



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

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

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December 6, 2017

Mr. Chris Ragsdale
Superintendent
Cobb County School District
514 Glover Street
Marietta, Georgia 30060

Re: Complaint #04-16-1257

Dear Mr. Ragsdale:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its case resolution process of the above-referenced complaint filed against Cobb County School District (District) alleging discrimination on the basis of disability. Specifically, the complainant alleges that the District denied her son a free appropriate public education (FAPE) during the 2014-2015 school year by failing to implement his Individualized Education Plan (IEP) by not providing him speech therapy services, occupational therapy services, and services during transportation. She also alleged that the District discriminated against the Student on the basis of disability by failing to provide him an opportunity to participate in extra-curricular activities at the XXXXXXXX XXXXX XXXXXXXX (XXXXXX)¹.

OCR is responsible for enforcing 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, *et seq.*, 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. Therefore, OCR has jurisdiction over this complaint.

OCR investigated the following legal issues:

Whether the District denied the Student a FAPE by failing to implement his IEP during the 2014-2015 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33 and the Title II implementing regulation at 28 C.F.R. § 35.130.

Whether the District discriminated against the Student by failing to provide him an opportunity to participate in extra-curricular activities at the XXXXX XXXXXXXX, in noncompliance with

¹ During the course of OCR’s investigation the XXXXXXXX XXXXX XXXXXXXX (XXXXXX) physically moved locations and is now called the XXXXX XXXXXXXX at XXXXXXXX (hereinafter XXXXX XXXXXXXX).

the Section 504 implementing regulation at 34 C.F.R. § 104.37 and the Title II implementing regulation at 28 C.F.R. § 35.130.

Legal Standard

The regulation implementing Section 504 at 34 C.F.R. Section 104.33(a) and (b) requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of Sections 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program developed in accordance with the IDEA is one means of meeting the standard established above. OCR interprets the Title II implementing regulations, at 28 C.F.R. 35.130, to be consistent with this Section 504 obligation.

The regulation implementing Section 504 at 34 C.F.R. Section 104.37 (a)(1) requires a recipient to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. Section 104.37 (a) (2) states that nonacademic and extracurricular services and activities may include counselling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to individuals with disabilities, and employment of students, including both employment by the recipient and assistance in making available outside employment.

Summary of Investigation to Date

During the course of this investigation, OCR interviewed the Complainant and District staff and reviewed evidence submitted by the District. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the District requested to address the complaint allegation #1 with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). With respect to allegation #2, OCR determined that this allegation should be administratively closed because another federal agency had filed a lawsuit regarding the allegation. Below is a summary of OCR's investigation to date.

Background

The Student has been diagnosed with XXXXXX and is speech language impaired. His home school was XXXXXXXX XXXXXXXXXXXX School. According to the Complainant, the Student was XXXXXXXX with severe behavior problems, which means aggression that causes him to XXX, XXXX, and XXXXXXXX other students and staff. The Complainant stated that the Student's placement was changed to the XXXXX XXXXXXXX when he was in the Xth grade. The XXXXX XXXXXXXX hosts that Georgia Network for Educational and Therapeutic Support

(GNETS) program for the District. According to the District, during the 2014-2015 school year, the Student was in the Xth grade at the XXXXX XXXXXXXX.

The Student's IEP effective beginning on XXXXXXXXXX XX, XXXX, included provisions for speech therapy (ST) services and occupational therapy (OT) services as well as transportation services. During a XXX X, XXXX, IEP meeting the Student's ST and OT services were modified, and he was approved to receive Extended School Year (ESY) services summer 2015. The Complainant withdrew the Student from the District in XXXXXX XXXX. He is currently enrolled in a GNETS program in another District, and the Complainant has does not wish to return to the Student to the District.

Issue 1 - Denial of FAPE

Speech Therapy (ST) services

According to the Complainant, the Student was not provided ST services as identified in his IEP during the 2014-2015 school year. The IEP developed for the Student on XXXXXXXXXX XX, XXXX, required that the Student receive ST services for XX minutes weekly. The Student's IEP was modified on XXX X, XXXX, to require that the Student receive XXX minutes of ST services monthly.

