



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. Brian T. Austin
Superintendent
Lee County Public Schools
153 School Board Place
Jonesville, Virginia 24263

RE: OCR Complaint No. 11-17-1589
Resolution Letter

Dear Dr. Austin:

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 XXXX against Lee County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School).¹ The Complainant alleged that the Division discriminated against the Student on the basis of his disability (XXXX) during the XXXX and XXXX school years.

Allegations

1. The Division failed to comply with the evaluation and procedural requirements of Section 504, thereby denying the Student a free appropriate public education (FAPE), when it:
 - a. Placed the Student on XXXX for the remainder of the XXXX school year, without convening a group of persons knowledgeable about the Student, at an Individualized Education Program (IEP) meeting held on XXXX; and
 - b. Failed to reevaluate the Student prior to initiating a significant change of placement for the Student (XXXX) for the XXXX school year.
2. The Division failed to provide the Student with XXXX hours XXXX times per week during the XXXX school year, thereby denying the Student a FAPE.

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

¹ XXXX SENTENCE REDACTED XXXX.

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

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 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.

During the investigation, OCR reviewed documents provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* on March 27, 2018.

Background

During the prior XXXX school year, on XXXX, the Student's IEP Team placed him on XXXX for the remainder of the school year. The Student continued XXXX from the start of XXXX school year through XXXX. XXXX SENTENCE REDACTED XXXX. On XXXX, the Division developed an IEP for the Student, which requires the provision of special education and/or related aids and services, in both general and special education settings, for one hour in XXXX and one hour in XXXX each school day, as well as the following modifications: XXXX; access to special resource teacher to complete difficult materials; XXXX; small group sessions, repeated directions as needed; and reading of test items.

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. 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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about

the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Allegation 1(a)

Regarding Allegation 1(a), the Complainant alleged that the Division failed to comply with the evaluation and procedural requirements of Section 504, thereby denying the Student FAPE, when it placed the Student on XXXX for the remainder of the XXXX school year, without convening a group of persons knowledgeable about the Student, at an IEP meeting held on XXXX. Specifically, The Complainant alleged that during the IEP meeting held on XXXX, most of the members of the IEP Team left the meeting, leaving the Complainant and XXXX with the Division's Director of Student Services (the Director). The Complainant told OCR that the Director, without the full participation of the IEP Team, discussed placing the Student on XXXX for the remainder of the XXXX school year. The Complainant indicated that the other members of the IEP returned to the room and then the Director briefed the IEP Team of the placement decision.

Analysis

OCR reviewed documentation from the XXXX IEP meeting. The Division convened the meeting to determine the Student's continued eligibility and proposed reevaluation XXXX. Documentation further indicated that because of the Student's XXXX. In making this placement determination, IEP documentation noted that the IEP Team reviewed the Student's education records and evaluation reports, in addition to input from School staff, XXXX, and the Complainant. Finally, all of the members of the IEP Team comprised of the Director, the Special Education Representative, the General Education Team, the Special Education Team, the Principal, XXXX, and the Complainant were signatories attesting to their participation at the meeting.

Because Section 504 requires a reevaluation of a student with a disability prior to a significant change of placement, OCR first determined that the Student's XXXX constituted a significant change in placement, and therefore necessitated a reevaluation. IEP records note that the XXXX meeting was purposed to propose reevaluating the Student, XXXX and the Complainant denied. Absent consent to conduct a reevaluation, the IEP Team, comprised of a group of knowledgeable persons, including persons knowledgeable about the Student, considered available evaluative data including educational and behavioral records, and evaluation reports in making a placement decision.

OCR requires further investigation to determine whether the Director had, in fact, initiated a significant change in placement prior to reevaluating the Student and without collaboration or input from the full IEP Team, or otherwise without a group of knowledgeable persons, as the Complainant alleged. During the pendency of the investigation, the Division expressed interest in resolving Allegation 1(a), pursuant to Section 302 of OCR's *Case Processing Manual*.

Allegation 1(b)

With respect to Allegation 1(b), the Complainant alleged that the Division failed to comply with the evaluation and procedural requirements of Section 504, thereby denying the Student FAPE, when it failed to reevaluate the Student prior to initiating a significant change of placement for the Student (XXXX) for the XXXX school year.

Analysis

As stated earlier, documentation from the XXXX IEP meeting indicated the Complainant and the XXXX denied the Division's proposal to reevaluate the Student. Instead, the Complainant and the XXXX elected to have the Student independently evaluated. In anticipation of new evaluation reports, records indicated that the IEP Team would make a placement decision concerning the Student prior to the start of the XXXX school year.

In a letter dated XXXX, the Principal and the Director notified the Complainant and the XXXX that the Division would offer XXXX for the Student until the IEP Team met to determine his placement.

For purposes of this discussion, OCR determined that the Student's XXXX for the XXXX school year constituted a significant change in placement, which therefore required a reevaluation.² OCR is concerned that the Division failed to comply with the Section 504 evaluation and procedural requirements before commencing a significant change in placement for the Student. There is no indication from available documentation that the Student had been reevaluated or that the IEP Team discussed the Student's evaluative data prior to making a placement decision for the XXXX school year, as anticipated in existing IEP documentation and consistent with Section 504 regulatory requirements.

OCR requires further evidence that at the time the placement decision was made, the District complied with the Section 504 procedural requirements. The Division agreed to resolve the foregoing concerns with respect to Allegation 1(b), pursuant to a Section 302 of OCR's *Case Processing Manual*.

Allegation 2

The Complainant alleged that the Division failed to provide the Student with XXXX hours of XXXX times per week during the XXXX school year, thereby denying the Student a FAPE.

Analysis

The Division refuted the Complainant's allegation; and instead, reported that the Student was scheduled to receive XXXX for up to XXXX hours weekly. OCR reviewed existing IEP documentation, which failed to specify a provision or time schedule for XXXX for the XXXX school year. OCR also reviewed service provider logs completed by the Student's assigned

²Although the IEP Team placed the student on XXXX at the end of the XXXX school year, the information provided thus far indicated that the Division had not determined the Student's placement, pending his reevaluation.

XXXX instructor during the time period between the beginning of the XXXX school year (XXXX) and XXXX. Although the service provider logs verified that the Student received weekly instruction from XXXX to XXXX hours each occasion, the service provider logs were insufficient to corroborate either the Complainant's or Division's position. In the absence of applicable IEP documentation for the XXXX school year to specify the specific schedule, including the number of hours required, for XXXX, OCR is concerned that the Division failed to provide the special education service provision for the time period as alleged by the Complainant.

OCR requires further investigation to obtain corroborating information with respect to the intended frequency and duration of the Student's homebased instruction. To resolve these identified concerns, the Division agreed to resolve the foregoing concerns with respect to Allegation 2, pursuant to a Section 302 of OCR's *Case Processing Manual*.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on March 27, 2018 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 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 has fulfilled the terms of the Agreement. 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, 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 Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact the OCR staff assigned to this complaint, Judy Briggs at 202-453-5902 or Judy.Briggs@ed.gov; or Erika Westry at 202-453-7025 or Erika.Westry@ed.gov.

Sincerely,

/s/

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

Enclosure

cc: Anne E. Mickey, Esq. via email at AMickey@ReedSmith.com