



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

July 12, 2017

Dr. Patrick K. Murphy
Superintendent
Arlington Public Schools
1426 N. Quincy Street
Arlington, Virginia 22207

Re: OCR Complaint No. 11-15-1089
Letter of Findings

Dear Dr. Murphy:

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 XXXX against Arlington County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School), and alleged that the Division discriminated against her on the basis of disability (XXXX) by denying her a free appropriate public education (FAPE) during the XXXX school year.

Specifically, the complaint alleged that the School failed to: (1) train staff, (2) create a modified grade-level curriculum, and (3) provide required instructional opportunities and materials including: (i) adequate auxiliary aids and adapted materials; (ii) adequate space for instruction and resting; (iii) access to augmentative communication tools; (iv) XXXX (v) 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 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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division; interviewed the Complainant, the Student's parents, Division administrators and staff, including the Student's service providers, the Student's private XXXX specialist, and the Student's XXXX; conducted a site visit on XXXX and XXXX; and listened to audio recordings of XXXX Individual Education Program meetings.

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

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence to support a violation of Section 504 and Title II with respect to the Division's provision of a modified grade-level curriculum (Allegation 2) and provision of some instructional opportunities and materials (Allegation 3), which the Division agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support Allegation 1 with regard to training staff. OCR's findings and conclusions are discussed below.

Legal Standards

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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public educational systems, 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, it is subject to the provisions of Section 504 and Title II.

The implementing regulation of Section 504, at 34 C.F.R. § 104.33, requires that school districts provide students with disabilities with a free appropriate public education (FAPE). An appropriate education is 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 the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

In addition to the requirement to provide FAPE, the Title II regulation, at 28 C.F.R. § 35.160, further requires school districts to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with students without disabilities. To do this, school districts must provide appropriate auxiliary aids and services where necessary to provide effective communication so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the school system. Title II requires schools to give primary consideration to the auxiliary aid or service requested by the student with the disability when determining what is appropriate for that student. A school system is not required to provide a particular auxiliary aid or service if the school system can demonstrate that it would fundamentally alter the nature of a service, program, or activity, or that it would be an undue financial and administrative burden. However, the school system still has an obligation to provide an effective auxiliary aid or service to the maximum extent possible.

School systems must apply both a FAPE analysis and the Title II effective communication analysis in determining how to meet the communication needs of a student with a hearing, vision, or speech disability. In some cases, to comply with Title II's effective communication requirement, a school system may have to provide the student with aids or services that are not required for the student to receive FAPE.

Background

At the time the complaint was filed, during the XXXX school year, the Student was XXXX years old and XXXX at the School. The Student has been identified as having XXXX disabilities, including XXXX. XXXX 2 SENTENCES REDACTED XXXX.

The Student has been enrolled in the Division since XXXX. She received homebound instruction for several periods during the XXXX school year and again during XXXX, during which time the Student's parents and the Division attempted to resolve disagreements about the content of the Student's IEP and the appropriate educational placement. During the XXXX school year, the Student attended XXXX, where staff implemented what the Division and the Student's parents agreed was the "XXXX" IEP. Following the XXXX school year, the Student transitioned to the School for the XXXX school year, as she had outgrown the XXXX setting. The Student had limited attendance during the XXXX school year. She was unable to attend school until XXXX, due to XXXX. She attended school on several occasions during XXXX; however, she was told not to return until the Division and the Student's parents agreed upon a transition plan, which became the subject of a separate dispute resolved by Virginia Department of Education (VDOE) on XXXX.¹ Thereafter, she attended school for XXXX. After the Student's return to school in XXXX, she continued to have regular absences related to XXXX.² The Student's parents notified the School of their concerns about implementation of the Student's IEP via email on XXXX, stating that the School "XXXX". The parent continued that there was no XXXX.

Analysis

Allegation 1: Training of Staff

The Complainant alleged that the Division did not train staff to work with the Student, as required by the Student's IEP. Specifically, the Student's parents stated to OCR that the Student's providers were not trained in the competencies of the Virginia Deaf-Blind Project and were not familiar with the Student's needs or working with students with deaf-blindness. Related to this concern was their concern that no one, including the special education teacher, was trained to work with the Student in the absence of the Student's assistant.

