



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV

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May 26, 2023

Dr. Addison Davis
Superintendent
Hillsborough County Schools
P.O. Box 3408
Tampa, Florida 33601

Via E-Mail only to: XXXXXXXXXXXX

Re: OCR Complaint No. 04-23-1128
Letter of Resolution

Dear Superintendent Davis:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on November 30, 2022 against Hillsborough County Schools. Specifically, the Complainant alleged that a bus driver prohibited her son from getting on his school bus because he has XXXXXXXXXXXX during the fall 2022 semester. As a result her son missed a month of school between XXXXXXXXXXXX and XXXXXXXXXXXX. The bus driver also prohibited her son from riding his bus on XXXXXXXXXXXX. This letter will refer to her son as the Student.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 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 of Education; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department of Education and a public entity, the school system is subject to these laws and OCR's jurisdiction.

On January 20, 2023, the school system's representative responded to OCR's notification that we were processing the matter through our Rapid Resolution Process (RRP). During the investigation to date, OCR reviewed the Student's Section 504 Plan and related evaluation documentation, transportation medical information forms, emergency action plan for the Student's disability, the request for transportation for the Student, provision of transportation services for the Student, the Student's attendance records, contact logs, and emails regarding the Student. OCR also reviewed information regarding the school system identifying another student that also had delay in receiving transportation services that school year. OCR also interviewed the Complainant prior to and after receipt of the school system's documentation.

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Before OCR completed its investigation, the school system expressed a willingness to resolve the allegation pursuant to Section 302 of OCR’s *Case Processing Manual*. Section 203 of OCR’s *Case Processing Manual* states, in part, that RRP may be used to resolve complaints during an investigation where a recipient has indicated that it is willing to take action in the future to resolve the allegations, and then upon the recipient’s request and OCR’s agreement, the allegations may be resolved pursuant to Section 302 of the *Case Processing Manual*. Section 302 of OCR’s *Case Processing Manual* states that allegations under investigation may be resolved at any time, when prior to the conclusion of the investigation, the school system expresses an interest in resolving the allegation 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.

The following is a summary of the evidence obtained by OCR during the investigation to date.

Legal Standards

The Section 504 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 person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33(b)(1)(i)-(ii) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of an individual with a disability as adequately as the needs of an individual without a disability and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

Summary

The Student was in XXXXXXXXXX at XXXXXXXXXX School during the XXXXXXXXXX semester. On XXXXXXXXXXXXXXXX, the Student saw his medical provider who stated that he had had a recent XXXXXXX the week prior and the Complainant took the Student to the hospital. On XXXXXXX, 2022, an Emergency Plan of Action was created for the Student due to XXXXXXXX. The plan defined XXXXXXX, how to prevent and help control XXXXXXX, recognizing symptoms of XXXXXXX, and what an emergency situation requires.

On XXXXXXXXXXXXXXXX, the school’s Nurse emailed staff members including the school’s Exceptional Student Education (ESE) Specialist stating that the Student is on a regular bus but may need to be on an ESE Bus to have an aide who can supervise him in case XXXXXXXXXXXX on the bus. On XXXXXXXXXXXXXXXX, the ESE Specialist wrote in an email to the Nurse and other staff members that the school’s Counselor can hold an emergency Section 504 meeting and there is a way for her to request a bus with an additional adult through the Student’s Section 504 plan once it is developed.

On XXXXXXXXXXXXXXXX, the Nurse emailed the Counselor and stated that the Student enrolled last Thursday and has a history XXXXXXXXXX and that the Complainant wants the Student to use the bus as a way of transportation. The Nurse stated he needed to have a “MO19” created and sent to the transportation department. The transportation department would then send an email to

the Nurse to create a Transportation Medical Information (“TMI”) form, and once she trains the bus driver(s) she will call the Complainant to let her know that the Student is allowed to be on the bus.

On XXXXXXXXXXXXX, the Counselor emailed the school system’s Exceptional Student Education Program Manager (“Program Manager”) with the Student’s information, his emergency plan, the Complainant’s contact information and a description that states the Complainant requested bus transportation, but has been informed that the Student cannot ride the bus until there is an aide and/or the bus driver is trained.

