



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, DC

August 6, 2015

Maurice Green
Superintendent
Guilford County Schools
712 N. Eugene St.
Greensboro, NC 27401

Re: OCR Complaint No. 11-15-1038
Letter of Findings

Dear Mr. Green:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on November 11, 2014, against Guilford County School District (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX School (the School). The complaint alleged that the District discriminated against the Student on the basis of disability (XXXX) when it refused to exempt the Student from a grade promotion requirement for participation in athletics, which made the Student ineligible to try out for the School's XXXX.

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 District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR interviewed the Complainant and reviewed documents provided by the District, relevant state regulations, and North Carolina High School Athletic Association (NCHSAA) policies. After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding the District's failure to consider whether it needed to modify its academic eligibility requirements to afford the Student an equal opportunity to participate in its athletic program. The District agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Background

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 Student attended a XXXX school through the 2012-2013 school year. His transcript indicates that he was in eighth grade and earned three high school credits that year. During the 2013-2014 school year, the Complainant XXXX the Student through a XXXX program. His transcript indicates that he was in ninth grade but did not earn credits in any of the courses he attempted. According to the Complainant, the Student's disability-related symptoms were so severe that he was unable to complete his coursework. The Student's condition reportedly stabilized during spring and summer 2014, and he enrolled in the District at the beginning of the 2014-2015 school year as a XXXX grader. According to the District, the Student did not bring a document that could be used to develop an Individualized Education Program (IEP). However, the District placed the Student in co-teach classes with regular and special education teachers anticipating that he would eventually qualify for services under the Individuals with Disabilities Education Act (IDEA). The District evaluated the Student and developed an IEP that went into effect on XXXX. The IEP does not address athletic participation.

Under North Carolina's state regulations, students in grades 9-12 must pass at least 75% of the maximum possible courses each semester and meet promotion standards established by the Local Educational Agency (LEA) in order to participate in interscholastic athletics. 16 NCAC 06E .0202(a)(3). The North Carolina State Board of Education Policy Manual further specifies that students in grades 9-12 "must pass at least five courses (or the equivalent for non-traditional school schedules) each semester to be eligible anytime during the present semester and meet promotion standards established by the LEA." HRS-D-001(a)(3). Section 1.1.5 of the NCHSAA's rules ("Scholastic Requirements") also provides that high school students must pass at least five courses in traditional schedules or three courses in block schedules and "must also meet local promotion standards, set by the LEA and/or the local school." With respect to school attendance, section 1.1.4 of the NCHSAA's rules states that "a student-athlete must meet the LEA attendance policy during the previous semester at an approved high school."

Both the state regulations and the State Board's policy manual state that the NCHSAA "may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student." 16 NCAC 06E .0202(d); HRS-D-001(d). Section 1.3.1 of the NCHSAA's rules states that except for the age rule, the NCHSAA's Board of Directors "shall have the authority to set aside the effect of any eligibility rule, when in the opinion of the Board, the rule fails to accomplish the purpose for which it is intended and when the rule works an undue hardship upon the student." The NCHSAA rules do not specify disability as a possible basis for a waiver, but do refer to injury, illness, and "medical causes."

The School submitted a Hardship Request Form on behalf of the Student to the NCHSAA on October 9, 2014. The form indicates that the School applied for a waiver of "scholastic requirements" and "attendance requirements" because <XXXX PARAGRAPH REDACTED XXXX>

The NCHSAA responded in a letter to the School's principal dated XXXX, stating:

The request for a one-time waiver of the scholastic rule, based on last semester's grades, has been approved. Although it is a little different when the previous school was a home school, in terms of records and the like, it has been approved. However, there are a couple of other issues with this particular hardship request. A waiver was asked for the attendance requirements, but the student must now meet local attendance standards so that would not be something upon which we could act. In similar fashion, a student must meet 'local promotion standards' as one of the basic requirements for eligibility. We cannot set aside local standards, and based on our understanding the student-athlete has been enrolled in the ninth grade once again. So for him to be eligible during this semester, the promotion standard piece would have to be handled by the [District], according to whatever protocol it has in place.