¹ In addition to the Student's IEP, the Division developed a Transition Plan during the XXXX school year, which guided the Student's return to school from a homebound placement. XXXX SENTENCE REDACTED XXXX. VDOE determined that the Transition Plan still applied during the XXXX school year and required the Division to take corrective action to ensure its implementation.

² At the time the complaint was filed, the Student was absent from school XXXX. The Division was closed for Thanksgiving and winter breaks XXXX and XXXX.

The Student’s IEP requires her to have a one-on-one assistant XXXX who is “XXXX.” XXXX
2 SENTENCES REDACTED XXXX.

OCR determined that it has insufficient evidence to support this allegation. The Intervener began attending training led by the Virginia Deaf-Blind Project in XXXX and completed the XXXX semesters of coursework required for the Virginia Deaf-Blind Project training for paraprofessionals through the XXXX. She completed the program in XXXX, and the Division provided OCR with a copy of the Intervener’s certificate of completion. The Intervener told OCR that she also participated in several other local, in-person training sessions offered by the Virginia Deaf-Blind Project.

Although the Intervener had not completed the training program in the competencies of the Virginia Deaf-Blind Project before she began to work with the Student, she had completed more than XXXX months of the XXXX training program at the time the Student began attending the School in XXXX and completed the program XXXX. OCR finds that she had substantially completed the program at that point in time and that this satisfies the IEP’s statement that the Student will have a 1:1 assistant who is “XXXX” Accordingly, OCR finds insufficient evidence to support a finding that the Division did not train staff as required by the Student’s IEP.

OCR notes that the Division relied on the Intervener to be trained in the competencies of deaf-blindness to work with the Student, while other service providers (excluding the XXXX teacher who did not see the Student until XXXX) had not received training in working with students with deaf-blindness. Although the XXXX IEP does not require training for other providers, OCR suggests that the Student’s XXXX teacher, and another person designated to intervene in the event of the Intervener’s absence, receive similar training so that a trained individual is available to the Student at all times.

Allegation 2: Modified Grade-Level Curriculum

The Complainant alleged that the School failed to modify the grade-level curriculum for the Student, as required by the Student’s IEP. The Complainant said that activities were ad hoc, and staff often did not have anything for the Student to do. As early as XXXX, the parent wrote an email to the Principal stating that she did not believe the Division implemented a modified curriculum during the Student’s attendance on XXXX. In the email, the Student’s parent wrote that that the School “XXXX.” Then, according to the parent, on XXXX, the Intervener again told her she did not have anything else for the Student to do and thought there would be books to use in the office where the Student was learning that day. The Student’s parent said that the Intervener regularly told her, “XXXX,” after an hour of activities with the Student so the parent took the Student home.

The Complainant also said that the XXXX Teacher worked with the Student approximately XXXX times prior to XXXX. Instead, the Intervener filled the role of intervener and paraprofessional or teacher. The Student’s parent believed the Intervener did not have direct supervision from the XXXX Teacher, whom she understood from past experience to be responsible for modifying the curriculum. Further, the Complainant told OCR that the Student

did not receive speech-language, vision, or hearing services until XXXX or later, which were necessary to implement a modified curriculum.

The Student's XXXX IEP states that she will receive a "modified grade-level curriculum to allow for multiple repetitions of activities/concepts over time." It does not specify who was to make and implement curriculum modifications for instruction. The Student's IEP also called for both direct XXXX.³

First, to understand what the Division was to modify, OCR reviewed the Division's XXXX curriculum, which consists of the Virginia Standards of Learning (SOLs) for XXXX SOLs for XXXX include, among other concepts: XXXX 3 SENTENCES REDACTED XXXX.

Next, OCR gathered information relevant to the Division's implementation of a modified curriculum through documents provided by the parties and interviews of Division staff.

OCR reviewed one "daily lesson plan" that the Student's Intervener prepared for daily instruction of the Student during the XXXX school year. The Intervener explained to OCR that, although the plan looks like one day's lessons, it was actually for the whole semester since the Student repeated many topics and tasks. The undated lesson plan lists a schedule of activities for the Student, starting with XXXX. XXXX 2 SENTENCES REDACTED XXXX.

