



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.

May 7, 2014

Mr. W. Burke Royster
Superintendent
Greenville County Schools
301 E. Camperdown Way
Greenville, South Carolina 29601

Re: OCR Complaint No. 11-13-1272
Letter of Findings

Dear Mr. Royster:

This letter is to notify you of the outcome of the July 2, 2013, discrimination complaint filed with the District of Columbia Office of the U.S. Department of Education (Department), Office for Civil Rights (OCR). The Complainant filed the complaint against Greenville County Schools (District), alleging that the District discriminated against the Student, who attended XXXX (School), on the basis of disability (XXXX). Specifically, the complaint alleged that the District discriminated against the Student on the basis of his disability when, in March 2013, the District did not provide assignments to the homebound instructor, resulting in the Student receiving a failing grade.

OCR has completed its investigation of the allegation following a careful review of the investigative data provided by the Complainant and the District. We also conducted interviews with the Complainant as well as with District staff. OCR has determined that we do not have concerns with respect to the District's provision of assignments to the Student while receiving homebound instruction; however, during the course of investigation OCR identified preliminary concerns with respect to the District's homebound instruction policy (the Policy) and its application of the Policy to students with disabilities. A summary of OCR's responsibilities and applicable legal standards, and a more detailed discussion of our determination regarding the allegations are set forth below.

OCR's Responsibilities

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, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Additionally, OCR has jurisdiction as a designated agency to enforce Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a recipient of Federal financial assistance from the Department and a public entity; therefore, it is subject to the provisions of these laws.

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

Investigative Evidence and Analysis

The regulation implementing Section 504 requires school systems to provide qualified students with disabilities a free appropriate public education (FAPE), defined as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as it meets the needs of students without disabilities. 34 C.F.R. § 104.33(a). OCR interprets this provision to require that school districts take necessary steps to ensure that they meet the disability-related needs of students.

For OCR to find that the Student was denied a FAPE or was otherwise discriminated against based on his disability, the evidence must show that the Student was harmed as a result of the District's action. During OCR's interviews of the Student's regular educators as well as his homebound instructor they acknowledged that they did not provide the Student with every assignment they gave to students during class. Grade sheets provided by the District illustrate numerous assignments that did not have grades.

Teachers sent assignments to the homebound instructor one or two times each week. They explained, for example, that some assignments required group work or laboratory experiments and were not appropriate for a student receiving homebound services. In addition, the teachers modified assignments for the Student in accordance with his IEP and so he could complete them independently while still including every concept that was being taught in class. The homebound instructor said that the Student always had enough assignments to occupy their instructional sessions and for the Student to work on independently between their meetings. Although the Complainant said that the Student received failing grades, the Student did not receive a failing grade on his quarterly report cards. Academic records illustrate that the Student received poor grades on several individual assignments, but his overall grades were passing and included three Bs and one C in core academic subjects. Data show that teachers excused the Student from assignments they did not provide to him. His grade sheets verify that he was not penalized for completing different assignments from those which were given to other students. The record does not support a finding that the Student received failing grades as the Complainant alleged or that he was otherwise harmed.

As a result, OCR has insufficient evidence to find that the District denied the Student a FAPE by failing to provide all assignments. The teachers met the Student's individual needs by providing him assignments that corresponded to the concepts and topics taught in class and by continuing to modify assignments in accordance with his IEP.

Preliminary Concerns Identified

The Section 504 regulation, at 34 C.F.R. §104.35(a), requires the District to evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before initially placing the student and before any subsequent significant change in placement, such as a homebound placement. The Section 504 regulation, at § 104.34(a), requires a school district to provide FAPE in the least restrictive environment. This could include the provision of homebound services if a group of individuals knowledgeable about the educational

needs of a student meet and decide that homebound services are necessary to meet that student's individual needs, as required by § 104.35(c).

OCR reviewed documentation regarding the placement of students with disabilities in homebound status. In some instances, the documentation did not indicate the rationale used by the Section 504 or IEP team in determining the amount of homebound instruction to provide. Also, OCR found some evidence that the District failed to convene a Section 504 or IEP meeting for some students with disabilities to determine whether a homebound placement was appropriate and the amount of services to provide. In addition, the District's Homebound Policy indicated that students on homebound status would "typically" receive five hours per week of instruction; this suggests that determinations about the educational needs of students with disabilities on homebound status were not being made on an individualized basis, as required by Section 504.

During the course of the investigation, the District expressed an interest in resolving this preliminary concern under a voluntary resolution agreement, which is attached. The District signed the enclosed agreement, which, when fully implemented, will resolve the complaint. The provisions of the agreement are aligned with the concerns identified and the information obtained during the course of OCR's investigation, and are consistent with the applicable regulations. The District committed to, among other things, revise its Homebound Policy and review the individual circumstances of students with disabilities who were placed on homebound status during the relevant time period. OCR will monitor implementation of the agreement.

Conclusion

OCR found insufficient evidence to support the allegation; however, OCR did identify a preliminary concern, which the District has agreed to resolve in accordance with the attached agreement, as described above.

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.

We remind the District that no person is permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any person is harassed or intimidated because of filing a complaint or participating in an OCR investigation, that person may file a complaint alleging such treatment.

Also under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions regarding your complaint or this letter, please contact Amy Schumacher Williams, the attorney assigned to this complaint, at (202) 453-5933 or via e-mail at amy.williams2@ed.gov.

Sincerely,

/s/

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

Enclosure

cc: Doug Webb, Esq. via e-mail