



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 31, 2016

Dr. Eric Williams
Superintendent
Loudoun County Public Schools
21000 Education Court
Ashburn, Virginia 20148

RE: OCR Complaint No. 11-16-1005
Resolution Letter

Dear Dr. Williams:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on October 5, 2015, against the Loudoun County Public Schools (the Division). The Complainant alleges that the Division discriminated against Students 1-5 on the basis of disability. Specifically, the complaint alleges that:

1. The XXXX (the School) failed to provide Students 1-5 with the required amount of special education services specified in each of their Individualized Education Programs (IEPs) from XXXX. Specifically, the School failed to provide:
 - a. Student 1 with 15 minutes per week of monitor/consult services in the special education classroom to assess his progress in math and language arts, or with 150 minutes per week of academic support in language arts in the general education classroom.
 - b. Student 2 with 150 minutes per week of academic support in language arts in the general education classroom; 30 minutes, five times per week, of academic support in math in the general education classroom; or 30 minutes, five times per week, of self-contained math in the resource room.
 - c. Student 3 with 60 minutes, five times per week, of academic support in math in the special education classroom; or 120 minutes per week of behavior management for writing support and to assist her in task completion and writing.
 - d. Student 4 with 60 minutes, five times per week, of academic support in math in the special education classroom; or 120 minutes per week of behavior management in the resource room to provide support for assignment completion across all subject areas and special education remediation for reworking assignments with a C or below.

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

- e. Student 5 with 30 minutes, five times per week, of academic support for language arts in the resource room; 60 minutes, five days per week, of academic support in math in the resource room; or 60 minutes, five days a week, of behavior management in the resource room for obtaining grade level academic skills.
2. The School failed to provide Students 1-5 with any special education services on September 21, 2015, when the special education teacher had a medical emergency and left school for the day.

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. 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.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities 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 Act 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 a FAPE to the same extent required under the Section 504 regulation.

Students 1-5 have attended the School throughout the 2015-16 school year. Each Student has an IEP requiring that they receive special education services.

Allegation 1: *The School failed to provide Students 1-5 with the required amount of special education services specified in each of their Individualized Education Programs (IEPs) from August 31, 2015 through October 31, 2015.*

The Complainant informed OCR that from August 31 through October 31, 2015, the School did not provide Students 1–5 with specific services required in their IEPs. The Division provided, and OCR reviewed, copies of weekly schedules prepared by the Special Education Teacher (the

Schedules) purporting to show the timing and location of services to be provided to the Students at the School by the Special Education Teacher. The Schedules are dated September 4, September 10, September 28, and October 14. The Principal informed OCR that the Schedules had different dates to reflect when there was a change and a new schedule was developed. In addition, the Division provided, and OCR reviewed, copies of hand-written logs prepared by the Special Education Teacher (the Logs) that purport to show the amount and type of services that the Special Education Teacher actually provided to each of the Students. The logs are dated September 15 – October 30, 2015.¹

OCR interviewed the principal of the School (the Principal) and the regular classroom teacher (the Teacher) for Student 3. Both the Principal and the Teacher told OCR that the Special Education Teacher, as well as the Teacher and a paraprofessional in each of the Student's classrooms, provided services to Students 1-5 at various times. In addition, when OCR asked the Principal how he knew that each of the Students was receiving the services at issue, the Principal said that he reviewed the Special Education teacher's schedule and occasionally dropped in to each of the Student's classrooms to observe whether the services were being provided.

After reviewing the above-referenced information, OCR had the following concerns, in the case of each of the Students, that the Division may not have been providing all of the services specified in their IEPs, as alleged by the Complainant.

Allegation 1a: *The School failed to provide Student 1 with 15 minutes per week of monitor/consult services in the special education classroom to assess his progress in math and language arts, or with 150 minutes per week of academic support in language arts in the general education classroom.*

The Complainant asserted, and OCR confirmed, that Student 1's IEP dated August 27, 2015 requires, in part, 15 minutes per week of monitor/consult services in the special education classroom to assess progress in math and language arts, and 150 minutes per week of academic support in language arts in the general education classroom.

The Schedules indicate that Student 1 was scheduled to receive special education services in the Language Arts classroom for 165 minutes per week. The Schedule, dated September 28, reflects that he was scheduled to receive 20 minutes per day of special education services in the resource room, 5 minutes each morning and 15 minutes at the end of the day. For the October 14 Schedule, that amount was reduced to 15 minutes per day.