OCR also reviewed daily activity logs, which recorded how long the Student attended school each day, the IEP goal addressed during instruction, and the staff who worked with her. For instance, on XXXX and XXXX dates that followed, the Division recorded, under IEP goals addressed: XXXX 2 SENTENCES REDACTED XXXX.

During interviews, the Principal told OCR that the XXXX teacher has the role of creating lesson plans, though plans do not necessarily have to be written. Here, the Intervener, not the XXXX Teacher, prepared the lesson OCR reviewed. Despite the Principal's statement, OCR cannot find that the Intervener's preparation of the lesson plan violates Section 504 because the IEP does not explicitly state who is to plan and implement curriculum modifications.⁴ Further, that the Division produced only one lesson plan may be evidence of limited implementation of a modified curriculum but is not dispositive given that lesson plans are not required.⁵

³ According to VDOE's publication "Speech-Language Pathology Services in Schools: Guidelines for Best Practice," consultative services on behalf of a child "include providing information and demonstrating effective instructional and facilitation procedures. The speech-language pathologist may provide support for staff or analyze, adapt, modify, and create instructional materials and assistive technology for targeted students." Further, VDOE states, "This model is appropriate for...students whose teachers require additional support to create materials, implement specific communication strategies, or modify augmentative/alternative communication (AAC) equipment."

⁴ OCR confirmed that the XXXX Teacher worked with the Student on rare occasion until XXXX. OCR has concerns about the lack of interaction between the XXXX Teacher and the Student, particularly given the regular involvement of the XXXX teacher at the XXXX during the XXXX in implementing a modified curriculum; however, Virginia does not have guidance about the role and responsibilities of paraprofessionals, in comparison to XXXX teachers, in providing instruction to students with disabilities. Section 504 and Title II are also silent. As a result, OCR is unable to make a finding of a violation.

⁵ The XXXX Coordinator stated that, on a daily basis, teachers must identify the goal they are working on, even if the lesson plan is not written.

The lesson plan does not indicate with any specificity the particular curricular goal intended or the objectives of the Student’s IEP that corresponded to the lesson activities. The series of activities in the lesson does not resemble the XXXX schedule sent to the parent in XXXX, nor does it reflect the scope and sequence of the XXXX SOLs, the text or materials planned, or the instructional activity designed to teach a curricular skill.⁶

The Division did not provide other lesson plans to show the concepts and skills that the Student’s special education class and general education XXXX classes were learning during the XXXX school year, or how those lessons were modified for the Student. The Division provided no other documentation of a modified curriculum for the XXXX school year.⁷ Since neither the lesson plan nor the activity logs explicitly link the activities to the SOLs, whether the Division was instructing the Student using the SOLs or modifying curriculum for the Student is unclear. On one hand, the documentation does not provide strong evidence to support an explicit relationship to the grade-level curriculum or a long-term plan for instructing the Student in sequential curricular goals. On the other hand, the lesson plan and activity log documents suggest modifications to activities for the Student based on her needs,

Given the limited documentation from the lesson plan, which was not required, and activity logs showing that the Division implemented a modified curriculum for the Student, OCR turned to evidence from interview statements for further information about how the Division modified the curriculum for the Student. The XXXX Teacher told OCR that XXXX complete a unit of study about bears at the beginning of the year, so the Student also worked on that using the story of “XXXX.” She also said that XXXX did sorting activities XXXX. The XXXX Teacher stated that teaching some concepts, like XXXX. XXXX SENTENCE REDACTED XXXX.

XXXX PARAGRAPH REDACTED XXXX

OCR also reviewed evidence that suggests that the Division was not effectively modifying the curriculum for the Student. First, the Student’s XXXX observed the Student at the School on XXXX, and XXXX. She told OCR that during her observations, the Intervener appeared to have a lesson plan that modified the curriculum but that during the first observation the Intervener ran out of material to instruct the Student after 30-45 minutes, corroborating the parent’s concern.⁸

OCR also interviewed a third-party XXXX specialist who has consulted with the Student about her needs since the Student was XXXX years old and who also consulted with the Student’s providers at XXXX in the Division. The XXXX specialist noted that when she observed the Student at the School for XXXX, the Student was completing the same activities, e.g., XXXX that she had been working on during the XXXX specialist’s XXXX Assessment the previous

⁶ OCR is further concerned that the content of the lesson plan framework, which included XXXX, as provided by the Division, is insufficient to reflect curricular content for an entire year.

