



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

XXXX

Via U.S. Mail and Email (eric.williams@lcps.org)

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

Re: OCR Complaint No. 11-16-1217
Letter of Findings

Dear Dr. Williams:

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 Loudoun County Public Schools (the Division). The Complainant filed the complaint on behalf of herself as well as on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the Division discriminated against the Student on the basis of his disability, as well as retaliated against her for her disability-related advocacy during the XXXX school year. Specifically, the complaint alleged the following:

Allegation 1: The Division violated Section 504 when it failed to provide the Complainant with an opportunity to review the Student's records when she requested to see them XXXX;

Allegation 2: The Division discriminated against the Student on the basis of his disability when it failed to implement the Student's Individualized Education Program (IEP) and XXXX; and

Allegation 3: The Division retaliated against the Complainant after she requested to see documentation related to the Student's special education services when 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. The laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the

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

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 and Division staff; and listened to an audio recording of a meeting to review the Student's XXXX and develop the Student's XXXX held on XXXX. After carefully considering all of the information obtained during the investigation, OCR determined that there was insufficient evidence to substantiate Allegation 2. However, OCR determined that there was sufficient evidence to substantiate Allegations 1 and 3, in violation of Section 504 and Title II. The Division agreed to resolve the violations through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*. OCR's findings and conclusions are discussed below.

Background

XXXX SENTENCE REDACTED XXXX.

OCR reviewed an audio recording of the meeting held on XXXX.¹ During that meeting, the Complainant and her advocate requested to see the Student's records XXXX. XXXX 3 SENTENCES REDACTED XXXX.

XXXX 7 PARAGRAPHS REDACTED XXXX

Allegation 1

Regarding Allegation 1, the Complainant alleged that the Division violated Section 504 when it failed to provide her with an opportunity to review the Student's records, which she requested during the XXXX meeting held on XXXX and again by email later that day.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.36, requires recipients to establish and implement, with regard to actions pertaining to the identification, evaluation, and placement of students who, because of disability, need or are believed to need special instruction or related services, certain procedural safeguards. The regulation requires school districts to offer parents and guardians of the student an opportunity to examine relevant records. Generally speaking, OCR considers "relevant records" under this provision to include records established during and/or relied upon by a school district in implementing its identification, evaluation, and placement procedures under Section 504.

The Title II regulation at 28 C.F.R. 35.130(a) prohibits a public entity from denying a qualified person with a disability the benefits of its services, programs, or activities. The standards adopted by Title II of the ADA were designed not to restrict the rights or remedies available

¹ The audio recording was created by the Complainant and/or the Student's advocate, which the Complainant and her advocate submitted to OCR for review. However, the Complainant also submitted the audio recording to the Division, which the Division acknowledged to OCR.

under Section 504. OCR has determined that the Title II regulation applicable to the allegation of this complaint does not provide greater protection than the applicable Section 504 regulation and has, therefore, applied the relevant Section 504 standards in addressing the allegation of this complaint.²

Analysis

OCR reviewed the Division’s Section 504 procedural safeguards. The safeguards repeat the Section 504 regulation, stating that parents and guardians have the right to review relevant educational records, but the safeguards do not provide specific information related to how a parent is to make such a request or how and when the Division is to respond to such a request. Absent additional information, OCR looked to the Division’s IDEA procedural safeguards, compliance with which is one means of meeting the requirements of Section 504. The Division’s IDEA safeguards conform to the IDEA regulation and require the Division to respond to a parent’s request to review records “without unnecessary delay and before any meeting regarding an IEP...and in no case more than 45 calendar days after the request has been made.”

OCR noted that the Complainant made multiple requests to see the Student’s records both in person and in writing on XXXX and thereafter. XXXX SENTENCE REDACTED XXXX Therefore, the Division had the opportunity to allow the Complainant to review the records or to provide the Complainant with copies at that time but did not do so XXXX.

In addition, immediately after the Complainant submitted her request for the Student’s records in writing, the Special Education Teacher allegedly prepared and sent the requested records to the Principal to comply with this request. OCR further reviewed this teacher’s notes indicating that the Principal did not, however, send the records. The Division could not produce any documentation indicating that it sent the Complainant the requested records in response to the XXXX request. Rather, the Division’s own data production of the relevant email correspondence suggested that XXXX was the earliest date when it sent the Complainant the Student’s records.³ XXXX SENTENCE REDACTED XXXX. Even assuming that the Division sent the requested records to the Complainant sometime in XXXX, it is unclear whether this unidentified date was within the IDEA-specified period. OCR determined that the Division failed to offer the Complainant an opportunity to review records relevant to the Student’s evaluation and placement in a timely manner in response to her request, as required by 34 C.F.R. § 104.36.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate the Complainant’s allegation that the Division discriminated against the Student on the basis of his

² Absent a specific timeframe for review of records in the regulation, OCR considers whether a division provided an opportunity for review within a reasonable amount of time. Similar relevant statutes define a reasonable period, and OCR turns to them for guidance. FERPA, at 34 C.F.R. § 99.10(b) states that districts must comply with an inspection request within 45 days. The IDEA, which also includes the right of a parent to review a student’s records among its procedural safeguards, states that a district must respond to a request “without unnecessary delay and before any meeting regarding an IEP...and in no case more than 45 days after the request has been made.” 34 C.F.R. 300.613.

