



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

April 12, 2019

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

Re: OCR Complaint No. 11-19-1026
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) XXXX against Loudoun County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). Specifically, the complaint alleged that the Division discriminated against the Student on the basis of disability when it first determined that the Student could not attend a field trip XXXX, and then requested that a parent accompany the Student on the rescheduled XXXX field trip 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 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 to date, OCR reviewed information provided by the Complainant and the Division; and listened to an audio recording of an Individualized Education Program (IEP) meeting held on June 1, 2018.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the Division expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them

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because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Facts

During the 2017-2018 school year, the Student was a student with a disability, classified as having Autism, who was enrolled in a self-contained class at the School; the class served students with disabilities in XXXX.

The School's XXXX team planned a field trip XXXX that was scheduled for XXXX 2018. XXXX teachers informed families about the field trip on XXXX, 2018, and thereafter, teachers sent permission slips home. The XXXX for XXXX 2018, sent to families in approximately the last week of XXXX 2018, stated that parents soon would receive more information about the field trip to the XXXX; the newsletter also indicated that the field trip would take place for the whole school day.¹ Email correspondence from the teacher who organized the field trip indicates she sent a headcount to the farm on XXXX, 2018. Prior to that, on XXXX, 2018, the organizing teacher sent a message to another Division staff person stating that all XXXX classes and XXXX students from the Student's special education class were attending a field trip. On XXXX, 2018, the Student's special education teacher (the Special Education Teacher) responded to another XXXX teacher's question by email, stating that she was only sending XXXX students.

The Complainant reported that she first learned about the field trip on XXXX, 2018, after the Principal sent an email to parents of XXXX students telling them that the field trip may be canceled due to rain and asking them to stay tuned for information. The Complainant contacted the Special Education Teacher, asking for information about the field trip. Later that same day, the Complainant emailed the Principal, stating that she had not been made aware of the field trip. Further, the Complainant stated to the Principal that, based on a subsequent telephone call she had with the Assistant Principal, the Student had not been invited because "the team" decided the Student "was a risk" given that the trip was to XXXX.² The Complainant asked the Principal who had met and what discussion took place, considering that she and the Student's father had not been included in or notified of the meeting. She concluded her email by stating that the Student "will not be excluded from participating with his peers."

In an email sent later that afternoon on XXXX, 2018, the Principal responded to the Complainant by stating that some students are unable to attend the field trip based on their needs or parent decision, and he noted that the School did not hold an IEP meeting for the Student, for which she would have been included. Although he referred the Complainant to the Assistant Principal for further resolution, the Complainant requested a meeting. The Principal agreed to meeting but stated that the Assistant Principal and Special Education Teacher should attend because he thought it was "an IEP team discussion that [the Complainant] need[s] to be part of."

¹ Email correspondence indicates teachers selected parent chaperones by XXXX, 2018.

² In her email, the Complainant further stated that the Student enjoys XXXX, and she was surprised that he would not be invited given how the Division strives to be inclusive of students with disabilities.

On XXXX, 2018, the Student's IEP team met and discussed the Student's IEP. According to the Prior Written Notice that summarized the meeting, the IEP team generally discussed that inclusion with non-disabled peers is meaningful and modified the Student's IEP to provide opportunities for academic inclusion with non-disabled peers. The IEP team also discussed the Student's participation in the grade-level field trip and decided that the Student's Case Manager would discuss future field trips and "non-routine school events" with the Student's parents, including safety concerns, how the Student can participate, and possible accommodations. OCR's review of the audio recording of the IEP meeting indicates that the Assistant Principal was "requesting but not requiring" a parent to attend the field trip. The School also expected the Student's parents to transport him by private vehicle rather than on the school bus. Following the IEP meeting, on XXXX, 2018, the Student's father notified the Special Education Teacher that the Student would not attend the field trip, which had been rescheduled for XXXX, 2018, because he and the Complainant were unable to attend. He stated in his message to the Special Education Teacher that because the only option the School presented at the IEP meeting was for him or the Complainant, as the Student's parents, to attend with the Student and to provide transportation, he would not be able to attend.

The Complainant raised concerns both that the Division initially excluded the Student from a field trip open to all XXXX students; and that the Division subsequently failed to consider modifications that would allow the Student to participate in the field trip, instead, requiring her and her husband to attend and provide transportation.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division's programs or activities on the basis of disability.

Different Treatment

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the Division treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the Division had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the Division is a pretext, or excuse, for unlawful discrimination.

Non-Academic Services and Provision of a Free Appropriate Public Education/Placement Procedures

The Section 504 regulation governs extracurricular activities. Specifically, the Section 504 regulation, at 34 C.F.R. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities. Furthermore, school districts must ensure that students with disabilities participate in nonacademic

and extracurricular services and activities with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. OCR interprets the Title II regulation to provide the same protections as Section 504.

