



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

January 26, 2016

Reference: 06151214

Zekeriya Yuksel, Superintendent
Harmony Public Schools Central Office
9321 West Sam Houston Pkwy. South
Houston, TX 77099

Dear Mr. Yuksel:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of a complaint against Harmony Public Schools (HPS), which was received in our office on January 29, 2015. The complainant alleged that HPS discriminated against XXXX XXXX (the Student) on the basis of disability. Specifically, the complainant alleged that HPS failed to implement the special education and related aids and services in the Student's Section 504 Plan.

This agency is responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations, at 28 C.F.R. Part 35, which also prohibit discrimination on the basis of disability. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. HPS is both a recipient of Federal financial assistance from the Department and a public elementary and secondary education system. Therefore, OCR had jurisdiction to investigate this complaint pursuant to Section 504 and Title II.

Based upon the complainant's allegation, OCR investigated the following legal issue:

Whether HPS discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (i.e., shortened assignments and extended time to turn in work), and thereby denied the Student a free appropriate public

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

education during the 2014-2015 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

Please be advised that a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In the course of this investigation, OCR interviewed the complainant, the Student, and HPS staff, and reviewed documents provided by the complainant and HPS. While OCR found insufficient evidence to indicate that HPS failed to implement the provision of the Student's Plan regarding extended time, OCR found sufficient evidence to indicate that HPS failed to implement the Student's Plan with respect to reduced assignments, resulting in the denial of educational benefit to the Student. Thus, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to the issue investigated. The basis for OCR's determination is set forth below.

Legal Standard

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define an "appropriate education" as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student's Section 504 plan, also known as an "individualized education program," or "IEP." When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student's needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student's individual needs were or are being provided. If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

Findings of Fact and Analysis

At the time the complaint was filed, the Student was a XXXX-year old student in the XXXX grade at Harmony School of Nature (HSN). In her complaint filed with OCR on January 29, 2015, and in subsequent telephone conversations with OCR, the complainant alleged that HPS failed to provide the Student with the services deemed necessary by the District to meet his individual educational needs during the 2014-2015 school year. More specifically, the complainant alleged that the XXXX, XXXX, and XXXX teachers failed to give the Student XXXX XXXX days to turn in work, and failed to reduce many of his assignments by XXXX%.

A review of the Student's records revealed that the Student was evaluated pursuant to Section 504 on XXXX, 2014, and that the complainant was present for the deliberations, along with XXXX HPS staff members. The group of knowledgeable persons determined that the Student was a qualified individual with a disability (*i.e.*, XXXX), and was eligible for special education or related aids and services. The Student's 504 Plan (Plan) lists eight accommodations, including the following two at issue in this complaint:

- Shortened Assignments – X---paragraph redacted---X
- Extended time – X---paragraph redacted---X

When asked by OCR, the XXXX teacher, the XXXX teacher, and the XXXX teacher all indicated that they gave the Student XXXX XXXX school days to turn in work if he needed it. OCR spoke with the complainant and the Student who indicated that there were occasions on which these teachers marked work late and assigned grade penalties before the Student's additional XXXX days had expired. The Student provided OCR with a copy of a group XXXX assignment that he stated was turned in late by one of the other students in the group. The complainant indicated that all three group members' grades were penalized, including the Student's. She also indicated that, on this occasion and others, the Student received grades of XXXX on the day after the work was due – indicating what she believed was a failure to provide him with the XXXX XXXX days, as well as the X---phrase redacted---X, as provided for in his Plan. When asked about this by OCR, the XXXX teacher indicated that she reversed the grade penalty for the Student on the group assignment, giving all three Students XXXX XXXX days to turn in the assignment. When asked on rebuttal by OCR, the complainant was unable to provide evidence that this grade was not changed. She also was unable to provide dates of assignments that were improperly penalized for lateness. Based on a review of the above, OCR was provided with no corroborating evidence of the complainant's assertion that Student was not provided with extra time to turn in his work. Thus, by a preponderance of the evidence, OCR determined that there was insufficient evidence to indicate that HPS failed to give the Student the extra time to complete work as required by his Plan.

However, as noted above, OCR determined that HPS failed to implement the Student's Plan with respect to shortened assignments.

Based on the complainant's allegation and the information provided by the complainant and by HPS, OCR has determined that there is sufficient evidence to indicate a violation of Section 504 and Title II with respect to HPS's failure to implement the Student's Section 504 Plan during the 2014-2015 school year. Specifically, OCR determined that the XXXX teacher, the XXXX teacher, and the XXXX teacher failed to implement the portion of the Student's plan that requires a XXXX% reduction of assignments. The XXXX teacher informed OCR that she understood the Student's Plan to apply only to written assignments, not to reading assignments, and therefore she did not reduce reading assignments. The XXXX teacher indicated that on some occasions, because each XXXX XXXX is not always weighted equally, he would reduce the number of questions equivalent to XXXX% of the total points rather than reducing the number of questions by XXXX% as stated on the Student's Plan. OCR interviewed the XXXX Coordinator who indicated that she discussed this with the XXXX teacher on one occasion during the 2014-2015 school year, after the complainant brought the concern to her attention, and that she explained to the teacher how to appropriately implement the Student's plan. The XXXX teacher informed OCR that she did not understand until April 2015 that the Student's Plan applied to all assignments, not just those consisting of more than ten questions. The Student provided OCR with copies of nine XXXX assignments from January through March 2015 that did not appear to have questions removed. OCR spoke with the XXXX Coordinator who said that she met with the XXXX teacher after the complainant came to her with concerns about the implementation of the Student's plan in that class. She stated that the XXXX teacher told her that, rather than marking off questions for the Student not to complete, she would often tell the student orally that he could choose which questions he wanted to complete, but that he always chose to complete them all.

OCR analyzed the impact of the District's failure to shorten assignments. The recipient argued that the Student was not denied educational benefit by the alleged failure to implement his Plan, as evidenced by the fact that the Student earned XXXX and XXXX grades, and X---phrase redacted---X for the 2015-2016 academic year. The complainant, however, indicated that the Student was not X---phrase redacted---X. She informed OCR that the Student X---phrase redacted---X. She stated that the Student will be X---phrase redacted---X in the fall. She also stated that the Student earned XXXX and XXXX grades because he spent many hours each evening working on assignments, and also because his Plan allowed him to X---phrase redacted---X. She stated that the time the Student spent completing assignments that were not reduced took away from time for other school work, affecting his ability to learn necessary concepts; she stated that it also caused the Student emotional distress. The complainant also provided evidence that the Student earned "XXXX" scores on the Texas state standardized test on XXXX occasions between XXXX and XXXX, and it was her opinion that X---phrase redacted---X was a result, in part, from the HPS's failure to implement the Student's Plan. In addition, the complainant provided evidence of XXXX tutoring expenses X---phrase redacted---X during the 2014-2015 school year for the Student. She indicated that the tutoring was

necessary to assist the Student in mastering concepts he failed to learn as a result of HPS's failure to implement his plan. OCR therefore finds that the Student was denied educational benefit due to the impact of HPS's failure to appropriately provide shortened assignments.

Based on the foregoing, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to the issue investigated..

HPS committed to a written resolution agreement (copy enclosed) on January 22, 2016, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. OCR will monitor HPS's progress in the implementation of the agreement. Failure to implement the agreement, as scheduled, will result in OCR immediately resuming its investigation.

This concludes OCR's investigation of the complaint and should not be interpreted to address HPS'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 have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that HPS 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.

Thank you for the courtesy provided to our office by your counsel and your staff during the investigation of this complaint. If you have any questions about this matter, please contact Eve Shatteen Bell, the OCR attorney assigned to this complaint, at (214) 661-9682 or Eve.Bell@ed.gov.

Sincerely,

Taylor D. August
Director, Dallas Office

Office for Civil Rights

cc: Mr. Robert Schulman, Counsel