



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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September 23, 2022

Pedro Martinez
Chief Executive Officer
Chicago Public Schools, District #299
Sent via electronic mail only to ceo-martinez@cps.edu

Re: OCR Docket #05-22-1319

Dear Mr. Martinez:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its complaint resolution activities for the above-referenced complaint against Chicago Public Schools District #299 (District), alleging discrimination on the basis of disability.

Specifically, the complaint alleges that, in the 2021-2022 school year, the District discriminated against a student (Student A) at XXXXXXXXXX (School) based on disability when it denied Student A a free appropriate public education (FAPE) by failing to implement Student A's Section 504 Plan provisions that allowed her extended time to complete homework and the opportunity to make up missed assignments when absent for medical reasons.

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. OCR is also responsible for enforcing 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 from the Department, 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, the District is subject to the provisions of Section 504 and Title II.

During its investigation, OCR reviewed information provided by Student A's guardian and the District. OCR also interviewed Student A's Case Manager, the school nurse (Nurse), and several of Student A's teachers, including her homebound instructor (Homebound Instructor). Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). OCR determined it is appropriate to resolve the complaint because OCR's investigation has identified concerns that can be addressed through the enclosed Resolution Agreement (Agreement). The basis for OCR's determination is explained below.

Legal Standards

The Section 504 regulation, 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. The Title II implementing regulation at 28 C.F.R. § 35.130(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 public entity, or be subjected to discrimination by any public entity.

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 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 (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)(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 based on the adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35 and 104.36. The development and implementation of a Section 504 plan is one means by which FAPE may be provided.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35(b) of any person who, because of disability, needs or is believed to need special education or related services, before taking any action with respect to initial placement of the person in regular or special education, and any subsequent significant change in placement.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(c), states that, in interpreting evaluation data and making placement decisions, the recipient must draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The Section 504 implementing regulation, at 34 C.F.R. § 104.36, sets forth procedural safeguards the District is required to have in place in connection with the development of educational plans, including the opportunity for an impartial hearing. A reevaluation and due process procedure consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the Section 504 requirements related to evaluation and procedural safeguards.

Facts

During the 2021-2022 school year, Student A was enrolled as a XXXXXXXXXX student, and received academic adjustments in the classroom and nursing services pursuant to a Section 504 plan for XXXXXXXXXX. Student A's Section 504 plan provided, in relevant part, that Student A receive extended time to complete class assignments and be allowed to "makeup assignments/assessments when absent for medical needs."

On XXXXXXXXXX, Student A sustained a XXXXXXXXXX. Around XXXXXXXXXX, Student A's legal guardian provided a physician's letter to the School's Attendance Office that stated Student A had been evaluated for XXXXXXXXXX and recommended "homebound schooling" as well as "modified schoolwork and limited screen time until her symptoms resolve." Student A's guardian told the Attendance Office that Student A would not be in school for approximately three months because of XXXXXXXXXX, though the physician's letter did not mention a 3-month absence was necessary. The Principal told OCR he asked the Attendance Office to email the physician's letter to Student A's Case Manager, who also served as the Homebound Instruction Coordinator for the School. The District provided OCR with an email indicating Student A's Case Manager received the physician's letter on XXXXXXXXXX.

According to the District's procedures, homebound instruction from the Home and Hospital Instruction Program (HHIP) provides temporary instruction, by a certified teacher, to students "whose academic programs are anticipated to be interrupted because of a diagnosed medical or psychiatric condition." To obtain homebound instruction, the legal guardian and physician must complete a referral form from the Office of Diverse Learner Supports and Services (ODLSS) regarding the student and a physician diagnosis that would affect the student's school attendance with the date of the most recent medical examination. The school nurse reviews and signs the final section on the referral form.

