



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

Dr. Clayton M. Wilcox
Superintendent
Charlotte-Mecklenburg Schools
600 East Fourth Street
Charlotte, NC 28202

Re: OCR Complaint No. 11-17-1385
Letter of Findings

Dear Dr. Wilcox:

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 Charlotte Mecklenburg Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges that:

1. The District discriminated against the Student based on disability when:
 - a. From XXXX to XXXX, the School failed to implement the Student's Section 504 Plan.
 - b. On XXXX.
2. The District did not provide the Complainant with procedural safeguards at Section 504 Plan meetings that took place on XXXX and XXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District faculty/staff.

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 of a violation of Section 504, and Title II, regarding allegation 1a. However, OCR found insufficient evidence to support allegations 1b and 2.

OCR's findings and conclusions are discussed below.

Allegation 1a: The District discriminated against the Student based on disability when from XXXX to XXXX, the School failed to implement the Student's Section 504 Plan.

Background

The Student was diagnosed with XXXX in XXXX. He attended XXXX in another district during the XXXX school year, during which time a Section 504 Plan (the Plan) was put in place for the Student. The Plan required the following instructional accommodations:

- XXXX;
- XXXX; and
- XXXX.

It also required that when given assessments, the Student be provided the accommodation of XXXX.

In XXXX the Complainant enrolled the Student at the School as a XXXX. The parent did not provide the School with a copy of the Student's previous 504 Plan when she enrolled him nor did she disclose the Student's XXXX diagnosis at that time.

The Complainant asserted that on XXXX, she met with the Student's teacher and told the teacher that the Student had been previously diagnosed with XXXX, that the Student had a 504 Plan at his previous school, and that she wanted to modify the previous 504 Plan because she did not believe the plan would meet the Student's needs in the District. According to the Complainant, at that time, the Teacher told her that that the Student needed time to adjust to his new environment and that the 504 Plan did not need to be implemented. According to the Complainant, the School did not implement the Student's previous Section 504 Plan or any other modifications or related aids and services prior to XXXX, when the School, after having evaluated the Student, held a meeting, found the Student eligible for services under Section 504, and created a new Section 504 Plan for the Student.

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.

Analysis

The District acknowledged that the School did not implement the Student's prior Section 504 Plan. It further stated that the District "has not alleged any defense to that claim," and affirmed its willingness to enter into a resolution to resolve this matter. Based on the aforementioned, OCR determined that the District has an obligation to provide a student for whom it was aware of a disability and a need for related aids and services with a free and appropriate public education (FAPE). Unless and until a district convenes a group of knowledgeable persons to determine whether services are appropriate, a district must otherwise ensure that the student is not being denied a FAPE. This includes implementing a student's prior Section 504 plan or otherwise providing related aids and services as determined by a group of persons knowledgeable about the student. In this instance, the District conceded that it failed to provide such services. Accordingly, OCR determined that the District failed to implement the Student's Section 504 Plan from XXXX to XXX, in violation of Section 504 and Title II.

Allegation 1b: The District discriminated against the Student based on disability when on XXXX.

Legal Standard

A district's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

Analysis

XXXX PARAGRAPH REDACTED XXXX.

The Teacher told OCR in an interview that she did not witness the statement allegedly made by XXXX. She further told OCR that she did not make the comment to the Complainant that the Student was XXXX. XXXX SENTENCE REDACTED XXXX. In an effort to reconcile the two different accounts, OCR again contacted the Complainant. The Complainant stated that she had mentioned the XXXX statement to the Teacher in a casual and informal conversation and that there were no witnesses to her conversation with the Teacher.

Based on the above information, OCR finds insufficient evidence to support the Complainant's allegation that the Teacher discriminated against the Student based on disability when she dismissed the Complainant's report of a comment made to the Student by two other students.

Allegation 2: The District did not provide the Complainant with procedural safeguards at Section 504 Plan meetings that took place on XXXX and XXXX

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Analysis

According to the Counselor, who is the Section 504 Coordinator for the School, when parents receive the Section 504 Parent Consent for Evaluation form, they routinely get a copy of the procedural safeguards information and sign that they received it. Then again, at the Section 504 meeting, they get another copy of the procedural safeguards information, check a box indicating that they received the procedural safeguards information, and sign the form. The Counselor told OCR that in XXXX, she met with the Complainant to get her input and hear her concerns regarding the Student. The Counselor further stated that at this meeting, she asked the parent sign the Consent for Evaluation Form so that the Section 504 process could begin. The Counselor stated that she provided a copy of the procedural safeguards document to the Complainant at that meeting.

