



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

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ATLANTA, GA 30303-8927

REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

October 2, 2020

Via Email Only

Dr. Cathy Beck
Director of Schools
Cheatham County
cathy.beck@ccstn.org

RE: OCR Complaint No. 04-20-1359
Resolution Letter

Dear Dr. Beck:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 6, 2020, against the Cheatham County School District (the District). Specifically, OCR investigated the following legal issues¹:

1. Whether the District failed to timely evaluate the Student during the 2019-20 school year, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R § 104.33, and Title II and its implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District treated the Student differently due to her disability when she was excluded from a field trip on October 10, 2019, in noncompliance with the Section 504 and its implementing regulation at 34 C.F.R § 104.4, and Title II and its implementing regulation at 28 C.F.R. § 35.130.
3. Whether the District failed to provide procedural safeguards during 504 meetings on December 6, 2019 and January 30, 2020, in noncompliance with the 34 C.F.R § 104.36, and Title II and its implementing regulation at 28 C.F.R. § 35.130.
4. Whether the District fails to provide appropriate notice of Section 504 Grievance Procedure information, and designation of responsible employee, in noncompliance with the 34 C.F.R § 104.7(a) and (b), and Title II and its implementing regulation at 28 C.F.R. § 35.107.²

¹ OCR only considered the revised complaint the Complainant submitted during OCR's evaluation process since the Complainant requested that OCR not consider the original complaint.

² OCR revised this allegation to include a review of the designation of responsible employee because although the Complainant alleged failure to provide notice of the "grievance procedures" she also provided substantive information that the designation of the responsible employee was deficient.

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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, and Title II.

During the investigation to date, OCR reviewed information provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve Issues #1-#2 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that "allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement." Regarding Issue #3, OCR found insufficient evidence that the District was in noncompliance with Section 504 and Title II and their implementing regulations.

Regarding Issue #4, OCR found that a lack of the notice of grievance procedures in the School Handbook does not constitute a violation of Section 504 when the notice of grievance procedures are posted on the District's website. However, OCR also found that the School Handbook's designation of the 504 Coordinator is inconsistent with other District notices, and pursuant to Section 302 of OCR's CPM the Resolution Agreement requires the District to review and revise its designation of a 504 Coordinator to ensure that it is consistent in the School's Handbook and other related District notices. Set forth below is a summary of OCR's legal standards, findings, analysis, and conclusions.

Legal Standards

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state.

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.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

The Section 504 regulation, at 34 C.F.R. § 104.7(a) requires a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires Districts that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public District that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

Summary of Investigation

During the 2019-20 school year, the Student attended first-grade student at Peagram Elementary School (School) in the District. Previously, for kindergarten the Student attended Kingston Springs Elementary School, another school in the District. The Student has been diagnosed with XXXXXXXXXXXXXXXXXXXXXXXX. The Complainant is an attorney hired by the Student's parent (Parent).

Issue #1: Failure to Timely Evaluate

The data submitted by the District reveals that on July 29, 2019, the Parent enrolled at the School and submitted the District's Information Form stating that the Student had "Autism." The School conducted a Student Support Team meeting on September 12, 2019, with the Parent attending and an intervention plan put in place the same day. On September 26, 2019, the Parent forwarded a copy of the Student's psychological report to the District via email. On December 6, 2019, a 504 meeting was held with the Parent and a 504 Plan developed, incorporating the prior intervention plan. As noted above, the District and OCR agreed to resolve this issue under Section 302 of OCR's CPM by conducting a 504 meeting to determine if the Student requires compensatory services.

Issue #2: Disability Different Treatment

The Principal reported in a statement that on October 8, 2020, the Student, threw items at the

teacher and students, put glue all over her desk, and rolled herself up in the carpet. The Principal reported that when she called the Parent they discussed the upcoming field trip and both agreed that due to her behaviors she should not attend the field trip on October 10, 2019. The Student did not have a 504 plan at the time of the field trip. As noted above, the District and OCR agreed to resolve this issue under Section 302 of OCR’s CPM by conducting training of all teaching staff and administrators at the School.