Student A's guardian told OCR that she hand-delivered an application for homebound instruction to the Case Manager on or about XXXXXXXXXX. Student A's guardian provided OCR with a copy of a homebound application dated XXXXXXXXXX stating the physician examined Student A XXXXXXXXXX, and diagnosed Student A with XXXXXXXXXX and that she would need decreased stimulation and noise with limited time reading from computers and books. The Nurse told OCR she received Student A's completed application for homebound instruction on XXXXXXXXXX, and that she reviewed the application, signed it, and forwarded the application via email to the Case Manager on the same day. However, the Case Manager told OCR that she provided the guardian with the application for homebound instruction around XXXXXXXXXX, and the application for homebound instruction was first received XXXXXXXXXX.

XXXXXXX, Student A's Section 504 team convened a meeting to conduct an annual review. Student A's guardian received notice of the meeting and participated in the annual review along with the Nurse, Case Manager, and the General Education teacher. Student A's guardian told OCR that the discussion at the meeting focused on academic adjustments and related services for Student A's XXXXXXXXXX conditions, though she stated that Student A had not been in school and teachers were "not helping her with her homework." Student A's guardian did not recall the Case Manager saying anything about Student A's application for homebound instruction, the

physician's letter, nor raising the topic of homebound instruction during the team meeting. Student A's Case Manager told OCR that she was not aware at the time of the meeting that Student A had even sustained XXXXXXXXXX nor that she had been absent from school for several weeks.

The revised Section 504 plan XXXXXXXXXX stated that Student A sustained a XXXXXXXXXX approximately 3 weeks ago." It also stated in the notes section that the Case Manager and Student A's guardian "discussed the progress of the homebound application" and they were "waiting on the completed teacher application"; however, the plan does not include additional or different services, academic adjustments, or modifications related to homebound instruction. The Section 504 plan continued to provide nursing services, extended (double) time for homework assignments, and make up assignments/assessments when absent for medical needs. The Section 504 plan also included a remote learning plan for the delivery of academic adjustments and related services via Google Meets, email, Google Chat, and Google Classroom.

The Case Manager told OCR that Student A was approved for homebound instruction XXXXXXXXXX. From XXXXXXXXXX to XXXXXXXXXX the Case Manager met with Student A's teachers to create the education plan required for Student A's homebound instruction, but the education plan was not referenced or incorporated into Student A's Section 504 plan. Student A's guardian told OCR she was not invited to these meetings, and the Case Manager confirmed the guardian was not notified of, nor in attendance at, the meetings for the education plan. The Case Manager explained to OCR that the teachers discussed Student A's current grade in each class and reduced the coursework she would be responsible for during homebound instruction. However, the District did not provide information indicating whether Student A's 504 team convened to discuss Student A's need for homebound instruction, the amount of instruction, or how Student A's Section 504 plan should be modified to include homebound instruction.

Student A did not attend school or receive educational instruction from the District from the time she sustained XXXXXXXXXX, around XXXXXXXXXX, until she began receiving homebound instruction on XXXXXXXXXX the District's documentation did not clearly indicate whether Student A's Section 504 plan was being implemented during this time. Student A's teachers told OCR that, during the weeks when Student A was awaiting approval for homebound instruction, she was to access her coursework through Google Classroom and email. Student A began homebound instruction on XXXXXXXXXX, which was conducted virtually for one hour per day, five days a week.

XXXXXXXXXX Student A's guardian sent an email to the Assistant Principal expressing concern about Student A's progress. She wrote in her email that "[f]our weeks went by without teacher instruction" and that Student A "did what work she could without assistance" despite "a lack of communication from the administration" and "she would like a better understanding of what's going on." The information obtained did not indicate that after Student A's guardian sent the email, Student A's Section 504 team convened a meeting to address Student A's guardian's concerns. Instead, the Assistant Principal responded that Student A's teachers were working closely with her Homebound Instructor and that "work prior to the homebound approval unfortunately is not excused but going forward all teachers are working together to ensure her continued academic progress." Student A's guardian told OCR she understood the statement—

that missed work would not be “excused”—to mean Student A could not make up missed work and would receive no credit for her work. She expressed concern that Student A’s 504 plan was not being implemented while she was receiving homebound instruction.

