



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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April 3, 2023

Dr. Vasanne Tinsley
Superintendent
DeKalb County School District
By email only to: supt@dekalbschoolsga.org

Re: OCR Reference No. 04-22-1705

Dear Dr. Tinsley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of this complaint filed on September 16, 2022, against the DeKalb County School District. The Complainant alleged that the school system discriminated against her son on the basis of his disability. OCR will refer to the Complainant's son as the Student where appropriate in this letter.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704, and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination against individuals with disabilities from recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulations, at 28 C.F.R. Part 35, which prohibit public entities from discriminating against individuals with disabilities. Because the school system receives Federal financial assistance from the Department of Education and is a public entity, it is subject to Section 504 and Title II, and to OCR's jurisdiction.

OCR investigated the legal issue of whether the school system discriminated against the Student on the basis of his disability when his Math and British Literature teachers have not implemented his Section 504 plan for the 2022 – 2023 school year, in violation of 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.

During this investigation, OCR obtained evidence during interviews with the Complainant, as well as through review of documents, including Section 504 plans and communications. Prior to the conclusion of OCR's investigation, the school system requested to voluntarily resolve the allegation based on Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the point when OCR issues a draft letter of findings under *Case Processing Manual* Section 303(b), the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. A summary of OCR's investigation is set forth below.

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by fostering educational excellence and ensuring equal access.*

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LEGAL STANDARD

Free Appropriate Public Education: Pursuant to 34 C.F.R. § 104.33(a), a recipient shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. Section 104.33(b) states that 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 persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

The Title II implementing regulation, at 28 C.F.R. § 35.130, states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. OCR interprets Title II's general prohibition against discrimination consistent with the Section 504 regulations cited above.

SUMMARY OF INVESTIGATION

The Complainant alleged that on XXXXXXXXXX X, XXXX, the Student's Math teacher notified him that he is not permitted to turn in any work late; he then received a zero for not turning in an assignment at the same time as the other students in his Math class. The Complainant stated that the Student's Section 504 plan provides him with extra time to complete his assignments in his classes. The Complainant also stated that the Math teacher told her that she does not have a copy of the Student's Section 504 plan. The Complainant also notified OCR that the Student's British Literature teacher also prohibited the Student from turning in his assignments late, which she believed indicated that this teacher also does not have a copy of the Student's Section 504 plan.

For the 2022 – 2023 school year, the Student is in the XXth grade. The Complainant unenrolled the Student from in-person learning and enrolled him in virtual learning, via the school system's Flex Academy, on XXXXXX XX, XXXX. OCR's review of the school system's website indicated that the first day of school for on-campus students was August 17, 2022.¹ The Student's Flex Academy teachers are different than the teachers he had for in-person learning on a school system campus.

The Student's most recent Section 504 plan, dated XXXXXX XX, XXXX, provides the following applicable accommodation: "allow [Student] two days extra to complete class/hw assignments if needed, and once the assignment is flagged or put in IC parent needs to be notified via email or Remind."

The school system stated that schools are expected to provide teachers with students' "individual accommodation plans" or "electronic access" by the first day of class. Further, Section 504 individual accommodation plans are stored within the school system's electronic student information system, Infinite Campus; teachers should be able to electronically access their

¹See, https://www.dekalbschoolsga.org/calendar/action~agenda/page_offset~/cat_ids~7,8,9,10,11,20,13/request_format~html/ (last accessed 12/20/22).

students' individual accommodation plans. Section 504 staff would then obtain teachers' signatures on a form titled *Verification of Receipt* and upload the form to Infinite Campus.

The school system stated that the Student's in-person school took the above actions at the beginning of the 2022 – 2023 school year. The Student then enrolled in Flex Academy, the school system's virtual learning program, which transferred his enrollment. The first day of school for Flex Academy students was August 22, 2022. Within Infinite Campus, teachers with Section 504 students are granted electronic permission to view their students' individual accommodation plans. Those electronic profiles of students with Section 504 plans are flagged to alert teachers of the plans.

The school system stated that the Student's teachers verified they were able to view the flag in the Student's profile, but "due to some apparent error in permissions, they were unable to electronically access" the Student's Section 504 documents.

Regarding the XXXXXXXXXX X, XXXX, math assignment of which the Complainant alleged the Student received a zero as a result of not being permitted by the teacher to utilize his accommodation of two extra days, the school system stated that on that day, the Student requested to the teacher for her to reopen the assignment he had already submitted, prior to its due date, because it was incomplete. The teacher granted the Student's request and he resubmitted the completed assignment on the same day. The school system reported that the Student did not ask for any additional time in which to complete that assignment. The Student did not receive a zero for the assignment. (*Id.*). The school system notified OCR that all of the Student's teachers reported that, "while additional time has been available to the Student 'if needed', he has not required any accommodation and is excelling academically in their classes."

However, the school system stated that the math teacher reported that she was unable to access the Student's individual accommodation plan in his electronic profile, as of XXXXXXXXXX X, XXXX. The math teacher did communicate her inability to access the Student's accommodations to the Complainant on the same day. (*Id. at p 4*). On XXXXXXXXXX XX, XXXX, the school system emailed all of the Student's teachers a copy of his Section 504 plan.