⁷ Curriculum, by definition, implies a plan of some kind in that it is a designed course outcome. Although the parent was concerned about ad hoc activities, a concern that OCR shares, OCR does not have information to show that full, advanced planning was required to modify the curriculum or that ad hoc modified activities violated Section 504.

⁸ The XXXX said her understanding was that the Student was to attend school for XXXX based on a plan to transition the Student.

year.⁹ OCR does not necessarily view this type of repetition as an indicator that the Division was not implementing the Student's IEP, given the Student's limited attendance at school and that repetition was stipulated as part of a modified grade-level curriculum in the IEP, while presentation of new material was not. However, OCR also notes that when OCR asked the XXXX specialist whether she had observed implementation of a modified curriculum, she said there was no evidence of curriculum or objective content. She said she did not observe the Intervener asking follow-up questions about a fictional text, in line with the XXXX SOLs, such as XXXX.

XXXX PARAGRAPH REDACTED XXXX

Given these concerns, OCR turned to consideration of the role the Student's related service providers played in implementing a modified curriculum and their roles in supporting the Intervener and XXXX Teacher in doing so during daily instruction.

The Complainant told OCR that a central concern of the parent was whether the Intervener was receiving support from related service providers that was necessary to modify the curriculum for the Student. The evidence overwhelmingly shows that related services providers for hearing, speech-language, and vision did not consult with the Special Education Teacher or Intervener to modify the curriculum, as required by the Student's IEP, from XXXX until XXXX.

OCR interviewed the Student's related service providers regarding their provision of services to the Student during the XXXX school year.¹⁰ According to the XXXX Teacher, her role was to implement the core and expanded curriculum, to coach teachers about how to modify lessons, and to make concepts accessible to the Student. She described to OCR how she modified the curriculum for the Student and conferenced with the Student's other providers about how to teach a new concept so the Student could understand it by distilling curricular content. XXXX SENTENCE REDACTED XXXX. Likewise, the XXXX Teacher said her role was to provide educational and communication support in the classroom and to consult with staff to support them in working with the Student.

Activity logs provided by the Division indicate that the XXXX Teacher and XXXX Teacher began working with the Student XXXX, and XXXX, respectively.¹¹ Neither provider consulted with the Student's XXXX Teacher or Intervener during the XXXX school year before beginning to provide direct services to the Student.

The XXXX Teacher described the importance of modifying the Student's setting and materials to make instruction accessible but said she was not involved in procuring the materials until XXXX. She further explained how, after XXXX, she designed lessons modified for the Student and consulted with the Intervener so she would know how to introduce concepts and materials.

⁹ An email message dated XXXX, indicates that the Student's then-teacher at the XXXX was XXXX.

¹⁰ Both the XXXX Teacher and XXXX Teacher previously worked with the Student. The XXXX Teacher began providing services to the Student in XXXX, and the XXXX Teacher began working with the Student during the XXXX school year. Both were familiar with the Student's needs, and OCR found them extremely credible.

¹¹ During an interview, the XXXX Teacher told OCR that she began working with the Student in XXXX, after the XXXX IEP meeting, but OCR was not able to confirm this. The Division's logs first note the XXXX Teacher's presence on XXXX. XXXX SENTENCE REDACTED XXXX.

When OCR asked the XXXX Teacher if she was involved with the Student before the first session of XXXX school year, she said that she was not involved in helping to develop the Student's curriculum and that no one reached out to her. She said she started having discussions about curriculum with IEP team members in XXXX. At that point, she said she adapted materials and coached providers on how to adapt materials for the Student as well as consulted with the Intervener by XXXX. She told OCR that she did not observe the Student earlier during XXXX because she was not asked to do so. She said she met with the XXXX Teacher XXXX or XXXXtimes at the end of the year.

Likewise, the Student's XXXX Teacher told OCR she met with the Student XXXX during the school year because the Student did not attend school in the XXXX.¹² The XXXX Teacher said her role was to reinforce communication. She told OCR that lessons would incorporate the curriculum, but she did not provide detail about how or what activities that would include, and reiterated that she only worked with the Student XXXX school year. She further told OCR that during the XXXX school year, the previous XXXX teacher created lessons, but she did not work with the XXXX Teacher during the XXXX school year. She told OCR that she consulted with the XXXX weekly XXXX, and she consulted several times with the Intervener. Further, as discussed further below, no information supports consultation to set up the Student's space before she began to attend or during the period when the Student's attendance was limited to XXXX, which was an essential step to implementing modified curriculum for the Student and is discussed more below.

The XXXX who was to provide direct services to the Student XXXX hours per week and consultation services in the amount of XXXX minutes per week, did not work with the Student until XXXX during the XXXX school year.¹³ Unlike other related service providers, the XXXX worked full-time at the School and did not have to travel from other schools to see the Student. The fact that the Student did not receive XXXX services until XXXX, means that the Division could not have implemented a modified curriculum for the student with respect to her XXXX goals and XXXX component of the curriculum prior to beginning services.

As discussed above, with respect to support with modifying the grade-level curriculum, according to the XXXX specialist at a meeting in XXXX with the Student's XXXX, the Student's parent, and the Intervener, the Intervener acknowledged that she was not receiving guidance from other providers, including from the XXXX Teacher about lesson plans. The XXXX corroborated telling OCR that responsibility for planning lessons seemed to fall to the Intervener and that, during the XXXX meeting, the Intervener said she was getting assistance with a general overview of what to accomplish but was responsible for putting concepts into a form that the Student could understand.

Indeed, the Intervener spoke up during the XXXX IEP meeting and said she was receiving no support from related service providers to implement the Student's IEP, which as discussed above, required providers to modify the XXXX curriculum. OCR listened to a recording of this

¹² The XXXX Teacher stated that she works with XXXX students and could not rearrange her schedule to work with the Student. The XXXX Teacher worked with the Student during the XXXX school year as well.

¹³ The XXXX observed the Student, but did not provide services, on XXXX occasions in late XXXX.

meeting and confirmed that the Intervener said she did not receive support from the related service providers.

OCR finds the support of related service providers was necessary to appropriately modify the curriculum for the Student. The Intervener did not have such support. While the XXXX providers described modifications they made to the curriculum after they began working with the Student during the XXXX school year, none provided services for the period from XXXX to XXXX. Based on all of the evidence, OCR concludes that the Student's service providers were not assisting the Intervener or XXXX Teacher to implement a modified curriculum for the Student, as required by the Student's IEP.

In weighing the divergent and sometimes conflicting evidence about implementation of a modified grade-level curriculum, with respect to daily instructional activities, OCR concludes that the Intervener attempted to modify the grade-level curriculum for the Student; however, comments by the XXXX specialist and the XXXX as well as the Intervener, raise concerns about whether the Intervener was able to effectively modify the curriculum and whether the Division was doing enough to develop appropriately modified lessons that would fill the entire time the Student was at school. As a result, OCR concludes that the Division failed to fully implement this aspect of the Student's IEP, resulting in a denial of FAPE. Furthermore, OCR concluded that the Intervener was not receiving necessary support from the Student's related service providers in modifying the curriculum. The Student did not receive XXXX, XXXX, or XXXX services from XXXX through XXXX, contrary to her IEP, in violation of Section 504 and Title II.

Allegation 3: Required Instructional Opportunities and Materials

The Complainant next alleged that the Division failed to provide adequate auxiliary aids and adapted materials, an appropriate educational setting, adaptive equipment, and an opportunity to XXXX, as prescribed by the Student's IEP. OCR finds sufficient evidence that the Division failed to provide many of the aids and materials required by the Student's IEP, which were necessary for the Student to receive FAPE, in violation of Section 504 and Title II.

Auxiliary Aids and Adapted Materials

The Student's IEP requires the Division to provide "adapted materials—to include but not limited to XXXX." The parent told OCR that adapted materials had not been implemented during the XXXX school year with the exception of the Student's XXXX. Specifically, the parent was concerned that the Division used no new materials during the XXXX school year.

With regard to adapted materials, the IEP states that adapted instructional materials XXXX. The Student's IEP does not require the School to create *new* adapted materials; rather, it requires that the Student's service providers use adapted materials with the Student and that, when they do create new materials, they create them in advance of a particular lesson. According to interview statements by the Student's service providers, the related service providers were responsible for assisting the Intervener to adapt materials for instruction and, as discussed above, the XXXX, XXXX, and XXXX service providers did not work with the Student until XXXX and XXXX.

Consequently, OCR finds that without support from providers to create new adapted materials and introduce them during appropriate lessons, the Intervener could not have implemented this supplementary aid as required by the Student’s IEP and, therefore, the Division violated Section 504 by failing to implement this aspect of the Student’s IEP.

Among the auxiliary aids of concern noted by the complaint were a XXXX. OCR focused on these items when investigating this allegation.¹⁴ OCR addresses each in turn below:

XXXX 11 PARAGRAPHS REDACTED XXXX

Similarly, the School did not provide the Student with an appropriate separate learning station from XXXX through XXXX. XXXX 3 SENTENCES REDACTED XXXX.

Additionally, the space was not appropriate for the Student’s educational needs. XXXX 5 SENTENCES REDACTED XXXX.¹⁵

XXXX PARAGRAPH REDACTED XXXX.

Augmentative Communication

Next, the Complainant alleged that the School failed to provide access to augmentative communication tools. The Student’s IEP requires “continuous / immediate access to augmentative communication tools XXXX. XXXX 3 SENTENCES REDACTED XXXX.”¹⁶

XXXX PARAGRAPH REDACTED XXXX.

XXXX 4 SENTENCES REDACTED XXXX. While OCR cannot confirm when XXXX arrived at the School, the data and interviews support that the Student did not receive instruction using the required XXXX from XXXX through XXXX. OCR finds that the School’s failure to provide the XXXX is a violation of Section 504.

XXXX 3 PARAGRAPHS REDACTED XXXX

Based on this information, OCR finds that the staff failed to use the XXXX with the Student as required by the Student’s IEP. The Principal and the XXXX Teacher were far less familiar with the Student’s day-to-day education than the Intervener, and there is otherwise no evidence to support their statements that the device was used. Therefore, the Division violated Section 504 by failing to implement this aspect of the Student’s IEP. Additionally, failure to use augmentative communication appropriately violates Title II’s requirements relating to effective communication.

Adaptive Equipment

¹⁴XXXX PARAGRAPH REDACTED XXXX.

¹⁵ OCR, however, verified that the date was XXXX.

¹⁶ The unsigned, draft IEP dated XXXX, requires the Student to have XXXX

Finally, OCR reviewed the Student’s receipt of mobility-related aids and services. The IEP states that the Student is to have a XXXX

XXXX 3 PARAGRAPHS REDACTED XXXX

However, OCR found no evidence to support that the Student used adaptive equipment such as XXXX. XXXX 3 SENTENCES REDACTED XXXX

XXXX 2 PARAGRAPHS REDACTED XXXX.

Based on the data and witness interviews, OCR concludes that the Division did not fulfill its obligation to provide the Student with the adaptive equipment noted in the IEP from XXXX. Consequently, OCR finds that the Division violated Section 504 when it did not provide necessary adaptive equipment to meet the Student’s physical and mobility needs.

Opportunity to Rest and Eat

Finally, OCR considered whether the Student had opportunity to XXXX, in accordance with her IEP, “XXXX.”

XXXX 2 PARAGRAPHS REDACTED XXXX

As a result of these opportunities, OCR finds that it has insufficient evidence to support that the Division failed to provide the Student with an opportunity to rest and eat.

Conclusion

Based on the language of the Student’s IEP; documents provided by the Complainant and Division; and interviews of the Complainant, parents, and Division staff, OCR finds that the Division did not implement all provisions of the Student’s IEP. As a result of the Division’s failure to implement the Student’s IEP, OCR concludes that the Division denied the Student a FAPE in violation of Section 504. Additionally, the Division’s failure to provide the Student aids and services, as part of Allegation 3, violates Title II’s requirement to provide effective communication and equal opportunity to participate in the educational program.

On June 15, 2017, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the Division is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR’s *Case Processing Manual*, a complaint will be considered resolved and the Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the Division’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request additional information as necessary to determine whether the Division has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the Division on June

15, 2017, if the Division fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 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, assists, or participates in a proceeding under a law enforced by OCR. 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 Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.s.williams@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: John Cafferky, Esq., via email