Based on the IEP, in a seven week period, Student 2 should have received 105 minutes of monitor/consult services in the special education classroom to assess progress in math and language arts, and 1,050 minutes of academic support in language arts in the general education

¹ The Division provided logs for seven of the nine weeks covered by the Complainant's allegation. In addition, the Division provided handwritten notes regarding services provided to some of the Students during the first two weeks of school, but these notes are unclear and in the case of one Student, was not provided at all, and would require further investigation to determine how to interpret the notes in relation to the logs. Thus, OCR compared the seven weeks worth of logs to the amount of services to which each of the Students were entitled by their IEP during that seven week period.

classroom. However, the Logs demonstrate that for the seven week period, Student 1 received 60 of the 105 minutes of monitor/consult in the special education classroom and 190 minutes of the 1,050 minutes of academic support in language arts to which he was entitled.²

Allegation 1b: *The School failed to provide Student 2 with 150 minutes per week of academic support in language arts in the general education classroom; 30 minutes, five times per week, of academic support in math in the general education classroom; or 30 minutes, five times per week, of self-contained math in the resource room.*

The Complainant asserted, and OCR confirmed, that the IEP dated August 19, 2015 developed for Student 2 requires, in part, 150 minutes per week of academic support in language arts in the general education classroom; 30 minutes, five times per week, of academic support in math in the general education classroom; and 30 minutes, five times per week, of self-contained math in the resource room.

The Schedules reflect that Student 2 was supposed to receive special education services in language arts in the general education classroom for the amount of time or more than what was required in her IEP. The Schedules do not indicate that Student 2 was scheduled to receive 30 minutes, five times per week, of academic support in math in the general education classroom. The Schedules dated September 4 and September 10 indicate that Student 2 was scheduled to receive special education services in the resource room for 105 minutes per week. This changed for the remaining schedules to 150 minutes per week. The Schedule dated September 28 reflects that she was scheduled an additional 5 minutes of time in the resource room per day.

Based on the IEP, in a seven week period, Student 2 should have received 1,050 minutes of academic support in language arts in the general education classroom; 1,050 minutes of academic support in math in the general education classroom; and 1,050 minutes self-contained math in the resource room. However, the Logs indicate that Student 2 received 420 minutes of the 1,050 minutes of special education services in math in the general education classroom and 135 minutes of the 1,050 minutes of special education services in the general education classroom for language arts. The Logs do not reflect the additional 30 minutes, five times per week, of self-contained math support in the resource room that her IEP requires.

Allegation 1c: *The School failed to provide Student 3 with 60 minutes, five times per week, of academic support in math in the special education classroom; or 120 minutes per week of behavior management for writing support and to assist her in task completion and writing.*

The Complainant asserted, and OCR confirmed, that the IEP dated August 27, 2015 developed for Student 3 requires, in part, 60 minutes, five times per week, of academic support in math in the special education classroom, and 120 minutes per week of behavior management.

The Schedules indicate that Student 3 was scheduled to receive the amount of services or more as required by her IEP. Based on the IEP, in a seven week period, Student 3 should have received 2,100 minutes of academic support in math in the resource room and 1,540 minutes of

² Under four days, the Logs state that the Student was “watched.” Since this does not indicate that the Student was provided with the services, OCR is not considering that the Student received services on those days.

behavior management support for assignment completion in the resource room. However, the Logs show that in the seven week period, she received 1,260 of the 2,100 minutes of academic support in math and 60 of 1,540 special education services in language arts to which she was entitled.

Allegation 1d: *The School failed to provide Student 4 with 60 minutes, five times per week, of academic support in math in the special education classroom; or 120 minutes per week of behavior management in the resource room to provide support for assignment completion across all subject areas and special education remediation for reworking assignments with a C or below.*

The Complainant asserted, and OCR confirmed, that the IEP dated August 27, 2015 developed for Student 4 requires, in part, 60 minutes, five times per week, of academic support in math in the special education classroom; and 120 minutes per week of behavior management in the resource room.

The Schedules indicate that Student 4 was scheduled for 240 minutes per week of academic support in math in the special education classroom, less than was required by the IEP, and 170 minutes per week of “math catch-up” in the resource room. OCR was unable to determine if all or some of that time was spent on behavior management to provide support for assignment completion, as contemplated by the IEP.

According to the IEP, in a seven week period, Student 4 should have received 2,100 minutes of academic support in math in the resource room and 840 minutes of behavior management support for assignment completion in the resource room. However, according to the Logs, for the seven week period, the Student received 1,515 minutes of academic support in math of the 2,100 minutes, and 270 minutes of behavior management support for assignment completion of the 840 minutes to which she was entitled.

Allegation 1e: *The School failed to provide Student 5 with 30 minutes, five times per week, of academic support for language arts in the resource room; 60 minutes, five days per week, of academic support in math in the resource room; or 60 minutes, five days a week, of behavior management in the resource room for obtaining grade level academic skills.*

The Complainant asserted, and OCR confirmed, that the IEPs dated July 14 and September 3, 2015 developed for Student 5 require, in part, 30 minutes, five times per week, of academic support for language arts in the resource room; 60 minutes, five days per week, of academic support in math in the resource room; and 60 minutes, five days a week, of behavior management in the resource room.