The District's athletic participation policy (JI) states that students must "pass a minimum load as established by NCHSAA during the preceding semester and must meet [District] and State promotion standards" to be eligible to participate. The District's promotion standards require that a student "progress in meeting the core requirements annually as specified by one of the diploma pathways" (Policy IKE). Specifically for promotion from ninth to tenth grade, a student must have earned a minimum of five units for schools with non-block schedules (Policy IKE-P). Furthermore, Policy JI states that "all students are required to earn a weighted GPA of 2.0 each semester," with fall semester eligibility determined by the GPA earned during the preceding spring semester. Policy JI also states that students "must have been in daily attendance 85% of the previous semester." Policy JI-P provides that a "school administration may request a hardship exception to the attendance requirement if the cause of the excessive absences was due to circumstances beyond the control of the student, the parents, and/or the school." The District's policies do not provide for hardship exceptions for students who fail to meet District promotion standards or the minimum GPA requirement. However, the District's response to the complaint states that the minimum GPA requirement, but not the promotion requirement, can be waived by the District and that hardship waivers have been granted in the past.¹

According to the Complainant, after the NCHSAA responded to the hardship request the District's athletic director informed her via telephone that the Student would not be allowed to try out for basketball because of the grade promotion requirement.² According to a letter from the Student's parents to the School dated XXXX, the athletic director stated that "there is no precedence set for this and he couldn't just change policy." The parents' letter contended that in situations involving a student with a disability, policies should be modified to accommodate the student. The letter further contended that the Student's failure to progress a grade the previous year was "100% due to his disability." There is no record of a response to this letter from the District.

¹ Neither the Complainant nor the District raised the GPA requirement as a barrier to the Student's participation in athletics, so OCR did not inquire further into this issue with respect to the Student. However, the resolution agreement also addresses the minimum GPA requirement.

² Both the Complainant and the District told OCR that a waiver was granted with respect to attendance requirements, so OCR did not inquire further into this issue with respect to the Student. However, the resolution agreement addresses the attendance requirement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities, including athletics. OCR interprets the Title II regulation to provide the same protections as Section 504 with respect to this provision. OCR discussed Section 504's requirements in more detail in a "Dear Colleague Letter" issued on January 25, 2013. As stated in the Dear Colleague Letter, a school district must make reasonable modifications to its policies, practices, or procedures whenever such modifications are necessary to ensure equal opportunity, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the athletic activity or program. In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the district must allow it unless doing so would result in a fundamental alteration of the nature of the activity or program.

In the case of academic eligibility requirements, the issue is whether modifying the eligibility criteria for the student would fundamentally alter the district's athletic program. If a district determines that modifying eligibility criteria would constitute a fundamental alteration of its program, it must explain the basis for its reasoning. In the case where a student's disability may have prevented the student from meeting academic eligibility requirements, the district should take this into account in its analysis. Similarly, a district should take into account if a student may have failed to meet a requirement because the district did not implement the student's IEP or Section 504 Plan or otherwise denied a free appropriate public education to the student. In these circumstances, making an exception to the requirements for that individual student may not constitute a fundamental alteration but instead may be a reasonable modification to ensure an equal opportunity to participate.

Analysis

Both the state and District rules require that a student pass five courses in a traditional schedule during the previous semester in order to be eligible to participate in athletics during the current semester. The Student did not pass any courses during the XXXX school year, and so he did not meet the state-mandated minimum course requirements or the District's local promotion standards to be eligible to try out for basketball during the first semester of the XXXX school year. Therefore, modifications to the state and local academic eligibility requirements were necessary to allow the Student to participate, and the state and District should have modified their requirements for the Student unless the state and/or District determined that doing so would fundamentally alter the nature of their athletic programs.

The School applied to the NCHSAA for a waiver of the state eligibility requirements and stated that the waiver request was based on the Student's disability and its impact on the Student's ability to complete work the previous year. Therefore, it appears that the District considered the Student's disability-related circumstances and determined that requesting a waiver of the state academic eligibility requirements would be reasonable in the Student's case. However, the District failed to undertake a similar individualized inquiry after the NCHSAA deferred to the

District regarding the requirement that a student meet local promotion standards. Specifically, the District did not conduct an individualized inquiry to determine whether waiving the requirement of meeting District promotion standards for the Student would fundamentally alter its athletic program.

To clarify, Section 504 and Title II do not require the District to consider promoting the Student to the tenth grade when he did not earn the required credits. Rather, the issue is whether the District should have modified its academic eligibility requirements for the Student to allow him to participate in the athletic program even though he was repeating the ninth grade. OCR determined that the District's failure to consider whether it should modify its academic eligibility requirements for the Student, specifically the requirement related to District promotion standards, is not consistent with the Section 504 provision discussed above.

Conclusion

To resolve the compliance concern identified above, the District entered into the attached Resolution Agreement, signed on August 4, 2015. Once the Resolution Agreement is fully implemented, the District will be in compliance with Section 504 and Title II with respect to the issues addressed in this letter. OCR will monitor the District's implementation of the Resolution Agreement. Failure to implement the Resolution Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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 District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Sarah Morgan, the OCR attorney assigned to this complaint, at (202) 453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Supervisory Attorney, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXX (via email)