



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

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REGION IV

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February 7, 2020

Via Email Only (millard.house@cmcss.net)

Mr. Millard House II
Director of Schools
Clarksville-Montgomery County School System
621 Gracey Avenue
Clarksville, Tennessee 37040

Re: OCR Complaint No. 04-19-1531
Letter of Findings

Dear Mr. House:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on August 16, 2019, against Clarksville-Montgomery County School District (District). The Complainant filed the complaint on behalf of her daughter, a student (Student) at West Creek High School (School) and other students in her class. The Complainant alleged that the District discriminated against the Student and other students with disabilities, based on the following:

1. Students with disabilities are treated differently since they are dismissed 15 minutes earlier than their non-disabled peers at 2:15 pm, incurring a significant loss of educational time.
2. The Student and other students in her self-contained classroom at the School are segregated from their non-disabled peers during breakfast, lunch and music since they occur in their classroom and not the cafeteria and music room as their non-disabled peers.

Jurisdiction

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The District receives Federal financial assistance from the Department and is a public entity; therefore, the Department has jurisdiction over this matter pursuant to Section 504 and Title II.

Legal Issues:

OCR investigated the following legal issue(s):

1. Whether the District treats students with disabilities in the Student's self-contained classroom differently since they are dismissed 15 minutes earlier than their non-disabled peers at 2:15 pm, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a) and (b), and the Title II implementing regulation at 28 C.F.R. § 35.130(a) and (b).
2. Whether the District students with disabilities in the Student's self-contained classroom differently are in the least restrictive environment since they have breakfast, lunch and music in their classroom and not the cafeteria or music room as their non-disabled peers, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.34(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a) and (b).

Summary of Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District including students' Individualized Education Programs (IEPs), and the District's policies and procedures; interviewed the Complainant, Teacher, Secondary Special Population Coordinator, and Bus Driver.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, regarding allegation #1, but determined that the District resolved the issue. Regarding allegation #2, OCR found sufficient evidence of a violation of Section 504 and Title II, related to breakfast and lunch.

Background

During the 2019-20 school year, the Student was in one of the School's three Comprehensive Development Classrooms (CDC). The Student's class (the Class) has eleven students total; these eleven students have the most severe and profound disabilities in the School. The Teacher has four additional Educational Assistants (EAs) in the classroom with her at all times to assist her—two of the EAs are specific to two students, while the other two EAs are generalized for all students. The age range in her classroom is from 15 to 21 years of age, and about half the students in the classroom are non-verbal.

Allegation 1: Whether the District treats students with disabilities in the Student's self-contained classroom differently since they are dismissed 15 minutes earlier than their non-disabled peers at 2:15 pm, incurring a significant loss of educational time.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from

participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of disability.

Factual Findings/Analysis

Once the District was notified of OCR's complaint, the District surveyed the Class's departure time on October 22, 2019, and found that the bus departed at 2:17 pm. By October 23, 2019 the District ensured that the Class was released at the same time as other non-disabled students at the School, which is 2:25 pm. Similarly, the bus driver and Teacher stated that prior to October 23, 2019, the Class's students were released to the bus between 2:10 to 2:15 pm, and sometimes as late as 2:20 pm; however, since October 23, 2019, the Class was released at the same time as other non-disabled students at the School at 2:25 pm.

On January 31, 2020, when OCR called the Complainant to confirm the above correction, she acknowledged that there had been a correction since October but stated that since the prior week, the District has reverted. She stated, "It's not possible that they're letting out at 2:25 pm and getting to my house at 2:30 pm since before when it was fixed, they'd get to my house at 2:45 pm to 3 pm." OCR contacted the District regarding the alleged reversion and the Teacher stated that the Class continued to be released at 2:25 pm since October 23, 2019, when the initial correction occurred and there had been no variation in release time. The Teacher stated that loading took approximately two minutes since the buses were located right outside the back door of the Class. Additionally, the District confirmed through video footage that the Class was released from the classroom at 2:25 pm the prior two weeks. Finally, the District also provided bus departure times from the bus's GPS location device, which also confirmed departure from the School after 2:25 pm. In summary, although the Complainant alleges that the bus continues to depart prior to the release time of other non-disabled students, OCR finds that based on a review the evidence provided by the District that the Student's Class continues to be released at 2:25 pm, which is the same time as other non-disabled students at the School. Pursuant to OCR's Case Processing Manual (CPM) § 108(j), OCR may dismiss an allegation when OCR obtains credible information indicating that the allegation raised by the complainant is currently resolved and is therefore no longer appropriate for investigation.