The Complainant informed the Student’s Teacher in an email that she informed the Assistant Principal that she does not have any way to bring her children to school and that she may have to keep her boys home until she hears back about transportation.

Later the same day, the Program Manager replied to the email from the Counselor encouraging her to move forward with the Section 504 evaluation and eligibility process for the Student, and should the team find the Student eligible for a Section 504 plan with transportation needs to submit a request for transportation for 504 students form and a TMI form which should be completed by the school’s nurse.

On XXXXXXXXXXXXX, the school Nurse’s contact log shows that the Complainant called her asking if anyone could bring the Student homework while he was waiting for the bus to be approved for him and could return to school. The log further states that the Nurse spoke to the Student’s Teacher, and the Teacher plans to gather material and bring it to the front office. The log states that the Nurse called the Student’s Teacher to see if she brought the material to the front office so that the Assistant Principal could take it to the Student.

On XXXXXXXXXXXXX, the school system convened a Section 504 team meeting to determine Section 504 eligibility and develop an initial Section 504 plan for the Student. The Section 504 plan meeting notes state that the parent was invited to the meeting but did not attend. The Section 504 plan states that the Student needs specialized transportation and that school staff will need to refer to and comply with the emergency plan of action. The start date for the Section 504 plan was XXXXXXXXXXXXX.

On XXXXXXXXXXXXX, the school’s Counselor sent a memorandum to the Complainant informing her that the Student’s Section 504 team determined that he was eligible for a Section 504 plan and that the school system’s transportation department required the bus driver to be trained in case the Student XXXXXXXXXXXXX on the bus.

On the same day, the school Nurse’s contact log states that she spoke to the school’s Guidance Counselor on the need for her to create a TMI form to train the bus drivers so that the Student can ride the bus once the bus driver has been trained. The notes state that they are still in the process of creating a Section 504 plan to be able to request transportation.

On XXXXXXXXXXXXX, the Complainant acknowledged that she received a copy of the school system’s procedural safeguards.

On XXXXXXXXXXXXXXXX, the Counselor emailed the Program Manager stating that the Student's Section 504 team met and determined that the Student will require specialized transportation. The Complainant requested that the Student's brother also ride the bus. The Counselor emphasized that this request was urgent as these students had not been in school due to lack of transportation. Nineteen minutes later, the Program Manager reviewed and signed the request electronically and forwarded it to the transportation department's Routing Analyst. The school was then out on XXXXXX break from XXXXXXXXXXXXXXXX.

When school was in session again on XXXXXXXXXXXXXXXX, the Counselor emailed the Routing Analyst stating that she wanted to send a reminder about the severity of the case and reiterated that the students have not been able to attend school over the past few weeks due to lack of transportation and requiring specialized transport.

On XXXXXXXXXXXXXXXX, the Routing Analyst replied and stated that he would process this request today. On the morning of the same day, the Routing Analyst emailed other transportation staff members stating that a new stop had been added to accommodate the Section 504 Plan for the Student and his sibling and that the plan needed to be reviewed with the bus driver. The effective date is XXXXXXXXXXXXXXXX. The email carbon copied the Program Manger and Counselor.

Later that afternoon, the Routing Analyst emailed the school system's Coordinator for Specialized Transportation stating that he had already routed the Student to start but noticed that the TMI form says the driver needs to be trained and that the Student is not "coded TMI". On XXXXXXXXXXXXXXXX, the Coordinator for Specialized Transportation replied stating that she sent the request to the Nurse to complete the TMI form and that she will send it to him ASAP so that they can get the driver trained.

On XXXXXXXXXXXXXXXX, the school system created a TMI form which provided a description of the Student's medical condition, the medication he takes, the Complainant's contact information and was signed by the Bus Driver and school Nurse.

