



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

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ATLANTA, GA 30303-8927

REGION IV
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June 6, 2017

X
Superintendent
The School District of Palm Beach County
Fulton-Holland Educational Services Center
3300 Forest Hill Boulevard
West Palm Beach, Florida 33406

Re: OCR Complaint #04-16-1461/Letter of Resolution

Dear X:

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the resolution of the above-referenced complaint filed with our office on May 13, 2016 against the Palm Beach County School District (District). Specifically, the Complainants alleged that the District failed to fully implement the Student's 2015-2016 Section 504 plan by: (a) failing to provide Hospital/Homebound services to the Student in April 2016 when he had numerous absences; and (b) from January 2016 until the end of the school year, failing to provide the Student with a folder in each class that contained teacher communications, notes on lectures, missed materials, homework/assignments, and other correspondence. The District has voluntarily entered into a resolution agreement (Agreement) that resolves the complaint allegations.

OCR investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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 from the Department. OCR also applied Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public educational institutions. Because the District is a recipient of Federal financial assistance from the Department and a public entity, it is subject to these regulations.

OCR investigated the following legal issue:

Whether the District failed to fully implement the Student's 2015-2016 Section 504 plan by failing to provide Hospital/Homebound services to the Student in April 2016 and failing to provide the Student with a folder in each class from January 2016 until the end

of the school year, thereby denying him a free appropriate public education (FAPE) in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR reviewed and analyzed relevant documents submitted by the Complainants and the District. Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this complaint, and OCR agreed. Therefore, the District entered into an Agreement that fully resolves the issues in this complaint. With respect to the first allegation, OCR found insufficient evidence that the District's failure to provide Hospital/Homebound services to the Student violated Section 504 and Title II. With respect to the second allegation, the Agreement resolves the issue of the District's failure to provide the Student with a folder in each class. This letter summarizes the applicable legal standards, OCR's investigation thus far, and the provisions of the Agreement.

A. Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. In addition, the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(b)(1)(i), (ii), and (vii) provide that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The Title II implementing regulation at 28 C.F.R. §§ 35.130(a) and (b)(1)(i), (ii), and (vii) contain substantially the same general prohibitions against disability discrimination as the above Section 504 provisions. As stated in the Title II implementing regulation at 28 C.F.R. § 35.103, this regulation shall not be construed to apply a lesser standard than the standard applied under Section 504.

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a)-(b)(2) requires a recipient that operates a public elementary or secondary education program or activity to provide a FAPE to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. The provision of 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 educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and that satisfy the requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (relating to educational setting, evaluation and placement, and procedural safeguards). Implementation of an Individualized Education Program developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

As the Title II implementing regulation affords no greater protection than the Section 504 implementing regulation with respect to the complaint issues, OCR investigated this complaint in accordance with the above Section 504 standards.

B. Findings of Fact

The Student was X years old at the time of the Complainants' OCR complaint filing. He was [REDACTED] grader during the school year at issue in this complaint, 2015-2016. During the first half of his X grade year, from August 2015 to December 2015, the Student attended a private school, X, on a McKay Scholarship. During the second half of the school year, from January 2016 until May 2016, he attended X School (School) in the District.

The Student has been diagnosed with [REMAINDER OF SENTENCE REDACTED]. Beginning on February 2, 2016, the Student was placed on a dual enrollment between Hospital/Homebound and the School. Under this placement, the Student would attend the School if medically capable of doing so. If he missed school for medical reasons, the District agreed to provide Hospital/Homebound services to the Student. One hour of in-home services would be provided to the Student for each day absent from school, up to a total of four hours per week.

To effectuate this dual enrollment, the District developed a Section 504 Accommodation Plan (Section 504 plan) dated February 1, 2016 and a Hospital/Homebound Individual Education Plan (IEP) dated February 1, 2016. Both plans had an initiation date of February 2, 2016. The Student's Section 504 plan provided such modifications and services as parental notification of any illness and/or outbreak at the School and the provision of extra textbooks for the Student's home use. The Student's IEP provided, in relevant part on pages 8 and 11, the following special education services, supplementary aids, and educational placement:

V. Special Education Services/Specially Designed Instruction/Supplementary Aids and Services/Related Services

A. Accommodations, Modifications, Aids & Services

“When student is absent, provide folder with notes and missing work.”

B. Special Education Services

“Direct instruction through hospital homebound home,” at the frequency of one hour per week for each day absent.

VII. Educational Placement

“When X is out sick from school he will be in hospital homebound dual enrollment.”

In addition, the Conference/Staffing Record notes of the discussion during the February 1, 2016 Section 504 meeting state as follows: “From this point forward teachers will let parents know what missing classwork needs to be made up. Each class will have a folder with notes from when he is absent.”

Issue #1: Failure to Provide Hospital/Homebound Services

The Complainants’ first allegation is that the District failed to fully implement the Student’s Section 504 plan by failing to provide Hospital/Homebound services to the Student in April 2016 when he had numerous absences.

The District submitted a copy of the Student’s attendance records to OCR, which showed that, in April 2016, the Student was absent three full days (April 4, 5, and 29) and missed portions of five additional school days (April 7, 8, 13, 20, and 28). Based on these absences, the District determined that the Student was entitled to receive seven hours of Hospital/Homebound services.

However, the District acknowledged to OCR that it did not provide any Hospital/Homebound services to the Student in April 2016. The District further acknowledged that a total of 21 missing Hospital/Homebound hours were not provided to the Student between February 1, 2016 (the date of the Student’s Section 504 plan and Hospital/Homebound IEP) and June 2, 2016 (the last day of school), due to a communication issue between the District and the Complainants.