Allegation 2: Whether students with disabilities in the Student's self-contained classroom are in their least restrictive environment since they have breakfast, lunch and music in their classroom and not in the cafeteria or music room similar to their non-disabled peers.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.34(a), requires a school district to educate a student with a disability with his/her nondisabled peers to the maximum extent appropriate to the needs of the student with a disability.

Factual Findings

Breakfast and Lunch:

The Teacher stated that generally the EAs pick up breakfast items from the cafeteria and bring them back to set them up for students. She said one student of the eleven in her class goes and gets his own breakfast independently and then comes back and eats in the classroom, although he has the option of eating in the cafeteria and has in the past. She said that it is beneficial due to unloading times in the morning since students may have to go to the bathroom, and some have intensive care routines. She noted that the ten students who stay in the classroom cannot independently go to the cafeteria and get their own food, but the one particular student is able to independently walk and eat on his own. She also noted that there is one student in her class with a feeding tube that the nurse handles. She stated that it is an option in her classroom that if the student is capable, he/she could go to cafeteria; however, the Teacher explained that most of the students have severe disabilities and are unable to go to the cafeteria independently.

The Teacher explained that the lunch routine for the Class is to go to the cafeteria before the rest of the crowd of approximately 400 students get in so the Class has time to eat. Every student is paired with a peer mentor or EA to assist them with choosing food items, using their lunch number, selecting their food and drink items, and getting cutlery. She stated that most of her students need assistance with these steps, and after they get their food they return to the classroom. Many of her students need to be with an adult while eating, depending on their needs. She noted some students need assistance with cutting up their food because they are a choking hazard. The EA will sit next to them and focus on the student while they eat, reminding them to take small bites, and chew slowly.

OCR reviewed the Class's IEPs and found that eating breakfast and lunch in the classroom was not discussed or noted, and there were no notes discussing whether or not this was the least restrictive environment for these students during breakfast and lunch. The Teacher confirmed that she participated in the students' IEP meetings and that generally the IEPs did not reflect that an individualized decision was made related to breakfast and lunch, although she contends that she was making an individualized determination. Finally, the Teacher noted that since the Complainant had raised this concern, they had amended the Student's IEP on November 14, 2019. OCR requested a copy of the updated IEP and found that the Student's IEP reflects that the Student should have lunch in the special education setting, although it was silent related to breakfast. Based on the above, OCR finds that all of the students' IEPs do not reflect that an individualized decision was made related to special education setting being the least restrictive environment for breakfast and lunch.

Music:

The Teacher explained that since the School's Music teacher had a free period, administration decided last year to have him come to the CDC classrooms and provide something extra for the students. The Teacher stated that the Music teacher teaches a basic music class two days per week for fifty minutes and is documented as part of her regular classroom time, and not in the students' IEPs as a music class per se. The Teacher also explained that some of her students attend other specials or electives which is an individualized decision documented in their IEPs with other non-disabled students. OCR's review of CDC students' IEPs found that several students, including the Student, attend various electives, such as guitar, art or chorus with general education students.

Based on the above, OCR found that the Class's students are able to participate in their least restrictive environment related to electives.

Proposed Resolution

To resolve the violation of Section 504 and Title II described above related to breakfast and lunch, we propose that the District enter into the attached Resolution Agreement, pursuant to which it would agree to conduct IEP meetings for all students in the Class and make individualized decisions related to whether the least restrictive environment for breakfast and lunch is in the special education settings.

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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Lorraine Irier, the OCR attorney assigned to this complaint, at 404-974-9349 or lorraine.rier@ed.gov.

Sincerely,



Arthur Manigault
Compliance Team Leader

Enclosure

cc: Ms. Carol Joiner, District's Attorney, (Carol.Joiner@cmcss.net)