The Student's Speech/Language Student Attendance Record (Attendance Record) indicates that the Student received ST services from XXXXXX XXXX until XXX XXXX on Tuesdays and Thursdays of each week during the school year. The Attendance Record also identifies the reason the Student did not receive his ST services as scheduled during the week and whether the Student was provided makeup services.

The Attendance Record also indicates that during the school year, on certain weeks, the Student only received ST services one day a week. In addition, the Attendance Record further indicates that he missed ST services for the following reasons: he was absent on the day services were scheduled to be provided to him; a student holiday/teachers work day; field trip; the ST provider was absent; the ST provider was at an IEP meeting; or other reasons. The Attendance Record does not indicate that the Student received any makeup services.

During an OCR interview, District staff stated that the Student was provided ST services directly in his classroom twice a week on Tuesday and Thursday for 30 minutes each day. OCR was advised that the Student continued to receive services twice a week for 30 minutes even after his IEP was modified on XXX X, XXXX.

OCR was advised that all individuals (i.e. speech language providers) who provide services in the small group class do instructional activities twice a week for XX minutes or once for XX minutes, which makes up for time that may be missed. District staff indicated that the Student sometimes received more than XX minutes of ST services on the day he was provided services. District staff also indicated that the Student was frequently absent from school which interfered with his ability to receive ST services. District staff also indicated that the Complainant did not raise any concerns regarding the Student's ST services. However, documentation indicates that

during the XXXXXX XX, XXXX, IEP meeting, concerns were raised that the Student's parents had not received any information about ST services.

Occupational Therapy (OT) Services

The Complainant alleged that the Student was not provided OT services during the 2014-2015 school year as required by the Student's IEP. She also stated that OT services discontinued prior to the end of the school year. The Student's IEP developed on XXXXXXXXXXXX XX, XXXX, required that the Student receive XXX minutes of OT services yearly, four times a year. The Student's IEP was modified in XXX XXXX to require that the Student receive XXX minutes of OT services yearly.²

During an OCR interview, District staff stated that the Student was provided OT services by two individuals. One of the individuals was a certified occupational therapist and the other was CODA certified. According to the District, both individuals met the criteria to be certified by the District as occupational therapist. District staff stated that both individuals co-provided OT services to the Student. OCR was advised that direct services were provided to the Student and consult services with the teachers.

Documentation shows that during an XXXXXX XX, XXXX, IEP meeting concerns were raised that the parents had not received any information regarding OT services. Documentation indicates that District staff reviewed the Student's progress report and explained the IEP requirements for OT as well as provided examples of how those services could be provided to the Student. Documentation indicates that the Student was provided OT services on XXXXXX XX, XXXX; XXXXXXXXXXXX XX, XXXX; XXXXXXXX XX, XXXX; XXXXXXXXXXXX XX, XXXX; XXXXXXXX XX, XXXX; XXXXXX XX, XXXX; and XXX X, XXXX. While the Student's behavior was noted in the document, the document does appear to indicate the nature of the OT services received by the Student.

Transportation Services

The Complainant alleges that the Student was not allowed to bring his comfort items on the bus to school. She also alleged that the transportation department in the District is not notified when students with disabilities have an IEP that may require services related to transportation. Documentation shows that transportation was requested for the Student starting XXXXXX X, XXXX. The Student was also to receive transportation for Extended School Year Services during the summer 2015. The provision in the Student's IEP regarding transportation identified the special equipment/special needs of the Student to include a bus monitor, a climate controlled bus, and a safety vest. The IEP developed for the Student on XXXXXXXXXXXX XX, XXXX, stated that the Student was permitted to bring a comfort item on the bus, a pillow/blanket. Documentation noted that the safety vest should be available, but not used unless absolutely necessary. District staff stated that transportation received copies of the Student's IEP. OCR was advised that the transportation department receives a transportation request form from the school with any modifications or changes to them. District staff interviewed indicated that to

¹ OCR was unable to interview the individuals that provided OT services to the Student during the 2014-2015 school year because they were no longer employed with the District.

their knowledge the type of comfort items the Student was allowed were not specified and that the provision in the IEP requiring air conditioning was optional.

