



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

March 21, 2016

Dr. Mark Hatchell, Superintendent  
Academy School District 20  
1110 Chapel Hills Dr.  
Colorado Springs, CO 80920

Re: Academy School District 20  
Case Number: 08-15-1350

Dear Dr. Hatchell:

We are notifying you of our decision in this case. On September 29, 2015, we received a complaint alleging that the Academy School District 20 (District) discriminated on the basis of disability. The Complainant alleges that a teacher designated in her son's (Student) Section 504 Plan (Plan) failed to fully implement the Student's Plan. Specifically, the teacher did not conduct daily check-ins/check-outs with the Student from fall 2014 through April 29, 2015, the last date the Student attended.

We investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 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 and a public entity, the District is subject to these laws and regulations.

We found sufficient evidence to support a finding of noncompliance with Section 504 and Title II. The District has voluntarily agreed to resolve the compliance concern in the attached Resolution Agreement. OCR will monitor the District's implementation of the Resolution Agreement until it is completed. The reasons for our conclusion are set forth in this letter.

In reaching a compliance determination in this case, we reviewed documentation submitted by the Complainant and the District. We also interviewed the Complainant and relevant District staff members.

### **Factual Findings**

The Student is a qualified student with a disability. The Student's 504 Plan, in effect during the 2014-2015 school year stated, "[The Student] has trouble with organizational skills and will benefit from the aid of check-ins and organizational coaching from XXXX," and provided for several accommodations, one of which provides for "Daily check-in check-out for organization/preparedness for class." Under "Person(s) Responsible" for implementing the accommodation, the Plan states "XXXX/student/parent." Given the lack of detail in the Plan regarding this provision, we sought to determine what the understanding was between the Section 504 Team and the Complainant on how this provision was to be implemented.

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

The District and the Complainant agreed that the Student held the responsibility of reporting to a designated location to meet with the XXXX before school started and at the end of the school day. Once there, the XXXX would assist the Student with organization by making sure he was prepared for the day or for the evening. The XXXX would check for materials (i.e. paper, pens, and notebooks) and whether the Student had documented whether he had homework and if so, was checked in the morning to see if the homework was completed and in the proper place in his backpack. If the Student reported without completing the homework that was expected (identified during afternoon check the day before), the Student had a brief fifteen minute “passing period” before the first class to allow for the Student to retrieve his work from his locker or to complete it.

The Complainant stated that it was not until a meeting in March 2015 with the Assistant Principal that she learned that the Student had “stopped attending the check in/out.” The Complainant said she then questioned the Student about the Assistant Principal’s statement to which the Student responded that “he gradually stopped going after Thanksgiving 2014.” The Student further stated that the XXXX would check whether he had his homework and if he did not she would tell him to “do it at home and bring it in tomorrow.” In those instances the Student would purposely avoid reporting for checks and after enough time, usually two days, the homework was “not mentioned again.”

The Complainant also stated that the XXXX had failed to email her weekly if the Student did not meet for check in/out. The Complainant said the XXXX had orally agreed in a Section 504 meeting that she would do that if the Student did not show for the check in/out. We reviewed the notes from an August 27, 2014 Section 504 meeting and confirmed that the XXXX had agreed to email the Complainant as she asserted. The District acknowledged that no such emails were sent.

We interviewed the XXXX and she confirmed she had not checked the Student since December 2014 because the Student did not come to the designated location and she did not seek him out. She also said she did not recall verbally agreeing to email the Complainant weekly if the Student did not meet for check in/out.

Based on the District’s confirmation that the accommodation was not being implemented after December 2014, OCR then analyzed the Student’s final grades and history of homework submissions for the 3<sup>rd</sup> quarter (January 4, 2015 to about March 12, 2015). For eight classes, the records reflect the Student had a total of fourteen missing assignments for which he received zero points. In one class, Pre-Algebra, he had four missing assignments and finished with a C. In the second class, Science, he had four missing assignments and finished with a D+. In the third class, he had six missing assignments and finished with an F (28.7%).

### **Analysis**

The regulation implementing Section 504 at 34 C.F.R. § 104.33, requires a recipient to provide a Free Appropriate Public Education (FAPE) to each qualified individual with a disability within its jurisdiction. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards).<sup>1</sup> Implementation of a Section 504 Plan is one means to meet this regulatory requirement.

---

<sup>1</sup> Title II provides no lesser protections than Section 504, which provide more specific requirements. Accordingly, we cite primarily to the Section 504 regulation in this letter.

The District contends that implementation of the accommodation was a shared responsibility and in this instance, the Student was ultimately responsible for reporting for check-in/outs. While the Student may share some responsibility, it is ultimately the District's responsibility to ensure the term is adequately addressing a student's need through consistent implementation, which also included notifying the Complainant via email if the Student did not show for check-in/outs. In this instance, the Section 504 team noted that the Student has trouble with organizational skills and would benefit from the aid of check-ins with a District staff person. OCR finds by a preponderance of the evidence that based on meeting minutes and the language of the Student's Plan, the District did not fully implement the check-in/out provision of the Student's Plan as agreed to, thus it failed to fully comply with 34 C.F.R. § 104.33.

### **Conclusion**

For the reasons explained, we found sufficient evidence to conclude that the District did not fully comply with Section 504 and Title II with respect to the allegation. The District agreed to voluntarily resolve the compliance concern and entered into a Resolution Agreement, signed March 17, 2016. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory manner. Once fully implemented, the Resolution Agreement will ensure the District's compliance with the regulations as addressed in this complaint.

This concludes OCR's investigation of this complaint and 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. The Complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

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.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact XXXX, Equal Opportunity Specialist, at XXXX or me at XXXX.

Sincerely,

/S/

Thomas M. Rock  
Supervising General Attorney