



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

June 27, 2019

BY REGULAR MAIL

Ms. Christie Finley
Superintendent
Huntsville City Schools
200 White Street
Huntsville, AL 35801

Re: Complaint #04-15-1371

Dear Ms. Staubach:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its investigation of this complaint, received on May 14, 2015, which alleged discrimination on the basis of disability by the Huntsville City Schools (District). Specifically, the Complainant alleged that the District (a) does not individualize Individual Education Program (IEPs) plans for students who are deaf; (b) places students who are deaf or hard of hearing, regardless of grade, in the same class; (c) does not mainstream students who are deaf or hard of hearing with their nondisabled peers; and (d) failed to provide students who are deaf or hard of hearing with sign language interpreters, or provided sign language interpreters who are not certified/licensed and/or qualified.

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, which prohibits 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), 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a public entity and a recipient of Federal financial assistance, the District is subject to these laws.

OCR investigated the legal issues of whether, during the 2014 – 2015 school year, the District discriminated against students who are deaf or hard of hearing on the basis of disability when it: (a) denied them a free appropriate public education (FAPE) by failing to base their IEP's or Section 504 plans on the individual needs of each student; (b) educated the students in the same class, regardless of grade; (c) failed to educate them in the least restrictive environment; and (d) failed to provide students who are deaf or hard of hearing with sign language interpreters, or provided sign language interpreters who are not certified/licensed and/or qualified, in noncompliance with the Section 504 implementing regulations, at 34 C.F.R. §§ 104.33 - 104.35, and the Title II implementing regulation, at 28 C.F.R. § 35.130.

In reaching its determination, OCR reviewed and analyzed documents pertinent to the complaint issues, including student records and policies and procedures. OCR also conducted interviews with relevant individuals, including the Complainant, and 12 District staff members.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion. Based on this investigation, and applying the preponderance of the evidence standard, OCR determined that there is insufficient evidence to support a finding of noncompliance of Section 504 or Title II for Issues a, b and c, and, prior to the conclusion of OCR's investigation, the District requested to voluntarily resolve Issue d pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*. The bases for OCR's determinations are set forth below.

Legal Standards

§ 104.33 Free Appropriate Public Education

The regulations implementing Section 504, at 34 C.F.R. § 104.33(a) and (b), state that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, and 104.35. OCR interprets the Title II regulation's general prohibition against discrimination consistent with the Section 504 FAPE regulations.

§ 104.34 Educational setting.

Section 504, at 34 C.F.R. § 104.34(a), states that a recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified person with a disability in its jurisdiction with persons who are not disabled to the maximum extent appropriate to the needs of the disabled person. A recipient shall place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

§ 104.35 Evaluation and placement.

Section 504, at 34 C.F.R. § 104.35, states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of disability, needs or is

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

believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services which ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Factual Findings and Analysis

(a) Whether the District discriminated against students who are deaf and hard of hearing on the basis of disability when it denied them a free appropriate public education by failing to base their IEPs or Section 504 plans on the individual needs of each student, in noncompliance with Section 504 at 34 C.F.R. § 104.33(a) and (b), and Title II at 28 C.F.R. § 35.130.

The Complainant alleged that the District is using the same educational plans for all of its students who are deaf or hard of hearing and are not making individualized educational decisions for those students. OCR's review of the evidence obtained in this indicated that the District identified 51 of its students as deaf or hard of hearing during the 2014-2015 school year.

OCR's review of the Districts policies and procedures regarding the identification, evaluation and placement of its students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) indicated that "[o]nce a child has been determined eligible for special education and related services, the child may receive any service that the IEP Team determines is required" Further, "[p]ublic agencies must develop and implement procedures to ensure that all eligible children have an appropriate IEP based on the child's unique needs and not on the child's disability." OCR's review of the District's Section 504 policies and procedures indicated that "Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students. . . ."

OCR reviewed educational plans for the 2014 – 2015 school year for students with hearing impairments and found that none of the educational plans are identical, as alleged by the Complainant. OCR also reviewed educational plans for some of those students for the 2015 – 2016 school year and found that none of those plans were the same. OCR's review of the educational plans indicated that the students had different levels of hearing and communication needs, some students communicated using sign language, some communicated using a combination of speech and gestures, and others used hearing aids, cochlear implants, and frequency modulation listening

devices. OCR determined that the educational plans considered the differing needs of the students when identifying related aids and services. For example, Student A attended Chaffee Elementary School and her IEP indicated that she communicates using speech, gestures, and sign language. Her IEP also indicated that she spent 120 minutes per day with a special education teacher, and received speech and language therapy twice per week for a total of 60 minutes, as well as 30 minutes per month of audiology services. The Student also was enrolled in regular education classes, spending between 40-79% of the school day in the regular education environment.

