



The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides 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 recipient, or be subjected to discrimination by a recipient of Federal financial assistance.

FAPE

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 and appropriate public education (FAPE) 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. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of an individualized education plan (IEP) or Section 504 Plan is one means by which FAPE may be provided.

Factual Background

Student A was a xxxxx grade student at xxxxxxxxxxxx during the 2015-2016 school year. He received services for xxxxxxxxxxxxxxxxxxxx pursuant to a Section 504 Plan that the District first developed in April 2015, before Student A began high school. Student A's Section 504 Plan provides classroom accommodations as well as testing accommodations, including test administration in a small group, individually, and in a separate location.

The Complainant asserts that Student A's teachers failed to provide his classroom and testing accommodations. She informed OCR that when she spoke with the School's case manager about why Student A was not being tested in a separate location, the case manager informed her that the School lacked space for separate testing. The Complainant further informed OCR that Student A's teachers stated that Student A never asked to take his tests in a separate location.

Documentation provided to OCR by the District includes email communications from the Case Manager to Student A's teachers regarding implementation of his Section 504 Plan and indicates that the Complainant raised concerns about non-implementation of Student A's Section 504 Plan on numerous occasions throughout the school year with School and District staff. The District's documentation shows some implementation of Student A's Section 504 Plan, but does not establish full implementation of Student A's Section 504 Plan. For example, Student A's xxxxx teacher provided a written statement on xxxxxxxxxxxx, in which she reported that she provided written and verbal directions to all students in her class, that she has notified the Complainant by email when Student A did not complete his homework, that Student A sat near her desk in the classroom so that she xxxxxxxxxxxx when he "xxxxxxxxx," etc. With respect to testing accommodations, she asserted that Student A took his xxxxxxxxxxxxxxxxxxxx individually in his counselor's office or in the School's Writing Center. However, Student A's xxxxxxxxxxxx teacher's statement does not indicate that Student A received his classroom and testing accommodations throughout the school year.

[illegible]

In order to complete its investigation, OCR would need to interview School staff, particularly the principal, counselor, case manager and each of Student A's teachers, as well as Central Office staff who responded to the Complainant's reports, to determine whether Student A's Section 504 Plan was implemented, and if not, why. OCR would also need to determine whether at any time during the course of the year School staff began to implement Student A's Section 504 Plan to assess the scope of any possible denial of FAPE.

Analysis and Conclusion

On November 17, 2016, prior to the conclusion of the investigation, the District requested to resolve the allegation pursuant to Section 302 of OCR's Case Processing Manual (CPM). The District entered into a resolution agreement (the Agreement) with OCR on December 2, 2016, which, when fully implemented, will resolve the alleged discrimination with respect to 34 C.F.R. §§ 104.4(a) and 104.33, which was at issue in the complaint. The provisions of the resolution agreement are aligned with the complaint allegation, the issues investigated, and are consistent with applicable law and regulations.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Agreement will address the alleged discrimination with respect to Section 504. OCR looks forward to receiving the District's first monitoring report, which is due on March 15, 2017.

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 file a private suit in federal court, whether or not OCR finds a violation.

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.

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.

If you have any questions, please call me or Mr. Tom Okawara, at (312) 730-1597 or Tom.Okawara@ed.gov. OCR appreciates the District's assistance and cooperation throughout our resolution of this complaint. Specifically, we appreciate the assistance of Dalila Bentley and Julia Simmons, of the EOCO.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Susan O'Keefe, Deputy General Counsel
Dalila Bentley, EOCO Administrator
Julia Simmons, EOCO Investigator