



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

August 13, 2019

Via U.S. Postal Mail and electronic mail at earnest.winston@cms.k12.nc.us

Mr. Earnest Winston
Superintendent
Charlotte-Mecklenburg Public School District
600 East Fourth Street
Charlotte, N.C. 28202

RE: OCR Complaint No. 11-19-1209
Resolution Letter

Dear Mr. Winston:

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, 2019 against Charlotte-Mecklenburg Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges that during the 2018-2019 school year, the District failed to implement the Student's individualized education program (IEP) with regard to transportation.

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 to date, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant, a witness, and members of the District's staff. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation 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 District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's

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

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

OCR reviewed the Student's IEP which directs the District to provide the Student with bus transportation to and from school. According to the Complainant, during the last academic year the bus service was inconsistent with the bus arriving late in the morning or, at times, not at all. Additionally, the Complainant reported that the bus would come home early in the afternoon, often before the official school dismissal time. In support of the allegation that the bus arrived late to school in the morning, the Complainant provided OCR with copies of XXXX. Further the Complainant provided OCR with email copies of communications from a web-based application utilized by the District which is designed to track the bus whereabouts. Based on communications from the app, the Complainant alleged the Student arrived at home in the afternoon at times close to or even before the school dismissal time (XXXX). The app, via email, notified the Complainant of the following arrival times: XXXX. Additionally, the Complainant identified a witness, which OCR interviewed, who confirmed that in the morning the bus service was inconsistent.

In the District's response, the District stated that the Student was scheduled an approximate pick-up time of XXXX am in the morning and a drop-off time around XXXX pm. The District's response states that the school day begins at XXXX am and dismisses at XXXX pm. On June 26, 2019, OCR interviewed the Director of Transportation (the Director). The Director told OCR he was not specifically familiar with the Student's bus schedule, but the District strives to have the buses arrive at school by XXXX am.

The District in its response wrote that according to the Student's teacher the Student's bus did not routinely arrive late such that the Student would miss instructional time. The District writes that the teacher reported the bus was "significantly late" on only one occasion, arriving "between XXXX-XXXX am."

Allegation: During the 2018-2019 school year, the District failed to implement the Student's individualized education program (IEP) with regard to transportation.

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 Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

OCR generally finds that a school district's failure to implement key aids, services, or accommodations/modifications identified in the IEP of a student with a disability denies the student a FAPE and, thus, violates Section 504 and Title II. However, not every failure to implement an aid, service, or accommodation/modification in an IEP or Section 504 plan automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and the impact, if any, that the failure had on the student's ability to participate in or benefit from a school district's services, programs, and activities.

Analysis

FAPE

Based on OCR's review of the information, OCR identified concerns, specifically, whether the District failed to implement the IEP provisions related to the Student's transportation, primarily evidenced as erratic bus transportation services, provided in such a manner which may have negatively impacted the Student's access to instructional time.

Before the completion of OCR's investigation, the District requested to resolve the complaint pursuant to Section 302 of the *Case Processing Manual*.

On August 13, 2019, the District signed the enclosed Resolution 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 District to develop a transportation plan (the Plan) to ensure that the Student does not arrive later or depart the school grounds earlier than general education students. The Plan will include the Student's bus route, along with the projected morning pick-up and afternoon drop off times. The District will report to OCR the implementation of the Plan by providing documentation from the bus's GPS system. Additionally, the District will account for any instance(s) in which the bus departs prior to the afternoon school dismissal. Finally, the District will provide OCR a copy of the notice sent to District employees who are involved in the Student's transportation and education; informing them: 1) if the Student receives specialized transportation services pursuant to his Individualized Education Program and 2) of the essential details of the Student's transportation plan. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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 Josie Evola, the OCR attorney assigned to this complaint, at 202-453-5908 or josie.evola@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure: Resolution agreement

cc: Ms. Jill Sanchez-Myers, District Counsel via email jill.sanchez-myers@cms.k12.nc.us