Documentation indicates that the Complainant raised concerns during the XXX X, XXXX, IEP meeting that the air conditioner was often not on and that the windows were down on the Student's bus. The IEP indicates that no representative from transportation attended the meeting even though the Complainant requested someone from transportation attend the meeting to address her concerns. In a XXX X, XXXX, email from the Complainant to a representative in the transportation advising her that the Student had a good day on the bus and asked why no one from transportation attended the IEP meeting. In a XXX X, XXXX, email to the Complainant, the representative advised the Complainant that representatives from transportation are not usually invited to attend IEP meeting. The Complainant was advised that a representative from transportation would attend the next IEP meeting if notified prior to the scheduled meeting.

During an OCR interview, District staff stated that an incident occurred on the bus in which the bus monitor took the Student's blanket from him because the blanket had dog hair and the monitor was severely allergic to the dog hair. District staff asserts that the monitor contacted the Complainant, and it was agreed that the Student would bring a clean blanket to leave on the bus so that there would be no allergy issues for anyone riding the bus. District staff stated that there were no other incidents on the bus related to the Student's use of his comfort items.

Reason to Resolve Issue #1 Pursuant to CPM Section 302

As noted, documentation provided by the District indicates that the Student may not have been provided ST services as required by his IEP because he not provided ST services on several days he was scheduled to receive services during the school year, and there is no indication that he received any make-up services. In addition, the documentation provided regarding OT services notes the Student's behavior, but does not indicate the nature of the OT services provided to the Student. Further, documentation indicates that the Complainant raised concerns about the air conditioning on the bus, and there was an incident where the bus monitor took the Student's comfort item. Thus, further investigation would be needed to conclude OCR's investigation as to whether the Student was denied a FAPE regarding the provision of ST and OT services and services during transportation.

Issue 2 – Extracurricular Activities

The Complainant alleges that the Student was not provided an opportunity to participate in extracurricular activities at the XXXXX XXXXXXXX. During the course of its investigation, OCR determined that although we opened this complaint against the District, the XXXXX XXXXXXXX is not a District school. The District is the host school for the GNETS program. The State authorizes and oversees the programs offered at the XXXXX XXXXXXXX, which houses students from the District and Douglas County and Marietta City school districts. District staff advised OCR that extracurricular activities are not offered at the XXXXX XXXXXXXX because it is not a school, it is a GNETS program. OCR was advised that students at the XXXXX XXXXXXXX who want to participate in extracurricular activities must participate in those activities at their home school. Therefore, in order for OCR to proceed with an

investigation regarding this issue, OCR would need to close the current complaint against the District as it relates to extracurricular activities and open a complaint against the State of Georgia.

However, DOJ has issued findings related to this issue and determined that students enrolled in the GNETS program are not provided an equal opportunity to participate in extracurricular activities compared to students outside the GNETS program. DOJ recommended remedial measures in its letter of findings, and enforcement proceeding have been initiated based on the State's response. On August 23, 2016, the DOJ filed a lawsuit against the State under the ADA and Olmstead regarding its GNETS program.

Proposed Resolution and Conclusion

With respect to issue #1, the attached Agreement requires the District to provide training to administrative and teaching staff at the XXXXX XXXXXXXX; all transportation staff and bus monitors assigned to XXXXX XXXXXXXX; and the District's Section 504 Coordinator regarding the District's requirement to provide a FAPE to students identified as eligible to receive disability related services under Section 504 and Title II. The training shall be provided by a source with expertise in Section and Title II³ and shall cover, at a minimum, the District's obligation to provide a FAPE to students eligible to receive disability related services.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

With respect to issue #2, OCR's *Case Processing Manual*, Section 110(i), provides that OCR may close a complaint where a class action with the same allegation(s) has been filed against the same recipient with state or federal court and the relief sought is the same as would be obtained if OCR were to find a violation of the complaint allegation(s). An OCR complaint may be refiled within 60 days following termination of court proceeding if there has been no decision on the merits or settlement of the state or federal complaint. Based on the above, OCR is administratively closing this allegation because DOJ is currently in litigation regarding the State's GNETS program, including issues related to extracurricular activities. Please note that OCR will take no further action with regard to this allegation.

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.

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,

³³ If the District desires, it may coordinate with OCR to provide the training at a mutually-agreeable time and place.

to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. 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 an investigation in connection with a complaint.

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 Ledondria H. Saintvil, Attorney, at (404) 974-9373, or me, at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure