



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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April 26, 2017

Ms. Toni Skaggs
Director
Greater Lafayette Area Special Services
2300 Cason St.
Lafayette, IN 47904

Re: OCR Docket #05-16-1477

Dear Ms. Skaggs:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its investigation of the complaint filed against Greater Lafayette Area Special Services (GLASS), alleging discrimination on the basis of disability.

Specifically, the complaint alleged that GLASS is subjecting students with disabilities to discrimination based on disability by providing them shortened school days due to transportation schedules.

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, GLASS is subject to these laws.

During its investigation, OCR reviewed data provided by the Complainant and GLASS and interviewed the Complainant and GLASS personnel. Prior to the conclusion of OCR's investigation, GLASS expressed interest in resolving the complaint. Discussions between OCR and GLASS resulted in GLASS signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), says that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department. The Section 504 regulation, at 34 C.F.R. § 104(b)(1)(i)(ii) and (iv), says a recipient, in providing any aid, benefit, or service, may not,

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directly or through contractual, licensing, or other arrangements, on the basis of disability deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others; or provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others.

In determining whether a recipient has subjected a student to discrimination on the basis of disability under the above regulations, OCR ascertains whether there were any apparent differences in the treatment of similarly situated students on the basis of disability. If different treatment is established, OCR then considers whether the recipient had a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient was a pretext for discrimination based on disability. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and procedures and whether there is any other evidence of disability discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33(a), says a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person 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), 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 disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of §§104.34, 104.35, and 104.36. The Section 504 regulation says implementation of an individual education program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of providing an appropriate education under Section 504.

Facts

GLASS is a special education cooperative that provides special education services for approximately 3600 students with disabilities from ages 3 through 21 years old who are enrolled in Lafayette School Corporation (Lafayette), Tippecanoe School Corporation and West Lafayette Community School Corporation. For students with a disability who have transportation listed as a related aid or service in the student's IEP, Lafayette provides the buses, bus drivers and attendants, and assigns the bus routes for such students, and Lafayette and GLASS manage the transportation services. Disabled students who do not require specialized transportation services take buses provided by their home school corporation.

The Complainant asserted that students served by GLASS receive a shortened school day due to transportation schedules. She said that, based on her personal observation of the times buses arrived or departed from certain schools, she believed many students are missing a significant portion of the school day. She indicated that she was aware that the buses she observed were for GLASS students, but she did not know the specific students on the bus or the program in which

the students were enrolled. She also did not identify specific students or programs who received a shortened school day.

GLASS provides specialized transportation services to 750 students with disabilities who have IEPs that require the student to receive transportation as a related service. GLASS provided OCR with information for each student, including the daily start and end time for each school and the arrival and departure time for each student. Of the 750 GLASS students who require specialized transportation, 601 have a school day that is the same or longer than the non-disabled students or disabled students who do not require specialized transportation. Of the remaining 149 students who require specialized transportation, 70 students have an IEP that provides for a shortened school day because of medical or behavioral issues. GLASS indicated that these were individual placement decisions made based on the student's individual needs and that parents were provided notice of their due process rights with respect to these decisions; OCR reviewed a sample of students' IEPs and confirmed that they specified a shortened school day for the student based on the student's individualized needs.

The remaining 79 students who require specialized transportation may have a school day that is shorter in duration than the non-disabled students or disabled students who do not require specialized transportation. GLASS provided explanations for the reduced school days of these students, including that some students are excused early because they have sensory, social and developmental, or other health issues which makes it difficult for them to be in the hallways at the end of the day with other students, that some variance can occur daily in school bus transportation times, that students at one school dismissed early are missing only a school-wide study hall and not instructional time, and that GLASS personnel had incorrect bell times at some schools; GLASS indicated during the investigation that it was correcting the errors so that it used correct start and end times in establishing bus schedules. OCR reviewed a sample of the 79 students' IEPs; not all of the reviewed IEPs contained documentation to confirm the explanation provided by GLASS.

The Complainant also provided OCR an example of a student (Student A) who appeared to have a disability on a bus at 3:07 p.m. when the bus arrived at Mayflower Mill Elementary; she said she believed Student A's school day must have been shortened to arrive at that time. The Director of GLASS informed OCR that Student A attends a program at another school, where dismissal occurs earlier. Student A boards a bus at the time of dismissal and subsequently is transported on the bus with a bus assistant to Mayflower Mill Elementary, where the bus loads additional students before proceeding to transport Student A to her home. Student A has the same length of instructional day as her non-disabled peers.

Analysis and Conclusion

OCR has determined that the complaint is appropriate for resolution under Section 302 of OCR's *Case Processing Manual*. GLASS expressed interested in resolving the allegation. The evidence suggests that some students receive a shorter school day than non-disabled peers. In order to reach a determination, OCR would need to review the IEPs of all of these students and would need to conduct additional interviews to discuss services provided to specific students.

The agreement requires GLASS to ensure that all bus routes for students with a disability receiving transportation as a related service have been corrected so that buses arrive before the morning bell time and do not depart until after the afternoon bell time to ensure that students with a disability do not have a shorter instructional day than their non-disabled peers solely as a result of the bus schedules and also requires that GLASS, for each of the 79 students with a disability who received a shorter school day based on time from arrival to departure than their non-disabled peers, convene a group of persons knowledgeable about the student to review the IEP and determine, based on the services provided to that student and the needs of the student, whether the student in fact received a shorter instructional day than his or her non-disabled peers and, if so, whether compensatory educational services are warranted or whether the shortened instructional day is due to the needs of the student; for those students for whom compensatory educational services are determined to be warranted, GLASS will develop a plan for providing compensatory and/or remedial services. OCR will monitor GLASS's implementation of the agreement.

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.

Please be advised that GLASS 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 individual may file a 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.

The complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We wish to thank you and your staff for your cooperation and courtesy during our investigation. In particular, we would like to thank Ms. Karen Glasser Sharp, counsel for GLASS. If you have any questions, please contact Salina Gamboa, Senior Equal Opportunity Specialist, at (312) 730-1627 or by email at Salina.Gamboa@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Karen Glasser Sharp