The Schedules indicate that Student 5 was scheduled for the amount of behavior resource services or more than was required by the IEP. The Schedules dated September 4 and September 28 indicate that Student 5 was scheduled for the amount of services or more of math resource services than was required by the IEP. However, the schedule dated October 14, indicates that Student 5 was scheduled for 15 minutes per week less math resource services than was required by the IEP. The Schedules indicate that Student 5 was scheduled for 150 minutes per week of

“language arts and behavior” services in the regular classroom and 45 min per week of “language arts” and 40 minutes per week of “language arts catch-up” in resource. Thus, Student 5 was scheduled for considerably less time per week of academic support in language arts in the resource room than was required by the IEP.

According to the IEP, in a seven week period, Student 5 should have received 1,050 minutes of academic support for language arts in the resource room; 2,100 minutes of academic support in math in the resource room; and 2,100 minutes of behavior management in the resource room for obtaining grade level skills. However, according to the Logs, for the seven week period, Student 5 received 1,260 minutes of academic support in math in the resource room of the 2,100 minutes; 350 minutes of academic support in language arts of the 1,050 minutes; and 660 minutes of behavior management in the resource room of the 2,100 minutes to which she was entitled. Student 5’s IEP also stated that academic support in language arts was to be provided in the resource room, but the logs indicate that these services were provided in the regular classroom.

Based on the information we have at this stage of the investigation, OCR has concerns that the Division may not have been providing to Students 1-5 the services specified by the Complainant and outlined in the Students’ IEPs during the time period investigated.

Allegation 2: The School failed to provide Students 1-5 with any special education services on September 21, 2015 when the special education teacher had a medical emergency and left school for the day

In an interview with OCR, the Principal stated that on September 21, 2015, the Special Education Teacher went to the Health Assistant and said she had fainted. The Health Assistant called an ambulance and the Special Education Teacher was taken to the hospital. She did not return to the School that day. The Principal stated that Students 1-5 received services that day because the Special Education Teacher was in the classroom until she got sick, and when she left, he provided services to some of the Students in her absence.

OCR reviewed the Schedule dated September 4, 2015, which would have been in effect on September 21, 2015. The Schedule reflected that on Mondays, Student 1 was scheduled to receive 60 minutes of language arts and behavior support in the regular classroom at 10:15 a.m. and 15 minutes of behavior support in the resource room at 2:15 p.m. The Log for September 21, 2015 did not show Student 1 receiving those services.

The Schedule reflected that on Mondays, Student 2 was scheduled to receive language arts and behavior support in the regular classroom at 10:15 a.m. The log for September 21, 2015 showed that Student 2 received 30 minutes of math resource services and did not reflect that any language arts or behavior services were received.

The Schedule reflected that on Mondays, Student 3 was scheduled to receive 45 minutes of math resource services at 12:45 p.m. and 15 minutes of behavior resource services at 2:15 p.m. The log for September 21, 2015 showed that Student 3 was “watched” for 45 minutes of math services in the regular classroom and received 45 minutes of math resource services. The log did not reflect that any behavior services were received.

The schedule reflected that on Mondays, Student 4 was scheduled to receive 45 minutes of math resource services at 9:30 a.m. and 45 minutes of math and catch-up services in the resource room at 12:00 p.m. The log for September 21, 2015 showed that Student 4 received those services.

The Schedule indicated that on Mondays, Student 5 was scheduled to receive 20 minutes of behavior support in the resource room at 7:30 a.m., 60 minutes of language arts and behavior support in the regular classroom at 10:15 a.m.; 60 minutes of math resource services at 12:15 p.m.; and 15 minutes of behavior support in the resource room at 2:15 p.m. The Log for September 21, 2015 showed that Student 5 received all of those services except for the 15 minutes of behavior support at 2:15 p.m.

Lastly, OCR reviewed an e-mail from the Complainant to the Principal dated September 21, 2015. In this email, the Complainant questioned why the Students did not have a substitute teacher on that day, including for special education services. OCR found that in a subsequent email the next day, the Principal forwarded the Complainant's email to the District's Elementary Special Education Supervisor, writing "since I was also in the hospital yesterday and we had another building issue, we did not have a sub yesterday. Let me know if you have any advice on how to respond to this email." Based on this email, OCR infers that at least some of the Students may not have received some of their special education services on September 21, 2015.

Based on the information OCR has gathered at this stage of the investigation, OCR has concerns that Students 1-3 and Student 5, may not have received services on September 21, 2015.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on March 30, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the 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 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, 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact one of the OCR attorneys assigned to this complaint, Jennifer Barmon at 202-453-6751 or jennifer.barmon@ed.gov, or Samantha Shofar at 202-453-5929 or samantha.shofar@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Anne Witt, Esquire