Student A’s guardian told OCR that she submitted an application for the homebound extension a couple days after she was informed that an application for extension would be required. Documentation provided by the District indicates that Student A’s guardian submitted a physician’s note dated XXXXXXXXXX to the District XXXXXXXXXX. The Case Manager said the “request” to extend homebound instruction was received on XXXXXXXXXX, and, after the Case Manager checked with other personnel about the proper procedures, she sent new medical forms for Student A’s guardian to complete around XXXXXXXXXX and the extension application was submitted on XXXXXXXXXX. Student A’s homebound instructor told OCR there was a lapse in instruction while the paperwork was processing. She further indicated that homebound instruction resumed on XXXXXXXXXX, and she created a second education plan for the remainder of the year and shared it with Student A’s guardian. However, when homebound services were extended, the Section 504 team did not meet to determine whether Student A needed any additional services due to any lapse in educational instruction or to discuss the education plan for the remainder of the school year.

The Homebound Instructor told OCR that Student A was absent from approximately half of all homebound instruction sessions, and her daily log revealed Student A did not attend 19 out of 26 homebound instruction sessions from XXXXXXXXXX. The District’s attendance records list those absences as “excused.” The information provided did not indicate whether the District held a Section 504 team meeting to address any academic adjustments or modifications related to homebound instruction based on Student A’s individualized needs, or concerns regarding Student A’s absences that may have resulted in a denial of FAPE.

Student A’s guardian told OCR that Student A was not provided extra time for all assignments and make-up work during homebound instruction and the District records could not verify whether Student A received extended time for each of these assignments as required by her Section 504 plan. Student A’s teachers told OCR that Student A was allowed more than double time to complete her assignments as all students were allowed to turn in late work until the end of the semester.

Student A failed five courses — XXXXXXXXXX — during the Spring 2022 semester. Student A’s guardian indicated that Student A attended summer school and received credit for XXXXXXXXXX during the summer semester. Student A is currently enrolled at XXXXXXXXXX for the 2022-2023 school year.

Analysis and Conclusion

During the course of the investigation, OCR identified concerns regarding the District’s provision of FAPE from XXXXXXXXXX. The evidence was not clear whether the District conducted an appropriate evaluation of Student A prior to making a significant change in her placement into homebound instruction. Student A’s Section 504 team convened a meeting XXXXXXXXXX, to conduct Student A’s annual review and, although aware of Student A’s

XXXXXXXXXX and request for homebound instruction, the documentation provided does not indicate that the Section 504 team addressed whether Student A was in need of additional or different services, academic adjustments, or modifications related to homebound instruction. Further, Student A's guardian was not notified to participate in meetings to develop the education plans created to address Student A's need for homebound instruction as a related aid and service due to disability. OCR has additional concerns about whether the School provided Student A with a FAPE during homebound instruction given that attendance records indicate that Student A did not begin to receive homebound instruction until XXXXXXXXXXXX, and she was absent for a significant percentage of homebound instruction sessions during the last month of the school year. The evidence is also not clear whether Student A was provided a FAPE when she was absent from homebound instruction without provision made for these missed sessions or an extension of homebound services during summer break.

Prior to completing the investigation, the District requested to resolve the complaint under Section 302 of CPM. The District executed the enclosed Agreement that, when fully implemented, will address the evidence obtained and the allegation investigated. The Agreement requires the District to convene a Section 504 team to determine whether Student A is need of any compensatory services resulting from the alleged failure to provide Student A with a FAPE; review and revise procedures to ensure that students who are in need of homebound instruction and services due to a disability are provided such instruction and services consistent with FAPE requirements in Section 504; provide notice and a copy of the revised procedures to all School Section 504 case managers and publish the revised procedures on the District's website; train the Manager of the HHIP program and certain School staff on the requirements relating to the identification, evaluation, and placement requirements of Section 504, including how to provide homebound instruction consistent with the FAPE requirements of Section 504. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in this case.

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

The laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating 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 against the District 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 privacy.

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Ms. Alexa Bulau. If you or any of your staff members have any questions, please contact Elisabeth Gusfa, OCR Attorney, at (312) 730-1621 or by email at elisabeth.gusfa@ed.gov.

Sincerely,

Melissa Howard
Supervisory Attorney

Enclosure

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