Issue #3 Procedural Safeguards

The Complainant alleged that the District failed to advise her of her procedural safeguards at 504 meetings held on December 6, 2019, and January 30, 2020. The District denies this allegation and states that notice of procedural safeguards were provided, on December 6, 2019. The District also stated that the December 6, 2019 meeting provided consent for the assessment, while the January 30, 2020 meeting was a review of the evaluations.

The data submitted by the District reveals that the Parent signed a form entitled, “Notice of Parent and Student Rights under Section 504” (Form) on December 6, 2019, indicating that she had received notice. The Form advised the Parent that placement decisions had to be made by a group knowledgeable of the Student; that she had a right to notice prior to any placement decision, a right to examine relevant records, a right to an impartial hearing, and right to a review procedure. Although the Complainant did not receive her procedural safeguards again at the January 30, 2020 meeting she had received them less than two months earlier at a related 504 meeting.

Based on the above, OCR concludes that there is insufficient evidence to find that the District failed to advise the Parent of her procedural safeguards in noncompliance with Section 504, as alleged.

Issue #4: Notice of Grievance Procedures, and Designation of 504 Coordinator

(a) Notice of 504 Grievance Procedures

The Complainant alleged that the District’s 504 grievance procedures are on the website but not in the School’s Handbook. OCR is dismissing this allegation under Section 108(a) of OCR’s *Case Processing Manual* because the allegation, on its face or as clarified, fails to state a violation of one of the laws or regulations OCR enforces. Specifically, although the Complainant alleges that certain information is not in the School Handbook but is posted on the School’s website; there is no requirement in regulations enforced by OCR for this information to be in the School Handbook or the School’s website. Rather, the regulations OCR enforces require the School have grievance procedures and disseminate the procedures, but nothing in regulations enforced by OCR requires it to be on a recipient’s website. Therefore, a lack of the information in the School Handbook does not constitute a violation of Section 504 or Title II.

(b) Designation of 504 Coordinator

The Complainant stated the District failed to designate the Section 504 Coordinator in the School Handbook. OCR also reviewed the School’s 2020-2021 Handbook that was found online, page 30 of the Handbook directs families to contact Beth Batson and provides a phone number for “inquiries about compliance,” under the educational opportunities section but does not list a

physical or email address, while on page 38, the Handbook refers inquiries to Stacy Brinkley, at the District’s main office address, but does not provide her phone number or email address. Additionally, the Complainant stated that Dr. Judy Bell identified herself as the District’s 504 Coordinator at the 504 meeting on December 6, 2019. On its website, the District does not provide the name, address, or telephone number of its Section 504 coordinator.

The District provided OCR a copy of their “Notice Non-Discrimination” that states to contact Judy Bell for inquiries regarding non-discrimination, providing her phone number and address.

The School Handbook’s designation of the 504 Coordinator is inconsistent with other District notices that appropriately provide the 504 Coordinator’s name, address and phone number. Prior to OCR completing its investigation, the District requested to voluntarily resolve this allegation pursuant to Section 302 of OCR’s CPM. Accordingly, the Resolution Agreement requires the District to review and revise its designation of a 504 Coordinator to ensure that it is consistent in the School’s Handbook and other related District notices.

Conclusion

On October 2, 2020, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegations. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. The Agreement requires the District to hold a Section 504 meeting to determine if the Student requires compensatory or remedial services, training related to the prohibition of treating students with disabilities differently, and review and revise its designation of its Section 504 Coordinator to ensure that it is consistent in the School’s Handbook and other related District notices. OCR will monitor the District’s implementation of the Agreement until the District has fulfilled the terms of the Agreement.

This concludes OCR’s investigation of the complaint. 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. 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 issues #3 and #4(a) related to 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, please contact Lorraine Irier, the OCR attorney assigned to this complaint, at 404-974-9349 or lorraine.rier@ed.gov.

Sincerely,

/S/

Ebony Calloway
Team Leader
Atlanta Region Office
Office for Civil Rights

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXXX