



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

July 7, 2015

Dr. Nikolai P. Vitti
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Re: Complaint # 04-15-1237

Dear Dr. Vitti:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution process regarding the above-referenced complaint filed on March 9, 2015, against Duval County Public Schools (District) in which the Complainant alleged that the District discriminated against her son (Student), who attended XXXXXXXX XXXX XXXXXXXX (School), on the basis of disability. Specifically, the Complainant alleged that the District failed to implement the Student's Individualized Education Program (IEP) when: (1) beginning in November 2014, the Student's Math teacher failed to allow the Student the use of a calculator and failed to provide the Student with an outline of class notes or extended time on assignments; (2) beginning in December 2014, the District failed to provide a progress report to keep track of the Student's grades and instead used a checklist; and (3) the Student's XXXX and XXXXXXXX teachers failed to bring the Student his assignments to the School's front desk.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District receives Federal financial assistance from the Department and is a public entity. Accordingly, OCR has jurisdiction over this complaint.

Based on the above allegations, OCR investigated the legal issue of whether the District denied the Student a free appropriate public education (FAPE) when, beginning in November 2014, it failed to implement the Student's IEP, in noncompliance with the Section 504 at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R § 35.130.

During the investigation, OCR interviewed the Complainant and the Student's Math and English teachers. OCR also reviewed documents submitted by the District and Complainant. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence

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

www.ed.gov

standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Prior to the conclusion of OCR's investigation, the District requested to resolve this complaint in accordance with Section 302 of OCR's *Case Processing Manual (CPM)*.

Background

During the 2014-2015 school year, the Student attended XXXXXXXX grade at the School, where he received services outlined in his IEP related to his disability. In relevant part, according to his November 14, 2014, IEP, the Student was to receive: extended time on assignments/tests, XXXXX XXXXX a week; the use of a calculator for assignments and tests in class, XXX XXXXX a week; a copy of class notes and outlines, XXXXX XXX week; and a daily progress report signed by teachers. On January 21, 2015, the IEP was revised to include the provision that XXXXXXXXXXXX XXXXXXXXXXXX be sent home/picked up by the parent once per week. According to the Complainant, on May 5, 2015, following a disciplinary incident, the District assigned the Student to XXXXX XXXX XXXX XXXXXXXXXXXX XXXXXXX, an alternative school.

Issue: Whether the District denied the Student a FAPE when it failed to implement the Student's IEP, in noncompliance with the Section 504 at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R § 35.130.

Allegation 1: Beginning in November 2014, the Student's Math teacher failed to allow the Student the use of a calculator and failed to provide the Student with an outline of class notes and extended time on assignments.

The Complainant alleges that beginning in November 2014, the Student's Math teacher failed to provide the following related aids and services that are listed in the Student's November 12, 2014, IEP: (1) use of a calculator, (2) extended time on assignments, and (3) outlines of class notes. The District submitted an accommodations checklist from the Math teacher, which details the services she provided the Student on each calendar day in the Student's XXXXXXXXXXXX XX class (as marked by an "X") beginning on January 21, 2015, and ending May 7, 2015. For the row corresponding to, "allow more time for completion of assignments/tests," there are only two days marked with an "X:" February 19 and 27, 2014. Similarly, the row titled, "provide a copy of class notes and outlines" had five dates marked with an "X," all occurring between the period of February 2 and February 17, 2015. Regarding the use of a calculator, the checklist indicates that the Student did not receive this service until March 26, 2015, but that he began receiving it daily thereafter.

During an interview, the Math teacher stated that the Student was allowed use of a calculator whenever he needed one and was never denied this service. She stated that although not all dates the Student had used a calculator had been marked with an "X" on the Student's accommodations checklist, the Student had nevertheless used a calculator whenever he needed one throughout the year. Additionally, the Math teacher stated that she allowed the Student additional time on any assignment that he did not complete in class. With respect to providing

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

www.ed.gov

the Student with an outline of class notes, the Math teacher acknowledged that she did not provide the Student with this service but did state that the Student had a “student companion” workbook that had class work in it but did not contain notes from the class itself. She stated that she would write notes on the board for the students to copy into their “student companion” workbook, but that she did not provide these notes to the Student.

Based upon the above, the District may have failed to provide the Student with a FAPE as required in the Section 504 regulations. However, before OCR completed its interviews, including a rebuttal interview with the Complainant, the District expressed an interest in resolving this allegation in accordance with Section 302 of OCR’s *CPM*.

Allegation 2: Beginning in December 2014, the District failed to provide a progress report to keep track of the Student’s grades and instead used a checklist

Per the services listed on the Student’s November 2014 IEP, he was to receive “[a] daily progress report signed by teachers.” However, according to minutes from the Student’s January 21, 2015, IEP meeting, the IEP team agreed to require the Student to have a “XXXXX XXXXXXXX Checklist” completed every day. The provision stating, “require XXXXX XXXXXXXX report signed by teachers” was removed from the services listed on the revised January IEP. According to the Complainant, the checklist “does not monitor [the Student’s] academics, instead it monitors his symptoms related to his medical condition.” On January 6, 2015, the Complainant emailed various District staff members (including the Superintendent, several of the Student’s teachers, and the School Principal) and stated that she had not agreed to a checklist during the January IEP meeting. On the same day, the XXX XXXXX Teacher replied by saying, in part:

[W]e agreed to discuss using a checklist to monitor the student’s progress on a daily basis due to a concern from parents and teachers regarding the student’s academic behaviors. It was decided in the meeting that we would give the student a checklist to take to each class and that I would scan the checklist XXXXX XXX XXXXX to the parents. The IEP was amended to reflect the additions discussed in the meeting and a copy has been mailed to you.

The Complainant alleged that, beginning in December 2015, the District failed to provide the Student with a progress report and instead used a checklist; however, the evidence shows that the provision of the progress report was removed from the Student’s IEP during a November 2014 IEP meeting. Further, during a follow-up conversation on May 20, 2015, with OCR, the Complainant confirmed that this provision had been removed from the Student’s IEP in November and that that her allegation pertained to her disagreement over the IEP team’s decision to no longer provide the progress report.

Although the Complainant disagreed with the School’s educational decision, it is important to note, as set forth in Appendix A, Subpart D, of the Section 504 regulation, that the Department, except in extraordinary circumstances, does not review the results of individual placement and educational decisions made by a recipient as long as the process requirements of the Section 504 regulation are met. The District’s decision and the Complainant’s issue seem to be a placement

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

www.ed.gov

decision and may therefore be appropriately addressed through a due process hearing. Accordingly, OCR is dismissing Allegation 2, effective the date of this letter.

Allegation 3: The Student's XXXX and XXXXXXXX teachers failed to bring his assignments to the School's front desk.

Per the Student's January 21, 2015, IEP, any incomplete assignments for the Student were to be "sent home/picked up by parent 1 time a week." A XXXXXXXX XXXXXXXXXXXXXXXXXXXX Teacher at the School sent each of the Student's teachers an email on January 22, 2015, stating that, as of that day, any assignments that the Student did not complete in class during the week must be taken to the guidance office by 2:00 p.m. every Friday. The Complainant raised concerns regarding this provision being implemented on several occasions, including in a March 24, 2015, email to the School Principal stating, "according to [the Student's] IEP, any missing assignments supposed to be placed in the front office for pickup on every Friday. [The Student's] IEP has been violated yet again, some of [the Student's] teachers have failed to place missing/incomplete assignments in the front office." Additionally, the School's XXX XXXX Teacher sent an email on February 17, 2015, to the Student's teacher saying that the Complainant told her that no work for the Student had been placed in the guidance office the previous week and requesting to know whether the Student had any makeup work during this period.

During an interview, the XXXX teacher stated that the Student completed all of his assignments in class and therefore did not require any assignments be taken to the front desk. According to the XXXXXXXX teacher, he would "sometimes" bring assignments that the Student had not turned in to the front desk while other times he would provide the assignments directly to the Student. The XXXXXXXX teacher went on to say that after being informed that the Complainant had expressed concerns that the Student's assignments were not being brought to the front desk, he began to bring the assignments to the front desk more and to provide them directly to the Student less, but not all the time.

Based upon the above, the District may have failed to provide the Student with a FAPE, as required in the Section 504 regulations. However, prior to OCR concluding interviews, the District requested to resolve this complaint through OCR's 302 resolution process.

Resolution and Conclusion

The evidence reviewed thus far indicates that there is evidence to support proceeding with a 302 Resolution Agreement (Agreement) with respect to Allegations 1 and 3. To address the Complainant's allegations, the Agreement requires the District to convene an IEP meeting consisting of the Student's parents, and other persons knowledgeable about the Student, the meaning of evaluation data, and placement options to determine whether the Student is in need of any compensatory services for the services the District failed to provide the Student beginning in November 2014. If so, the participants will develop a written plan providing the Student with the compensatory education or other remedial services deemed necessary, and the plan will: identify the nature and amount of the services to be provided at no cost to the Student's parents, who will be providing the services and when, and become part of the Student's IEP. The

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

www.ed.gov

Agreement also requires the District to train School staff regarding Section 504 legal standards concerning the provision of FAPE.

Pursuant to OCR procedures, the District is reminded that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in connection with a complaint.

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, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact Daniel Sorbera, Investigator, at (404) 974-9466, or me, at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader