



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

July 9, 2014

Dr. Linda Shifflette
Superintendent
Hampton City Schools
1 Franklin Street
Hampton, Virginia 23669

Re: OCR Complaint No. 11-11-1372
Letter of Findings

Dear Dr. Shifflette:

This letter is to notify you of the disposition of the September 30, 2011 discrimination complaint filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department). The Complainant filed the complaint against Hampton City Schools (the Division). The Complainant alleged that the Division, particularly XXXX School (the School), discriminated against XXXX as well as other parents and students who are Deaf and hard of hearing.

Based on our review of the investigative information, OCR determined that there is insufficient evidence to conclude that disability discrimination occurred with regard to Allegations 1, 2 and 3b, as alleged. OCR found a violation with regard to Allegation 3a and entered into a resolution agreement with the Division to resolve the allegation. A copy of that Resolution Agreement is attached. A more detailed summary of our determinations regarding the complaint allegations is provided below.

Complaint Allegations Investigated

Allegation 1: The Division, particularly the School, discriminated against the Complainant and the Student on the basis of disability on XXXX, when it failed to provide them with a Sign Language Interpreter for the Open House for Back to School Night.

Allegation 2: The Division, particularly the School, discriminated against the Student on the basis of disability on XXXX, 2011, when it failed to provide the Student with a Sign Language Interpreter for his physical education class (PE) pursuant to this Individualized Education Program (IEP).

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

Allegation 3: The Division discriminates against parents and students who are Deaf and hard of hearing by failing:

- a. To provide close captioning for re-broadcasted School Board meetings and Division events; and
- b. To have a reliable process for obtaining Sign Language Interpreters for Division and/or School events.

OCR's Responsibilities

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Factual Background

The Student has attended the School since the 2010-2011 school year, when he entered the first grade. The Student has XXXX. At the time of this complaint, the Student was XXXX. <XXXX TWO SENTENCES REDACTED XXXX>

Analysis and Conclusions

Allegation 1: Sign Language Interpreter for Back to School Night¹ (September 27, 2011).

Legal Standards

Section 504, at 34 C.F.R. §104.4, states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of disability in any program or activity that receives Federal financial assistance. Section 504, at 34 C.F.R. § 104.4(b)(i), also states that a school division may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. Further, Section 504, at 34 C.F.R. §104.37, states that a school division must provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

The Title II regulations, at 28 C.F.R. § 35.160, require that public entities take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. In addition, public entities must furnish appropriate auxiliary aids and services where necessary to afford qualified

¹ Back to School night is for parents to visit their children's classrooms.

individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

Discussion

The Complainant alleged that the School did not provide the Complainant or the Student with a sign language interpreter for the Back to School night. The Division informed OCR that a qualified sign language interpreter was available to the Complainant and the Student, but that the Complainant and the Student did not attend the Back to School night and were therefore not denied a qualified interpreter.

In response to the Complainant's request for a freelance interpreter, the School notified the Complainant that a freelance interpreter was not available that evening, but indicated that the teacher's interpreter, a qualified interpreter whom the Complainant knew and has used as an interpreter previously, would be at the School, in the classroom and available to the Complainant.

Although the Complainant's request for a freelance interpreter was not fulfilled, OCR concluded that the Division afforded the Student and the Complainant an equal opportunity for participation.² OCR notes that the Complainant has used the services of the teacher's interpreter previously with no concerns. Thus, OCR determined that there was insufficient evidence that the Division violated Section 504 and Title II as alleged.

Allegation 2: Sign Language Interpreter for the Student (XXXX, 2011).

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. §104.33, states that a recipient that operates a public elementary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability in its jurisdiction regardless of the nature or severity of the person's disability. The development and implementation of an IEP or a Section 504 Plan for students with disabilities are examples of ways that a school division may provide students with a FAPE. OCR interprets the Title II regulations to require districts to provide a FAPE to the same extent required under the Section 504 regulation. As discussed above, the Title II regulations also contain specific provisions requiring that public entities ensure equally effective communication with individuals with disabilities.

Discussion

The investigative evidence indicates that on XXXX, the Student's interpreter was out sick for the day. The Student's IEP provided for daily ASL interpreter services on the school campus. Thus, in accordance with the Student's IEP, the School sought one of its two back-up interpreters from other Division schools. Neither was available. The Student received interpreter services from his classroom teacher and/or his classroom teacher's interpreter for all core subjects except for PE.

² As discussed more in Allegation 3b, OCR also reviewed the Division's process for providing a qualified sign language interpreter for parents and students and did not identify any concerns with this process.

The Division informed OCR that an interpreter was available for the Student's PE class, if needed, but the Student completed all tasks since they were the same as previous PE classes and the Student was familiar with the exercise routines.

The Division's Coordinator informed OCR that she sent an e-mail to interpreters at another school to inquire about their availability to provide services to the Student for the one period for PE. The e-mail was sent before school hours and the interpreters did not see the e-mail until later in the day, after the Student's PE class. However, the PE class report indicated that the Student was able to complete all the PE routines and did not seek clarification or assistance. The Coordinator also informed OCR that due to the delay in response from the backup interpreters, a new procedure was put in place. Specifically, all requests for a backup interpreter to fill in for someone who is out begin with a call to the other school. If the office is unable to reach the interpreter, a voice message is left for the school's office secretary, who checks voice messages at the start of the school day, to pass along to the interpreters.

OCR concluded that while the Student did not receive a sign language interpreter in his PE class on one occasion in XXXX 2011, the unavailability of an interpreter for one PE period is not sufficient to deny the Student a FAPE or to deny the Student an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the School, particularly when there is evidence that the Student participated fully in his PE class. Thus, OCR determined that there was insufficient evidence that the Division violated Section 504 and Title II as alleged.

Allegation 3: The Division discriminates against parents and students who are Deaf and hard of hearing by failing to provide:

- a. *Closed captioning for re-broadcasted School Board meetings and Division events.*

Legal Standards

The Section 504 regulations, at 34 C.F.R §104.4(b)(1) and (2), provide that recipients of Federal funding may not provide a person with a disability with an aid, benefit, or service that is not as effective as that provided to others; to be equally effective, aids, benefits, and services, must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. In addition, the Title II regulations, at 28 C.F.R. §35.160(a), require a school division to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. These regulations, at 28 C.F.R. §35.160(b)(1), require a school division to furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, Title II requires that the school division give primary consideration to the requests of the individual with disabilities.

Discussion

The Division informed OCR that it maintains a television channel provided by Cox Communications as part of its cable contract with the City of Hampton. Interpreters are provided for each of the events, such as monthly school board meetings, select athletic events, the Citizen of the Month luncheon for Division students, and graduations. However, closed captioning is not provided when school board meetings and select events are re-broadcasted because the Division believes that it is exempt from providing closed captioning.³

As mentioned above, under Section 504 and Title II, the Division must ensure that its communications with individuals who are Deaf or hard of hearing are as effective as communication with individuals without hearing impairments. Because the Division failed to provide effective communication for individuals who are Deaf and hard of hearing to access rebroadcasts, OCR found compliance concerns. The Division entered into the attached Resolution Agreement to resolve this allegation.

b. *A reliable process for obtaining Sign Language Interpreters for Division and/or School events.*

The Division informed OCR that it has an established process for obtaining Sign Language Interpreters for Division and/or School events. During the 2009-2010 school year, requests for interpreters for events outside of the school day were done through the classroom teacher. The classroom teacher would complete the form and submit it to the office. During the 2010-2011 school year, the process was changed. The new process requires the person requesting an interpreter to complete the interpreter request form.⁴ The requester has to submit the form two weeks in advance to ensure an interpreter is available and can be provided. If the event/activity takes place during the school day, there are Division interpreters available.

For the 2010-2011 school year, there were five requests for interpreter services for school board meetings and each request was fulfilled. The Complainant has never submitted a form to the clerk for interpreter services but rather calls the clerk, usually a few days before or the day before she needs an interpreter. Nonetheless, the Division has provided the Complainant with an interpreter. Other than this complaint, there have been no complaints regarding the lack of an interpreter for a school meeting or an event.

Based on the information gathered, OCR concluded that the Division does have a process for individuals seeking a sign language interpreter for Division and/or School events, and the process is readily available. The interpreter request form and instructions are available on the

³ The Division informed OCR that pursuant to the Federal Communication Commission (FCC) regulations, at 47 C.F.R. 70.1 (12) and (13), it is exempt from providing captioning for its rebroadcasts because the Division has revenue less than \$3 million and is an educational channel. OCR also reviewed the FCC regulations that the Division relied upon and spoke with FCC attorneys. The FCC attorneys stated that the Division references a self-implementing regulation. There is not an application processes for an entity to obtain an exemption. An entity makes its own determination as to whether it qualifies for an exemption. OCR determined that regardless of an entity's self-designation as exempt from the FCC regulations, the language in Section 504 and Title II is clear; persons with disabilities must be afforded equally effective communication or communication that is as effective as communication with persons without disabilities.

⁴ The Director informed OCR that it does not matter whether a person calls the School Board office instead of completing the form or does not provide two weeks advance notice; all requests are processed and an interpreter is provided, if one is available. They do not question the requester's need for an interpreter.

Division's homepage as well as on the Special Education Department's page. OCR notes that for special education/IEP related meetings, an interpreter is automatically provided if the parent and/or student needs an interpreter. Further, the Complainant and the Student's father (both of whom have hearing impairments) have successfully used this process, on several occasions, to obtain a sign language interpreter. Thus, OCR determined that there was insufficient evidence to show that the Division violated Section 504 and Title II as alleged.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 the Division may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions regarding the complaint or the contents of this letter, please contact OCR Senior Attorney Selena Fox at 202-453-5910 or, via email, at Selena.Fox@ed.gov.

Sincerely,

/s/

Kay Bhagat
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure(s)