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

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ATLANTA, GA 30303-8927

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April 2, 2019

Dr. R. Stephen Green
Superintendent
DeKalb County School District
1701 Mountain Industrial Boulevard
Stone Mountain, GA 30083

Re: OCR Complaint No. 04-19-1021
Letter of Resolution

Dear Superintendent Green:

On October 4, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against DeKalb County Schools (the District). The Complainant (Niya Wood) filed the complaint on behalf of her sons, Jaylen Wood (Student 1) and Jaden Wood (Student 2). The Complainant alleged that the District discriminated against Student 1 and Student 2 on the basis of disability. Specifically, the Complainant alleged that the staff at Panola Way Elementary School have failed to implement Student 1's requirement for speech language therapy and one-on-one instruction in math, social studies and reading as outlined in his Individualized Education Plan (IEP). She also alleged that the staff at Miller Grove Middle School have failed to implement Student 2's requirement for speech language therapy and that the school does not have a paraprofessional to assist in his math and science courses, as outlined in his IEP.

OCR opened the complaint for investigation under the authority of 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. As a public entity, the District is also subject to the provisions of 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 prohibits discrimination on the basis of disability. The District is a recipient of Federal financial assistance from the Department and a public entity and is therefore subject to these laws that prohibit discrimination on the basis of disability.

Based on the above, OCR investigated whether the District denied Student 1 and Student 2 a free appropriate public education (FAPE) by failing to implement their IEPs, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR reviewed documents provided by both the District and the Complainant, including the special education records of Student 1 and Student 2 and

correspondence between District staff and the Complainant. OCR also interviewed the Complainant.

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement. Set forth below are the applicable legal standards and a summary of the 302 resolution.

Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. Pursuant to 34 C.F.R. § 104.33(b)(1), 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 disabled persons as adequately as the needs of non-disabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36 (relating to educational setting, evaluation and placement, and procedural safeguards).

Facts, Analysis and Conclusion

Student 1 and Student 2 both have been diagnosed with a specific learning disability and speech/language impairment. Student 1 attends Panola Way Elementary School (School 1) and Student 2 attends Miller Grove Middle School (School 2). Both students have an IEP to provide accommodations relevant to their disability.

Student 1

The Complainant alleged that Student 1 has not received instruction from a paraprofessional in his math, science, and social studies courses, as outlined in his IEPs for December 2017 and November 2018. She also alleged that Student 1 was not receiving his required speech language therapy services. OCR reviewed data provided by the District regarding these allegations. At the time that this complaint was filed, Student 1's December 2017 IEP stated that he would receive instruction in his Science and Social Studies courses 55 minutes/five times a week from a paraprofessional in the General Education Classroom. This information can be found under the "Educational Setting" section of the December 2017 IEP. In November 2018, the IEP team met and developed Student 1's most recent IEP. In the "Educational Setting" portion of Student 1's November 2018 IEP, it is indicated that Student 1 will receive instruction in his Science and Social Studies courses 55 minutes/five times a week from the General Education Teacher in the General Education Classroom. However, the meeting minutes for the November 2018 IEP state that Student 1 will receive Social Studies and Science instruction in the para support setting. Student 1's IEP did not require paraprofessional support for math.

The District asserted that Student 1 was not required to have one on one support from a paraprofessional based on the November 2018 IEP. However, the November 2018 IEP meeting minutes state that the Student will receive support from a paraprofessional. In a follow up call with the Complainant, the Complainant told OCR that there was no paraprofessional in the classroom to provide any form of instruction for Student 1 at any time, even though it was listed in both of Student 1's IEPs. The District requested to voluntarily resolve this issue pursuant to Section 302 of OCR's Case Processing Manual.

The District also asserted that Student 1 received all of his speech language therapy sessions, but the District did not provide OCR with data that documented the Student's sessions. The District also requested to voluntarily resolve this issue through the 302 resolution process.

Student 2

The Complainant alleged that Student 2 has not received instruction from a paraprofessional in his math and social studies courses, as outlined in his December 2017 IEP. She also alleged that Student 2 was not receiving his required Speech services. A review of the records provided by the District revealed that at the time that this complaint was filed, Student 2's IEP did not require paraprofessional support. During a December 2018 IEP meeting, the District added the provision of "one on one paraprofessional support as needed" to Student 2's IEP. During OCR's call with the Complainant on March 7, 2019, she confirmed that Student 2's IEP did not require paraprofessional support until it was added in December 2018. As such, OCR has determined there is insufficient evidence of noncompliance with Section 504, as alleged in this issue.

With respect to Student 2's speech language therapy sessions, the District acknowledged that some sessions were missed. As a result, the District has developed a plan to provide compensatory services for any sessions missed and requested to voluntarily resolve this issue pursuant to Section 302 of OCR's Case Processing manual.

The District signed the enclosed Resolution Agreement (Agreement) that, when fully implemented, will resolve this complaint. The Agreement requires the District to convene an IEP meeting for Student 1 to determine if instructional time in a paraprofessional support setting was missed and, if so, provide Student 1 with compensatory services. The IEP team will also review Student 1's speech language therapy data to determine if Student 1 missed any sessions and, if so, provide Student 1 with compensatory services. Regarding Student 2, the District will provide Student 2 with an additional hour of speech language therapy each week (on top of the hour per week he is required to receive) as compensatory services for the sessions that the student missed during the 2018-2019 school year, prior to October 4, 2018.

OCR will monitor the District's implementation of the 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.

This concludes OCR's investigation of this complaint and 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's insufficient evidence determination regarding Student 2's alleged failure to receive paraprofessional instruction 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 District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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, 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.

OCR is committed to prompt and effective service. If you have any questions, please contact Lachauna Edwards, Attorney, at (404) 974-9390 or the undersigned at (404) 974-9392.

Sincerely,

Vahn Wagner
Acting Compliance Team Leader

Enclosure (Resolution Agreement)

cc: Nina Gupta, Esq. (Counsel for District) (w/ encl.)