The District explained to OCR that, on March 6, 2016, the Student’s father (Father) informed a Hospital/Homebound office representative that the family was ill and that he would contact the in-home teacher directly to schedule services after they recuperated. According to the District, there was no further communication between the family and the Hospital/Homebound office until May 10, 2016, when the Student’s mother (Mother) called to inquire about a math teacher. The District informed OCR that it was at this time that the District discovered the communication issue and the 21 hours of unprovided Hospital/Homebound services. OCR reviewed an e-mail dated May 5, 2016 from the District’s Exceptional Student Education (ESE) Coordinator to the Mother with the same explanation for the non-provision of Hospital/Homebound services.

After discovery of the communication issue, the District developed a written communication process to be implemented whenever the Student was absent from school due to illness. Pursuant to the new process, the Complainants would e-mail the assigned in-home teacher whenever the Student was absent for medical reasons. The in-home teacher would contact the Student’s four core content teachers, who were required to e-mail her the Student’s missed lessons. The in-home teacher would then schedule in-home instruction with the Complainants,

teach the missed lessons based on the time designated in the IEP, obtain written parental verification of the provided in-home session, and prepare logs of the provided instruction. The Hospital/Homebound Manager communicated the new process to the Father via e-mail on May 13, 2016 and informed him that the in-home teacher would provide the missing Hospital/Homebound services (16 hours as of that date) to the Student. She also assured the Father that she intended to make procedural changes to ensure that the mistake did not recur.

On August 12, 2016, the Mother informed OCR that the Student received Hospital/Homebound services in May 2016 and that the District had offered to provide the missing hours of Hospital/Homebound services to the Student during the summer. However, the Mother advised OCR that she rejected the offer because she wanted the Student to enjoy his summer.

During the fall of 2016, the District again offered to provide compensatory Hospital/Homebound services to the Student. Specifically, on October 27, 2016, the Hospital/Homebound Manager called and e-mailed the Father to arrange to provide the 21 hours of compensatory Hospital/Homebound services to the Student. On the same date, the Mother responded via e-mail to the Hospital/Homebound Manager to advise her that the Mother did not want any further correspondence from the Hospital/Homebound Manager or her department. On November 5, 2016, the Father e-mailed the Hospital/Homebound Manager, informing her to direct her communications to OCR.

The District informed OCR that it “remains ready, willing and able to provide compensatory Hospital/Homebound services for the days absent” to the Student.

OCR generally finds that a school district’s failure to implement key aids, services, or accommodations/modifications identified in the IEP or Section 504 plan of a student with a disability denies the student a FAPE and, thus, violates Section 504 and Title II. However, not every failure to implement an aid, service, or accommodation/modification in an IEP or Section 504 plan automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and the impact, if any, that the failure had on the student’s ability to participate in or benefit from a school district’s services, programs, and activities.

In this case, OCR finds insufficient evidence that the District’s failure to provide Hospital/Homebound services to the Student constituted a denial of FAPE, and therefore, a violation of Section 504 or Title II. The evidence in this case shows that the District attempted to provide the Hospital/Homebound services to the Student, but the Complainants canceled due to family illness. The Father informed the District that he would contact the in-home teacher to reschedule the services when the family recuperated, but failed to do so. Although the District likewise failed to timely follow up with the Complainants to reschedule the Hospital/Homebound services, it immediately took actions to remedy the issue when it discovered the non-provision of services. The Hospital/Homebound Manager implemented a new written communication process to avoid a future recurrence of the communication issue. In addition, the District twice offered to provide compensatory Hospital/Homebound services to the Student, during the

summer of 2016 and again during the fall of 2016, but the Complainants rejected both offers. The Student is currently homeschooled. Based on all of the above, OCR finds insufficient evidence of a violation of Section 504 or Title II with respect to this first issue.

Issue #2: Failure to Provide Class Folder During Absences

The Complainants' second allegation is that the District failed to fully implement the Student's Section 504 plan by failing to provide the Student with a folder in each class that contains teacher communications, notes on lectures, missed materials, homework/assignments, and other correspondence.

The Student's IEP requires the School to provide him with a folder containing notes and missing work for each class when he is absent. The District acknowledged that only the Student's U.S. History teacher used a folder system in her classroom and that the remaining teachers did not. The District submitted evidence to OCR showing that the teachers who did not use folders in their classrooms relayed assignments and missed work to the Student during his absences in one of three ways: (a) responded directly to the Complainants' e-mails requesting work assignments; (b) provided a hard copy of the work to the front office for pick-up by the Mother or home delivery by the in-home teacher; or (c) required the Student to access the assignments and work via electronic portals accessible by all students, including the Student.

OCR also found that, due to a miscommunication about the Student's required make-up work, the Student completed the wrong work in Algebra I Honors during the last nine-week period. The Mother blamed the miscommunication on the lack of a folder. However, the Algebra teacher did not penalize the Student for the error. The teacher gave the Student credit for the wrong work completed and did not require him to do the correct assignment.

Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved prior to the conclusion of the investigation if the recipient expresses an interest in resolving the issues and OCR agrees. In this case, the District expressed an interest in voluntarily resolving this second issue and entered into the Agreement to resolve the class folder issue. The Agreement requires the District to train School personnel regarding the District's obligation under Section 504 and Title II to fully implement students' Section 504 plans and IEPs.

C. Conclusion

OCR will closely monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with Section 504 and Title II. If the District fails to fully implement this Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainants may 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. This letter 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.

Intimidation of 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. If this happens, the individual may file a complaint with OCR 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, personally-identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Vahn Wagner, Senior Attorney, at (404) 974-9392 or Virgil Hollis, Compliance Team Leader, at (404) 974-9366.

Sincerely,

Melanie Velez
Regional Director

Enclosure (Signed Resolution Agreement)

cc: X (District's ADA/504 Specialist) (w/ encl.)