Student B, who also attended Chaffee Elementary School, communicates using speech and sign language, spent 90 minutes daily with a special education teacher, and received 60 minutes per week of speech and language therapy services. Student B also received 30 minutes of occupational therapy per week and received 20 minutes per month of audiology services. Student B attended regular education classes between 40-79% of the school day. Both of these students had a sign language interpreter to work with them in all classes. OCR also noted that, although Students A and B attended the same school, their IEP team members differed.

Student C, a student at Huntsville Middle School, communicates using sign language. Her educational plan stated that she had use of a sign language interpreter all day for classes and assessments, that she received 30 minutes of speech language therapy per week and spent 150 minutes per week with a special education teacher. Student C spent from 80% - 110% of the school day in regular education classes.

During interviews with District staff, a special education teacher stated that all students who are deaf or hard of hearing at Chaffee Elementary School spend part of the day working with a teacher specifically trained to work with students who are deaf or hard of hearing. One teacher provides services to Huntsville Middle School and Huntsville High School; she primarily works with students who are hard of hearing while they are in their regular education classes. IEP teams met and decided on what services such students needed. In some cases, they decided sign language interpreters were needed, but in others that aides or neither were needed. Students had different amounts of speech therapy, different amounts of time spent in regular education classes, different amounts of time spent in a class with other students who are hard of hearing, and also spent working directly with a teacher who specializes in working with students who are hard of hearing. The Complainant could not provide OCR with any evidence that showed that IEPs for students who are hard of hearing are not individualized.

In sum, the educational plans reviewed by OCR were comprised of results from different evaluation methods, contained different goals for achievement, as well as different related aids and services. Further, the educational plans evidenced that the meetings were attended by different administrators, specialists, therapists, special education, and regular education staff. Accordingly, OCR found insufficient evidence of noncompliance with Section 504 or Title II for this issue.

(b) Whether the District discriminated against students who are deaf and hard of hearing on the basis of disability when it places such students in the same class, regardless of grade level, in noncompliance with Section 504 at 34 C.F.R. § 104.35, and Title II at 28 C.F.R. § 35.130.

The Complainant alleged that all students who are deaf or hard of hearing in the District’s kindergarten through fifth grades are “combined into one class in the District.” She alleged that “deaf students are being kept in classes with deaf students only at Chaffee Elementary, Huntsville Junior High and Huntsville High Schools.”

OCR’s review of educational plans for students who are deaf or hard of hearing for the 2014 – 2015 and 2015 – 2016 school years indicated that none of those students spent/spend the entire day in a special education classroom exclusively with other students who are deaf or hard of hearing. Student D attended Morris Elementary School for the 2014 – 2015 school year and was educated in the least restrictive environment (regular education classroom) 100% - 80% of the day. Further, OCR reviews of Student D’s class schedule confirmed that she had a class with at least one regular education teacher. Student E attended Columbia High School for the 2014 – 2015 school year and was educated in the least restrictive environment (regular education classroom) 100% - 80% of the day. OCR’s review of Student E’s schedule confirmed that he had a class with at least one regular education teacher. Student F attended Columbia High School for the 2014 – 2015 school year and was educated in the least restrictive environment (regular education classroom) 100% - 80% of the day. OCR’s review of Student F’s schedule confirmed that she had a class with at least one regular education teacher. OCR confirmed the information contained in the IEPs with the students’ teachers.

Further, OCR’s review of educational plans for students who are deaf and communicate using sign language indicated that Student G attended Challenger Elementary School and received services in regular education and in special education classrooms; Student G was educated in the least restrictive environment 100% - 80% of the day. Student H attended Grissom High School and was educated in the least restrictive environment 100% - 80% of the day; his IEP stated that “[Student H] will participate in the general curriculum for inclusion math with a special education and regular teacher.”

During an interview with OCR, a special education teacher at Huntsville Middle and High Schools stated that the District has no classrooms solely for students who are hard of hearing at those schools. She further stated that the teachers who work with those students who are hard of hearing provide those services in the students’ classroom or pull them out of class to provide those services specifically identified in their educational plans. She further stated that she does not have any students for the entire school day. During an interview with OCR, a retired special education teacher who taught at Chaffee Elementary School stated that she worked with students who were deaf or hard of hearing for 90 minutes or more per day, on average, but that most of the students were in regular education classrooms for most of the day. She also stated that the District has no rule prohibiting the mixing of students in different grades in her class, but clarified that each student performed assignments specific to his or her grade level. Further, a special education teacher currently teaching at Chaffee Elementary School also stated that students who are deaf or hard of hearing spend only part of the day in her classroom for instruction. A regular education teacher at Chaffee Elementary School confirmed that students who are deaf or hard of hearing attend her classes and that they receive services in her classroom from a teacher trained to work with students who are hard of hearing, or those students are pulled out for 30 minutes for specialized instruction.

Further, The Complainant could not provide OCR with any evidence that showed that students who are deaf or hard of hearing are placed in self-contained special education classrooms for the entire school day or that such students, regardless of grade level, are placed in the same special education classroom(s).

Based on this information, OCR determined that students who are deaf or hard of hearing do not attend the same class with the same special education teacher, regardless of grade level; the students' educational plans and class schedules confirmed that those students attended both regular and special educational classes, which was corroborated by information obtained from teachers. Accordingly, OCR found insufficient evidence to establish noncompliance with Section 504 or Title II with regards to this issue.

(c) Whether the District discriminated against students who are deaf or hard of hearing on the basis of disability when it failed to educate them in the least restrictive environment, in noncompliance with Section 504 at 34 C.F.R. § 104.34, and Title II at 28 C.F.R. § 35.130.

The Complainant alleged that students who are deaf or hard of hearing are not educated with their nondisabled peers.

OCR reviewed the IEP's of students who are deaf or hard of hearing and found that no students, with the sole disability identified as deaf or hard of hearing, are educated in classrooms with only students receiving special education services. The District's Special Education Coordinator confirmed that no students whose only disability is auditory are in special education classes all day. In reviewing students' IEPs, most students who are deaf or hard of hearing are educated in regular education classrooms from 40-100% of the school day. Further, OCR's review of class schedules for students who are deaf or hard of hearing indicated that they attend regular education classes. The Complainant could not provide OCR with the names of any students who are deaf or hard of hearing that she believes are educated solely with special education students.

Based on the evidence reviewed for this issue, OCR determined that there is insufficient evidence that the District is in noncompliance with Section 504 and Title II, as alleged.

(d) Whether, during the 2014-2015 school year, the District discriminated against students who are deaf and hard of hearing on the basis of disability when it denied them a free appropriate public education by failing to provide them with certified/licensed and/or qualified sign language interpreters, in noncompliance the Section 504 at 34 C.F.R. § 104.33, and Title II at 28 C.F.R. § 35.130.

OCR reviewed evidence indicating that the District removed one sign language interpreter for three weeks, leaving students without full-time use of an interpreter. Further, those students served by the interpreter had IEPs requiring full-time use of an interpreter. Prior to the conclusion of OCR's investigation to determine fully whether sign language interpreters were either not provided or not

certified/licensed/qualified, the District requested to voluntarily resolve this issue pursuant to Section 302 of OCR's *CPM*.

Conclusion

Based on the information obtained in this investigation, OCR found insufficient evidence to establish that the District is in noncompliance with Section 504 or Title II for Issues a, b and c. The District requested to voluntarily resolve Issue d, discussed below.

302 Resolution Agreement

Prior to the completion of OCR's investigation of Issue 1(d), the District requested to voluntarily resolve this allegation. Pursuant to Section 302 of OCR's *CPM*, a complaint may be resolved before the conclusion of an investigation, when the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the investigation because OCR has identified issues that can be addressed through a resolution agreement. Pursuant to the attached Resolution Agreement (Agreement) the District has agreed to: (1) develop procedures to track and verify that sign language interpreters are properly qualified prior to their use; (2) develop procedures to track that all students who are deaf or hard of hearing, and who require use of a qualified sign-language interpreter per their educational plan, are provided such interpreter for the full period of time, as stipulated in their plan; (3) provide training to special education and other administrative staff responsible for procuring/scheduling/assigning sign language interpreters, of the new policies and procedures; and (4) convene education placement team meetings for all of its students who are deaf or hard of hearing, and who require a qualified sign language interpreter, to determine the amount and type of compensatory education services due to the student(s) as a result of the non-provision of an interpreter or the provision of a non-qualified interpreter.

On June 17, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the complaint. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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.

The Complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case;

failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

If you have any questions regarding this matter, please contact Wayne Awtrey, at (404) 974-9377, or me at (404) 974-9354.

Sincerely,

Ebony Calloway, Esq.
Compliance Team Leader

Enclosure

cc: Rod Lewis, Esq., by electronic mail