Additionally, 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.

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.

Analysis

Different Treatment

Based on the foregoing, OCR has determined that there is sufficient evidence to establish a prima facie case of discrimination. Specifically, OCR determined that the Division treated the Student less favorably than similarly situated students without disabilities, when it excluded him from the field trip initially scheduled for XXXX, 2018, and then subsequently requested that the Complainant and her husband serve as chaperones for the rescheduled field trip on XXXX, 2018, so that the Student could attend.

Specifically, the evidence obtained indicates that the Division excluded the Student from the XXXX field trip initially scheduled for XXXX, 2018 because of his disability. Documentation indicates that the School planned the field trip and notified parents about it well in advance of the scheduled date, via email, but it failed to notify the Student's parents of the same. Moreover, the documentation indicates that the School did not intend for the Student to attend the field trip because it did not include him in the headcount given to School staff on XXXX, 2018, which included only XXXX students from the Student's class, or in the headcount to the XXXX on XXXX, 2018. In addition, when asked by the Complainant, the School stated that its decision was based on concerns that the Student would not be able to participate safely on the field trip because of his disability-related needs.

Although the Division has proffered a number of legitimate, nondiscriminatory reasons for excluding the Student and treating him differently from students without disabilities, *because* of his disability, including ensuring the Student’s safety, OCR has not yet determined whether the reasons provided by the Division are a pretext, or excuse, for unlawful discrimination.

Before OCR completed its investigation, the Division requested to resolve the complaint under Section 302 of the *Case Processing Manual*. Based on the above-referenced concerns, OCR determined such resolution was appropriate.

Non-Academic Services and Provision of a FAPE/Placement Procedures

Moreover, OCR has concerns that the Division made its initial decision to exclude the Student from the field trip without considering what modifications were necessary to allow the Student to attend and without convening a meeting of a group of persons knowledgeable about the Student. When a school district has sufficient information that a student with a disability requires reasonable modifications to participate in an extracurricular field trip, the district must take steps to determine whether it could provide a reasonable modification that would allow the student the opportunity to participate without fundamentally altering the nature of the activity. One way of meeting this obligation is to hold a meeting with a group of persons knowledgeable about the student to decide whether there are any reasonable modifications or aids and services that could be provided to the student in the extracurricular context.

The Principal referred to a “team,” which did not include the Complainant and her husband, that discussed and rejected the idea of the Student’s participation in the XXXX field trip. The Principal first noted that an IEP meeting had not been held to determine that the Student could not participate, but he subsequently told the Complainant that the Student’s participation in the rescheduled field trip was, in fact, an IEP team decision. Before the Division’s initial decision to exclude the Student, the Complainant and her husband were not provided with notice a meeting, or the opportunity to provide information relevant to the Student or be involved in the placement decision; and the Division did not explain what modifications it considered for the Student before deciding his participation would not be safe.

Finally, when the field trip was rescheduled for XXXX, 2018, OCR has concerns that the Division again failed to consider the Student’s needs and make modifications that would allow him to participate with his non-disabled peers. Although the IEP team, consisting of knowledgeable people including the Complainant and her husband, met to discuss the Student’s participation in the field trip, OCR has concerns that the School requested the Student’s parents to attend the field trip to support the Student and to provide private transportation rather than determining modifications necessary for the Student to participate.³ The School also “requested” that the Student’s parents accompany him on the field trip, rather than securing additional adult support for him. Although the School indicated that it was “requesting but [was] not requiring” the Student’s parents’ attendance and transportation, the documents OCR has reviewed thus far do not indicate the team discussed other options for the Student’s participation. Moreover, because the

³ OCR reviewed documentation pertaining to the Student’s receipt of special education and/or related aids and services. Although the Student is placed in a self-contained special education class, his IEP does not preclude his participation with non-disabled peers for school events or field trips.

Student's parents ultimately declined to have the Student participate, given their inability to attend due to other obligations, OCR does not know whether the School would have provided adult support in lieu of the Student's parents' attendance, or whether the School would have procured appropriate transportation for the Student to attend.

Before OCR completed its investigation, the Division requested to resolve the complaint under Section 302 of the *Case Processing Manual*. Based on the above-referenced concerns, OCR determined such resolution was appropriate.

Conclusion

On April 12, 2019, the Division signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to convene a group of persons knowledgeable about the Student to discuss the supports necessary for the Student to participate with his non-disabled peers, including as part of non-academic and extracurricular activities; allow the Student to participate in the Kindergarten field trip during the spring of 2019; and provide training for its staff. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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, please contact Amy Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

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

Enclosure

cc: XXXX