



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

September 30, 2015

Chancellor Kaya Henderson
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

RE: OCR Complaint No. 11-15-1105
Letter of Findings

Dear Chancellor Henderson:

The purpose of this letter is to inform you of our disposition of the above-referenced complaint that was filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education, on January 21, 2015 against District of Columbia Public Schools (DCPS). The Complainant filed the complaint on behalf of her clients (the Parents), whose daughter (the Student) attended DCPS's XXXX School (the School) during the 2014-2015 school year. The Complainant alleged that DCPS discriminated against the Student on the basis of disability XXXX by:

1. Denying her a free and appropriate public education (FAPE) when it failed to timely provide her with related aids and services; and
2. Removing her from the Spanish immersion program in the fall of 2014.

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 DCPS receives Federal financial assistance from the Department and is a public entity, it is subject to the provisions of the above laws and we have jurisdiction over it. Because the Complainant alleged discrimination under the above laws, we have jurisdiction over the allegations.

What follows is a discussion of the legal standards applicable to, and our findings and conclusions regarding, allegations 1 and 2.

Allegation 1

The legal standard applicable to this allegation is that Section 504 requires recipients to provide students with disabilities with a FAPE, that is, regular or special education and related aids and services that are designed to meet these students' educational needs as adequately as they meet the educational needs of students without disabilities. OCR's investigation of an allegation that a recipient has failed to provide a student with a FAPE is normally limited to ensuring that the recipient has complied with the process requirements of Section 504 relating to educational setting, evaluation and placement, and procedural safeguards. For example, in determining whether a recipient has failed to promptly and properly evaluate a student, we look to whether it: (1) had before it evidence indicating that the student might have a disability for which Section 504 might require that the recipient provide the student with special education or related aids and services; (2) if so, promptly determined whether the student needed to be referred for additional evaluation; and (3) if so, promptly conducted an evaluation and determined whether the student was eligible for aids or services as a student with a disability pursuant to Section 504. If the recipient has found that the student is eligible for such aids or services, we also determine whether it promptly and fully provided them. We interpret Title II as imposing similar requirements on public education systems and schools.

The evidence indicates that DCPS's knowledge of the Student included the following.

1. During the 2012-2013 and 2013-2014 school years, DCPS had sufficient evidence before it to support providing disability-related academic and behavioral aids and services for the Student through a "Daily Support Plan." Complainant's Exhibit A (attached to her complaint narrative) and DCPS's February 26, 2015 narrative response to the allegations (at page 1).
2. In a November 14, 2013 "Confidential Psychological Evaluation" of the Student, a DCPS School Psychologist stated that the Student was taken from , <XXXX PARAGRAPH REDACTED XXXX> DCPS's February 26th data response.
3. A November 18, 2013 "Educational Assessment Report" prepared by a DCPS "Special Education Evaluation Coordinator" included observations of the Student's history and prior behaviors that were similar to those in the evaluation (immediately above) and nine suggestions concerning disability-related aids and services to be provided to the Student, including explicit instructions, "play/motor breaks," visual cues and supports, and timers (to

show her how long she has to work on tasks). DCPS's February 26th data response.

4. On July 25, 2014, the Student's parents informed DCPS that the Student had been diagnosed with XXXX (and provided that diagnosis at an August 22, 2014 meeting with DCPS staff) and requested that she receive a Section 504 Plan. Complainant's Exhibit 1 (an email) and DCPS's narrative statement.

The Student's parents made numerous requests for a Section 504 Plan and particular special education or related aids and services for the Student (including many of the aids and service appearing above). Complainant's narrative statement and exhibits and DCPS's narrative statement. DCPS found the Student to be eligible for a Section 504 Plan at a September 16, 2014 meeting and asserted that "the school began implementation of the 504 Plan on September 17, 2014 and continues to implement said Plan." DCPS's narrative statement, at page 2.

However, the documentation submitted by both parties indicates that, although a draft Section 504 Plan was prepared at that meeting and the Student's parents and DCPS staff met on many occasions during the Fall of 2014, it was never finalized or signed. Additionally, during the April 10, 2015 interviews with the Student's Spanish Immersion Program (SIP) and regular education teacher, they indicated that no special education or related aids and services were provided to the Student until December 2014. There is also no documentation or statement obtained during interviews that supports a finding that such aids or services were provided prior to December 2014. See OCR notes on its April 10, 2015 interviews of the DCPS Section 504 Specialist, the Student's SIP and regular education teachers, and the School Principal, Assistant Principal and Social Worker.

