has a physical or mental impairment that substantially limits one or more major life activities.

We also note that the fact that the Student was receiving services pursuant to a HTP did not alter the requirement that the Division conduct an evaluation of the Student and determine whether he was eligible for services as a student with a disability. The Division’s HTP provisions⁵ do not provide Section 504 protections, e.g., they include no provisions for meetings at which the HTP will be discussed, no commitment by the Division that it will provide all (or any) of the aids or services contained in the HTP (which are prepared by students’ parents and doctors), and no hearing, appeal, or other due process procedures or rights.

CONCLUSION

Pursuant to Section 303 of OCR’s *Case Processing Manual*, OCR discussed resolution options with the Division. On December 20, 2013, the Division signed the enclosed agreement which, when fully implemented, will resolve the concerns identified regarding this complaint. The provisions of the agreement are aligned with the issues raised in the complaint and information obtained during the course of OCR’s investigation, and are consistent with the applicable regulations. OCR will monitor implementation of the agreement.

This concludes OCR’s investigation of this complaint. OCR is closing this complaint investigation effective the date of 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

⁴ “In amending the Act, Congress directed that the definition of disability shall be considered broadly and that the determination of whether an individual has a disability should not demand extensive analysis.” (OCR’s Dear Colleague Letter dated January 19, 2012).

⁵ Which are located at <http://pwcs.schoolfusion.us/modules/groups/homepagefiles/cms/493839/File/Regulations/R757-3.pdf>.

Please note that the Division is not permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual 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. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

We appreciate the courtesy and cooperation that the Division extended to OCR throughout this investigation, in particular the assistance of its counsel. If you have any questions, you may contact Ms. Kendra Riley at (202) 453-5905 or kendra.riley@ed.gov, Ms. Wanda Frazier at (202) 453-5911 or Wanda.Frazier@ed.gov or Mr. Duane Scott at (202) 453-6596 or Duane.Scott@ed.gov.

Sincerely,

/s/

Robin C. Murphy
Team Leader, Team II

Enclosure

CC: James Fagan
Counsel for the Division