OCR reviewed electronic communications between the Student and his math teacher on XXXXXXXXXX X, XXXX. At 10:03 am, the Student wrote to the math teacher "[e]xcuse me [math teacher], can I get a re-open on today's assignment? I turned it in by accident while I was checking my answers, please." He then wrote at 11:10 am "I honestly don't know how I pressed the space bar and the submission requests screen popped up, once it popped up, I pressed back, and it turned in. Can I please get a re-open?" The math teacher responded at 11:10 am, stating "Please don't accidentally press submit. I will not re-open assignments for you in the future."

By email to the Complainant on XXXXXXXXXX X, XXXX, the math teacher wrote "I communicated to students that resubmissions/2nd attempts are NOT guaranteed in my course and late assignments will not be accepted."

OCR reviewed the Student's grades for XXXXXXXXXX 2022 math assignments; the Student received a grade of 80% for an assignment assigned on XXXXXXXXXX X, XXXX, due on

XXXXXXXXXX X, XXXX; the Student received a 100% for two assignments, one assigned and due on XXXXXXXXXXX X, XXXX, and the other assigned and due on XXXXXXXXXXX X, XXXX. The Student did not receive a grade of zero for any assignments OCR reviewed.

OCR reviewed all of the Infinite Campus communications between the Student and all four of his Flex Academy teachers from XXXXXXXXXXX X, XXXX, until October 19, 2022. On XXXXXXXXXXX XX, XXXX, through the Student's Infinite Campus account, the math teacher notified the Complainant "as for his 504, I have not received it. It is the responsibility of the homeschool counselors to ensure we receive all documentation for students." OCR did not see that the Student requested additional time for assignments during this time.

The Student, however, stated that he did request additional time for at least two assignments in math; he said that he made the requests to his math teacher via Infinite Campus or verbally using the microphone on his computer, but his math teacher denied those requests for extended time. The Student reported that he received a grade of zero for an assignment the teacher did not allow him to finish, but stated that the teacher removed the zero from his grades at the end of the semester. The Student reported that he believes he received a grade of A in math for the fall 2022 semester.

In addition, the Complainant provided OCR with screenshots of his XXXXXXXXXXX XX, XXXX, Infinite Campus communications with his math teacher, in which the Student wrote to his math teacher "[t]he Student-Teacher Conference paper that was put in Infinite Campus on Nov. 18 is now locked and flagged as missing. Can you please re-open this?" The math teacher responded by stating "[n]o. You were supposed to complete the assignment during class on XXXXXXXXXXX XX. I will not reopen it."

OCR's review of additional screenshots of the Student's Infinite Campus communications with his math teacher provided by the Student indicated that on XXXXXXX XX, XXXX, the Student wrote to the teacher "I completed the Changing Tires assignment and you marked it as a 0 in Infinite Campus (sic) also can I re-take the assignment from X/XX/2022?" The teacher responded by stating "[t]he assignment was marked absent because you had not completed it by the due date. Per the syllabus, re-submissions are not guaranteed."

OCR note that the Student's Section 504 plan also provides "Teacher will return work back to [the Student] so he can complete work."

ANALYSIS

Section 504 does not strictly require the development of any document. Thus, OCR's analytical approach to allegations based on the denial of an appropriate education does not track a recipient's alleged failure to have or to implement correctly any document. Rather, OCR determines: (1) whether a student's needs were determined on an individualized basis; (2) whether the evaluation and placement procedures that were applied conformed with those specified in the Section 504 regulation; and (3) whether the placement, aids, and services identified by the recipient through this process as necessary to meet the student's individual needs are or were being provided.

OCR's review of the evidence in this investigation indicated that the Student's teachers were not able to view his Section 504 plan until XXXXXXXX XX, XXXX, nearly a month after the first day of school. That alone would not be an automatic compliance issue provided the Student did not require any accommodations during this time period; however, the Student stated, and his Infinite Campus messages corroborated, that he did request, but was denied, additional time and the opportunity to redo his work for at least two math assignments. And at least one of those requests was made by the Student after the math teacher received an emailed copy of the Student's Section 504 plan; thus, his individual needs as outlined in his Section 504 plan were not provided.

Prior to the conclusion of OCR's investigation, the school system requested to voluntarily resolve this complaint.

CONCLUSION

In sum, the attached Resolution Agreement will resolve this complaint; the Agreement will require the school system to convene the Student's Section 504 team, with the Student present should he choose to attend, and to review his fall 2022 math grades along with his requests for extended time in conjunction with his Section 504 plan to determine whether he should be permitted to make up any of his assignments; and to train pertinent staff on Section 504 and Title II's provisions regarding the obligations of school system staff to ensure a free appropriate public education to students.

On March 30, 2023, OCR received the enclosed signed Agreement that, when fully implemented, will resolve this complaint. OCR will monitor the school system's implementation of this Agreement to ensure that it is fully implemented. If the school system fails to fully implement the agreement, OCR may reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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. OCR would also like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the school system must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any 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. 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.

OCR Complaint No. 04-22-1705

If you have questions about this letter, please contact Stephanie Pessin, at (202) 987-1887, or me at (404) 974-9367.

Sincerely,

Ebony Calloway, Esq.
Compliance Team Leader

cc: XXXXXXX XXXXXXXX, Esq.; XXXXXXX XXXXXXXX, Esq.; and XXXXXXX XXXXXXXX, Esq.