Based on the above, we find that: (1) as early as the 2013-2014 school year, DCPS had before it evidence indicating that the Student might have a disability for which Section 504 and Title II might require that it provide the Student with special education or related aids and services; (2) DCPS found the Student eligible for such aids and services on September 16, 2014; (3) DCPS did not provide such aids and services until no sooner than December 2014; and, therefore, (4) DCPS failed to timely provide the Student with special education or related aids and services during the 2014-2015 school year.

Allegation 2

The legal standard applicable to this allegation is that Section 504 prohibits discrimination on the basis of disability in programs that receive Federal financial assistance and Title II prohibits such discrimination in programs administered by public

education systems and schools. In applying this standard to allegation 2, we will first determine whether there is sufficient evidence to establish an initial or prima facie case of disability discrimination, that is, whether DCPS treated the Student less favorably than similarly situated students without disabilities. If so, we will determine whether DCPS had a legitimate, nondiscriminatory reason for its action against the Student and, if so, whether the reason given by DCPS is a pretext or excuse for discriminating against the Student.

Both parties agree that DCPS removed the Student from the SIP. DCPS provided evidence indicating that students without disabilities were not removed from the SIP. Therefore, OCR found that a *prima facie* case of different treatment has been established.

We next look to whether DCPS provided a legitimate, nondiscriminatory reason for its removal of the Student. In DCPS's narrative response, it stated that, during a September 11, 2014 Section 504 eligibility meeting:

The team raised concern that the Student's PTSD was causing her to struggle with the structure of the SIP classroom.

Additionally, during an April 10, 2015 interview, a DCPS Section 504 Specialist was asked why the Student was removed from the SIP, and he responded that:

She was having negative behaviors that were aligned to her emotional needs and what her diagnoses are. When you think about a student who is this young and has PTSD and attachment issues, putting her in a classroom where she will feel isolated because of the language barrier and because she is just joining the Spanish program; that was not a good fit for her.

During that interview, the Specialist described these "negative behaviors" as including: "running away;" "running to the fence" (during recess); "provoking other students;" having "trouble with maintaining composure;" and manifesting "attachment and trust issues generally."

During their April 10th interviews, the Student's SIP and regular education teachers, and the School Principal, Assistant Principal and Social Worker described similar behaviors as having been considered when removing the Student from the SIP, including: refusing to line up during -- and leaving -- the SIP classroom and running away from the playground (regular education teacher); trying to get attention from her peers, hiding, running away from class, and "constantly moving" (SIP teacher); and "climbing under and on top of tables, running around the classroom [and] refusing to go in the classroom" (Principal).

Based on the above evidence, we find that the Student's disability was a factor in the DCPS decision to remove her from the SIP. Additionally, we find that the Student's disability-related conduct was cited by DCPS staff as the primary reason why she was removed from the SIP, and that this did not constitute a legitimate, nondiscriminatory reason for that removal, particularly in light of the fact that DCPS staff also stated that the Student was not provided with any special education or related aids and services during her brief participation (about one week) in the SIP (despite DCPS's knowledge of her disability, see above discussion of allegation 1).

Based on the above discussion, we find that DCPS is in violation of Section 504 and Title II with respect to the allegations because of its failure to timely provide the Student with special education or related aids and services during the 2014-2015 school year and its discriminatory removal of the Student from the SIP in September 2014.

To address OCR's compliance concerns, DCPS has signed the enclosed Resolution Agreement, pursuant to which it agrees to: (1) offer the Student's parents the opportunity to have her considered for compensatory or remedial education services; (2) if requested by the parents, consider her for such services and, if the Student is found eligible for them, provide her with them; and (3) if the Student is again enrolled in a DCPS school within two years of the date of the agreement, evaluate her to determine whether she is eligible for special education or related aids and services and, if so, provide her with such aids and services to the extent necessary to meet the FAPE requirement.

We will monitor DCPS's implementation of the Agreement to ensure that it fully complies with it.

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.

Please be advised that DCPS 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.

Please note that, 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, to the extent provided by law, information that,

if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter or the outcome of this complaint, please contact Peter Gelissen, the OCR attorney assigned to this case, at (202) 453-5912 or peter.gelissen@ed.gov.

Sincerely,

/S/

Dale Rhines
Program Manager
District of Columbia Office
Office for Civil Rights