OCR reviewed a copy of the Consent for Evaluation Form. At the top of the form, there are blank lines to fill in the date, the student's name, the name of the school, and the parents' names. The copy of the form OCR reviewed had the Student's name and other information handwritten into the form. Immediately following is an explanation of the evaluation process. At the bottom of the form it states: "Please read and sign: As the parent/legal guardian of _____ I have received a copy of the Parent/Guardian-Student Rights and Responsibilities under Section 504." Immediately following there are two check boxes, one to indicate consent for an evaluation under Section 504 and one to indicate non-consent for evaluation under Section 504. Directly underneath the check boxes is a line for Parent/Guardian signature and date. OCR determined that the Complainant wrote the Student's name into the blank, checked the box indicating consent for evaluation, and signed and dated the form.

In explaining to OCR that the Complainant signed the Consent for Evaluation form (indicating receipt of the parental rights information), the Counselor stated that she filled in the information at the top of the form, "sent it to [the Complainant], and she sent it back to me." When OCR

attempted to clarify with the Counselor whether she gave it to the Complainant or sent it to the Complainant, the Counselor stated, “XXXX.” The Counselor further stated that the Complainant received another copy of the procedural safeguards information at the XXXX, Section 504 meeting. The District also provided a document that the Complainant signed acknowledging receipt of the procedural safeguards dated XXXX.

The Complainant provided OCR with a copy of an email from the Counselor to the Complainant dated XXXX with the Subject line “Parent Consent Form.” The email stated, “XXXX.” The email does not mention or reference the procedural safeguards document. The sole attachment to the email was a copy of the Consent for Section 504 Evaluation form.

The Complainant told OCR that she signed the form consenting to the evaluation but did not realize that her signature was also considered validation that she received the Parents Rights handbook. The Complainant stated that she did not receive a copy of any procedural safeguards document for the Student until she requested it at an Individualized Education Program Meeting on XXXX. However, the Complainant told OCR that she received a copy of the Section 504 procedural safeguards document on XXXX, when she signed the consent form to evaluate the Student’s sibling under Section 504.

The Counselor and the Complainant have provided conflicting versions of events regarding if and when the District provided the Complainant notice of the procedural safeguards. When this type of conflict occurs, OCR attempts to find other evidence that would tend to corroborate one or the other version of events, so that we are able to make a determination by a preponderance of the evidence that one version of events is more likely to have occurred than the other. In this case, OCR found no such corroborating evidence, and thus, OCR must find insufficient evidence that the District did not provide the Complainant with procedural safeguards at Section 504 Plan meetings that took place on XXXX and XXXX.

However, OCR finds that even if the Counselor inadvertently forgot to provide a copy of the procedural safeguards document on XXXX, when they discussed the Student being evaluated, the Complainant nevertheless received notice of the procedural safeguards approximately XXXX days later, when the District provided her with a copy of the document. The purpose of providing the notice is so that parents/guardians will know how to challenge evaluation and placement decisions with which they do not agree. In this case, the Complainant agreed with the decision to evaluate the Student, since she signed the consent form. Thus, there was no harm to the Complainant if the District did not provide the notice at the time she signed the consent form. Moreover, the Complainant acknowledged receiving a copy of the Procedural Safeguards on XXXX, prior to any decisions being made about whether the Student was eligible for services or what his placement would be, so the Complainant was sufficiently put on notice of how to challenge those decisions if she did not agree with them.

Conclusion

On XXXX, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District 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 District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District'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 District 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 District on February 28, 2018, if the District 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 District 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 District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, 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.

If you have any questions, please contact Samantha Shofar, at 202-453-4929 or samantha.shofar@ed.gov, or Jennifer Barmon, at 202-453-6751 or jennifer.barmon@ed.gov, the OCR attorneys assigned to this complaint.

Sincerely,

/s/

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

Enclosure

cc: J. Melissa Woods, Senior Associate General Counsel