



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.

March 28, 2014

Dr. Lane B. Mills
Superintendent
Craven County Schools
3600 Trent Road
New Bern, North Carolina 28652

Re: OCR Complaint No. 11-13-1319
Letter of Findings

Dear Dr. Mills:

This letter is to notify you of the outcome of the September 13, 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 Craven County Schools (District) on behalf of a student (Student) who attended XXXX School (School), alleging that the District discriminated against the Student on the basis of disability XXXX when it:

1. Denied the Student a Free Appropriate Public Education (FAPE) by failing to evaluate the Student; and
2. Denied the Student's request for an intra-district transfer to the School.

OCR has completed its investigation of the allegations 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. 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. Thus, we determined that OCR has jurisdiction over the complaint.

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

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. §104.33 requires that school districts provide students with disabilities with a FAPE. This means that school districts must provide to students with disabilities regular or special education and related aids and services that are designed to meet the individual educational needs of a student with a disability as adequately as they meet the needs of students without disabilities. A modification to an attendance policy or practice is one such service that may be required, depending on the individualized needs of a student with a disability. The Section 504 regulation, at 34 C.F.R. §104.35(a), requires school districts 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.

The Section 504 implementing regulation at 34 C.F.R. §104.35 (c) states that an evaluation of an individual who is believed to need special education or related services must use established standards and procedures, including (1) drawing upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establishing procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensuring 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, and (4) ensuring that the placement is in the least restrictive environment. OCR interprets Title II standards similarly to those of Section 504; therefore, we applied the Section 504 standards in our analysis.

Analysis and Conclusions

Failure to Evaluate

OCR identified concerns that the District failed to evaluate whether the Student is a student with a disability who needs related aids and service, including a modification to the District's attendance policy and related policies and practices.

In September 2012, the Student's parents provided the District with medical documentation that the Student was diagnosed with XXXX, described the nature of the Student's symptoms, and explained how the condition could affect her ability to access the educational program, including that the Student would need related aids and services and may not be able to attend school on some occasions. After receiving this documentation, the Student was designated as "Medically Fragile" by the District, a designation given when a Student is unable to meet attendance requirements due to a serious medical condition. According to the School Counselor/Section 504 Coordinator, this designation allows the District "flexibility" in counting absences and makes a student eligible for homebound instruction in the event of extended absences. Indeed, the Student was absent eighteen days because of illness during the 2012-2013 school year before she began receiving homebound instruction in October 2012. During the 2012-2013 school year, each of the Student's 18 absences was related to her medical condition.

According to the Principal, the School recognized the need for some modifications to the Student's educational program because of her medical condition so it informally allowed the

Student to take bathroom breaks and arrive to class late. Even though the District informally made modifications while the Student was attending the School, the District failed to conduct an evaluation to determine if she needed other, non-academic supports and services required by Section 504, such as a modification in the District's attendance requirements.

The School Counselor/Section 504 Coordinator informed OCR that the District did not evaluate the Student for special education and related aids and services because she earned average grades and her parents had not requested such an evaluation. However, OCR found that the Student's grades declined in general, and particularly when comparing those grades from the 2011-2012 school year, which were in the 90s, with grades from the 2012-2013 school year, which averaged in the 70s and 80s. Further, OCR notes that the Student requested consideration of Section 504 eligibility. In a letter dated July 19, 2013, the Student's medical provider requested that the District consider implementing a Section 504 plan and suggested specific interventions.

OCR found that District staff deliberated about whether Section 504 eligibility was appropriate for the Student during the 2012-2013 school year. In an e-mail sent in November 2012, the School Counselor/Section 504 Coordinator wrote to the District Section 504 Coordinator, asking for guidance about whether to consider a Section 504 plan or other intervention for the Student. Specifically, the Counselor noted that the Student had been diagnosed with XXXX, she had "average grades," and her diagnosis required her to be on homebound. While being assigned homebound services does not automatically require the development and implementation of an Individualized Education Program (IEP) or Section 504 plan, when the Student continued to receive homebound instruction because of a chronic medical condition and experienced excessive absences prior to her placement on homebound instruction, the District had sufficient information to believe that the Student may need special education or related aids and services, as required under Section 504.

Based on notice of the Student's diagnosis and the chronic nature of the symptoms associated with it, the Student's frequent absences related to the condition, the informal modifications made by the School, including the decision ultimately to provide homebound instruction, and the decline in the Student's grades, OCR finds that the District had sufficient information to warrant evaluating the Student for a disability as required under Section 504 and to determine whether the Student may need regular or special education or related aids and services due to a disability. As a result of the District's failure to evaluate the Student, OCR has concerns that the District may have denied the Student appropriate educational services.

Denial of Intra-District Transfer

The Complainant alleged the District discriminated against the Student when it denied her intra-district transfer request because of the Student's absences, which were related to the XXXX. The District informed OCR that attendance is a reason that a principal may deny a student's transfer request. The Principal informed OCR that she routinely denies transfer requests to the School based on a student's absentee record and that she denied the Student's transfer because of her absences.¹

¹ The District's records also indicate that the Principal denied the Student's transfer request because of her lack of attendance at school while she received homebound instruction and was assigned to the online Odyssey Program as a result of her medical condition, even though the District considered her present at school during that period. The

Although Section 504 and Title II do not prohibit the District from considering attendance as a basis for denying an intra-district transfer request, if a student's attendance is affected by his or her disability, the District should consider whether to make a modification to the District's attendance-related policy. As a result of the District's failure to evaluate the Student, OCR has concerns that the District failed to consider whether to modify its intra-district transfer attendance criterion based on the Student's disability (assuming eligibility under Section 504).

Conclusion

OCR found sufficient evidence to support the allegations. On March 28, 2014, the District entered into the attached resolution agreement (Agreement) that, when fully implemented, will resolve OCR's concerns with respect to this complaint. OCR will monitor the District's implementation of the Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Section 504 and Title II.

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 the attorneys assigned to this complaint, Josie Evola, at (202) 453-5908 or via e-mail at josie.evola@ed.gov, or Amy Schumacher Williams, 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

Odyssey Program is an online academic instruction delivery system that allowed the Student to complete lessons and tests, and receive academic credit, independently and at her own pace when she could not attend school due to her medical condition. The Student completed assignments daily and could contact School teachers for assistance.