³ Although the Division shared XXXX email indicating XXXX, there is no supporting evidence to corroborate this claim.

disability, when it failed to provide her with an opportunity to review the Student’s records in a timely manner when requested on XXXX, despite reporting to have such records readily available on that date. The Division did not provide an opportunity to review the relevant records within a reasonable amount of time. Accordingly, the Division agreed to resolve the violation identified in Allegation 1 through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR’s *Case Processing Manual*.

Allegation 2

With respect to Allegation 2, the Complainant alleged that the Division discriminated against the Student on the basis of his disability, when it failed to implement the Student’s IEP and XXXX, as discussed in Allegation 1 above.

Legal Standard

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 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.

Analysis

OCR reviewed the Student’s IEP from the XXXX school year, dated XXXX. The Student’s IEP provided for special education services in XXXX, XXXX times per week, as well as XXXX for XXXX, XXXX times per week. Specifically, the Student’s IEP references the following three supports: (1) XXXX; (2) a XXXX”; and (3) a XXXX. The Student’s IEP also includes implementation of “XXXX” under the accommodations section. Among other strategies, the Student’s existing XXXX further duplicates these supports, providing for: (1) XXXX (2) XXXX and (3) XXXX.

OCR also interviewed the Special Education Teacher and General Education Teacher and reviewed related documents. XXXX 8 SENTENCES REDACTED XXXX

Based on the foregoing, and in consideration of all of the information and documentation reviewed, OCR determined that this minimal change from the XXXX to the XXXX did not rise to the level of a compliance concern because the XXXX achieved the same purpose as the XXXX that it replaced. The data suggests that the Division was implementing the XXXX to meet the same IEP and XXXX goals that the preexisting XXXX targeted. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant’s allegation that

the Division failed to implement the Student’s IEP and XXXX, as alleged.⁴ Accordingly, OCR will take no further action regarding Allegation 2.

Allegation 3

With respect to Allegation 3, the Complainant alleged that the Division retaliated against her after she requested to see documentation related to the Student’s special education when it XXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will consider: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took a materially adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient’s reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

First, OCR considered whether the Complainant engaged in a protected activity. An individual engages in a protected activity if he or she opposes an act or policy that he or she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing.

OCR determined that that the Complainant engaged in a protected activity of which the Division was aware when she attended the Student’s XXXX meeting on XXXX and repeatedly, through her advocate, requested to see the Student’s records XXXX data that supported the draft XXXX. Further, the Complainant reported what she believed to be a violation of the Student’s IEP and XXXX when she discovered that the Student’s XXXX.

Next, OCR determined that the Division took a materially adverse action against the Complainant when XXXX. An adverse action is something that could deter a reasonable person from engaging in further protected activity. OCR determined that XXXX was adverse because it

⁴ However, to the extent that OCR had concerns regarding revisions to the Student’s BIP and the provision of special education and/or related aids and service to the Student, OCR addressed these concerns through a prior complaint filed regarding the Student, OCR Complaint No. 11-16-1123.

precluded the Complainant from XXXX Student, thereby potentially limiting her participation in the Student’s educational activities and any further advocacy.

OCR also determined that there was evidence of a causal connection between the Complainant’s protected activity and the Division’s adverse action. XXXX 3 SENTENCES REDACTED XXXX.

OCR next considered whether the Division had a legitimate, non-retaliatory reason for taking an adverse action against the Complainant by XXXX. XXXX 2 SENTENCES REDACTED XXXX.

Finally, OCR considered whether the Division’s proffered legitimate, non-retaliatory reason was actually pretext, or an excuse, for retaliation. XXXX 5 SENTENCES REDACTED XXXX

XXXX 5 PARAGRAPHS REDACTED XXXX.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate the Complainant’s allegation that the Division retaliated against her when it XXXX. OCR determined that the Division’s proffered legitimate non-retaliatory reasons served as a pretext for retaliation. Specifically, the Division failed to consistently apply its visitor’s policy. XXXX 2 SENTENCES REDACTED XXXX. Accordingly, OCR determined that the Division retaliated against the Complainant in violation of Section 504 and Title II.

Conclusion

On April 19, 2018, 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 described in Allegations 1 and 3. 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 additional 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 by the Division on April 19, 2018, 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, 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 regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

/s/

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

Enclosure

cc: Anne E. Mickey, Esq.