On the morning of XXXXXXXXXXXXXXXX, the Principal emailed the transportation department's XXXX Field Supervisor stating that the Student has been enrolled at her school with no transportation for several weeks. The email stated that the Nurse provided the Bus Driver with medical training for the Student yesterday, but the Bus Driver refused to pick the Student up this morning. She stated that they received approval from the transportation department earlier this week and needed help communicating to the Bus Driver that she is good to move forward with transportation for the Student.

On XXXXXXXXXXXXXXXX, the Routing Analyst informed the Coordinator for Specialized Transportation that the drivers have been trained and that he needs the TMI form.

On XXXXXXXXXXXXXXXX, the Routing and Planning Analyst informed the Coordinator for Specialized Transportation that they are being told that the Student does not require a nurse and asked if she received an updated TMI form with the nurse removed.

On XXXXXXXXXXXXXXXX, the Coordinator for Specialized Transportation emailed the Routing Analyst stating that the nurse removed the “1:1 nurse” on the form and that the Bus Driver was trained on the new TMI yesterday.

The Student has recorded absences through XXXXXXXXXXXXXXXX. The Student stopped attending the school system and was withdrawn on XXXXXXXXXXXXXXXX.

In response to OCR’s request for supplemental data, the school system also provided data showing that during the XXXXXXXX school year, there was only one other student with a disability who requested accommodations related to transportation and experienced a delay before receiving services. The student was a XXXXXXXX who qualified as XXXXXXXX and was displaced twice, the first time resulting in a 13-day delay and the second time resulting in a 16-day delay for transportation. According to the school system, the delays were due to not having all of the paperwork required, specifically documentation from the HELP Students in Transition program, which authorizes the school system to provide transportation outside of school boundaries and other support. As a result, the student missed three days of school.

Analysis and Conclusion

Based on OCR’s investigation to date, OCR identified concerns with the delays in the School’s evaluation for and implementation of the Student’s required transportation services. After initially learning of the Student’s medical condition on XXXXXXXX, the Student was absent from school for at least twenty-four school days.¹ The Student was able to be safely transported to school by bus, in early XXXXXXXX. Part of the delay seems due to confusion as to whether the Student could ride the bus even after the driver was trained, as well as miscommunication between the school and the transportation department. Specifically, the Section 504 plan initially stated that a nurse/aide needed to be on the bus, the transportation department later clarified that the bus driver only needed to be trained.

As the Student missed nearly a month of school due to this issue, there was a concern that an unreasonable delay in evaluating the Student, developing a Section 504 plan, and implementing the Section 504 plan’s transportation services resulted in denying the Student a FAPE. The data received to date does not indicate whether the school system had considered if there is a need to assess the impact of the delay in implementing the Section 504 plan on the Student’s receipt of a FAPE and whether he needs compensatory educational services for the time missed. Furthermore, OCR has identified a concern that a similar delay in implementing transportation services may have resulted in a denial of FAPE for another student as well.

On May 24, 2023, the school system signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated and address the other identified student at the School that may have been impacted in a similar manner. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR’s investigation and are consistent with applicable law and regulation. The Agreement requires the school system to invite the Student to re-enroll at the school, and if the Student re-enrolls, then

¹ This time period excludes weekends, holidays, and XXXXXX break from XXXXXXXXXXXXXXXX.

the school system will convene a Section 504 team meeting to determine whether or not the Student requires compensatory and/or remedial services due to his absences; to evaluate the second student with a disability to determine whether the student requires compensatory and/or remedial education services due to the student's transportation related absences; develop a plan to provide any compensatory and/or remedial services determined necessary; and to provide training to relevant staff members on Section 504 and Title II requirements. When fully implemented, the Resolution Agreement will address the evidence obtained and all of the allegations investigated.

OCR will monitor the implementation of the Resolution Agreement until the school system is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. 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 a 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 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, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the school system's cooperation in the resolution of this complaint. If you have any questions, please contact Jennifer Kwon, the OCR attorney assigned to this complaint, at 202-987-1428 or at Jennifer.Kwon@ed.gov.

Sincerely,

Michael Bennett
Supervisory General Attorney

Enclosure: Agreement