



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

Chancellor Antwan Wilson
The District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

RE: OCR Complaint No. 11-17-1400
Resolution Letter

Dear Chancellor Wilson:

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) opened for investigation against the District of Columbia Public Schools (the District). As OCR indicated when it opened this investigation, the Complainant originally filed a complaint against the Office of the State Superintendent of Education of the District of Columbia (OSSE). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The complaint alleged that OSSE discriminated against the Student on the basis of disability. Specifically, the complaint alleged that OSSE discriminated against the Student on the basis of disability, after XXXX, by failing to provide him a free appropriate public education (FAPE) when it did not provide the Student appropriate transportation to and from school.

OCR determined that the District was a necessary party to resolve the allegation in the complaint. Therefore, OCR opened this complaint against the District, and investigated whether the District failed to provide the Student a FAPE when he repeatedly arrived late to the School from XXXX through XXXX, missing classroom instruction.

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.

During the investigation, OCR reviewed documents provided by the Complainant, the District, and OSSE; and, interviewed the Complainant and District faculty/staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps

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

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.

Legal Standards

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.¹

Factual Background

The Student is diagnosed with XXXX, and during the XXXX school year, the Student was enrolled in the XXXX grade. During the XXXX school year, his IEP included XXXX. He also received transportation services from OSSE, including XXXX during transportation XXXX.

During the relevant time period, from XXXX through the end of the XXXX school year, the transportation services provided by OSSE delivered the Student to School after the start of the school day on numerous occasions. Specifically, according to the District's records, the Student was marked tardy XXXX days during the relevant time period, generally between 15 and 30 minutes after the XXXX school start time.² There were XXXX other students on the Student's bus route, all of whom attended the School as well. While OCR did not review the District's attendance records for these students, OCR infers from OSSE's records that the students, who also are students with disabilities, similarly arrived to school late.

OCR also interviewed the Student's teacher, who was also his case manager. She told OCR that when students arrive late to school due to a bus delay, she ensures that they receive their instruction according to their IEPs, regardless of what time they arrive at school, as her schedules allows for modification. She reported that when the Student arrived late, she rearranged his schedule to ensure that he accessed all of the activities and instruction planned for him for the day, and that he missed no instructional time. She reported that she spoke to the bus driver on one or two occasions, asking that the Student be delivered on time. Finally, she told OCR that

¹ OCR notes that, in accordance with 34 C.F.R. § 104.37, a school district must provide non-academic services, including transportation, in a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services. However, in the case of the District, transportation to and from school is only provided for students with disabilities. Therefore, OCR did not consider whether the transportation services provided by OSSE met the requirement of this provision.

² OCR notes that OSSE's records reflect that the Student was delivered to the School late XXXX days during the relevant time period. However, OSSE and the District's records do not consistently match up in terms of which days the Student was delivered late and which days he was marked tardy by the District.

the IEP team never discussed providing additional services due to the Student arriving to school late.

Based on OCR's investigation thus far, OCR identified a possible compliance concern with respect to whether the Student's tardiness resulted in a denial of FAPE. Specifically, OCR notes that the Student did miss a significant amount of instructional time for the XXXX days he arrived late to school via the OSSE-furnished transportation. While the teacher indicated that she rearranged the schedule to ensure he receive instructional time consistent with his IEP, she also indicated that, while she waited for the Student to arrive to the class, she provided instruction on technology to the other students and students participated in "learning centers" in the classroom. OCR has not yet determined whether the Student missing this instruction amounted to a denial of FAPE, or whether the teacher had sufficient time available in the day to ensure compliance with the Student's IEP. Furthermore, OCR identified preliminary concerns that the other students on the same bus may also have been denied FAPE due to the loss of instructional time. However, prior to completing OCR's investigation and making a compliance determination, including conducting interviews with the Local Education Agency Representative at the School for the XXXX school year, the Student's XXXX and XXXX, the District expressed a willingness to resolve the complaint by taking the steps set forth in the enclosed Resolution Agreement.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on January 8, 2018 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation 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 District's implementation of the Agreement until the District 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 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Shana Heller, the OCR Attorney and Jan Gray, the OCR Senior Attorney, assigned to this complaint. You may reach Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov or Ms. Gray at 202-453-6028 or Jan.Gray@ed.gov.

Sincerely,

/s/

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Anitra Allen-King
Director, Resolution
Office of the Chief Operating Officer
Innovation and Systems Improvement