



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

December 10, 2019

Dr. Steven L. Walts
Superintendent
Prince William County Public Schools
14715 Bristow Road
Manassas, VA 20112

Re: OCR Complaint No. 11-19-1398
Letter of Findings/Resolution Letter

Dear Dr. Watts:

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 June 12, 2019 against Prince William County Schools (the Division). The Complainant alleged that the Division discriminated against her son (the Student) on the basis of disability as follows:

Allegation 1: On XXXX, 2019, the Student's XXXX teachers denied the Student a free appropriate public education (FAPE) when they failed to allow him to use his "flash pass" to go to the bathroom as required by his Individualized Education Program (IEP);

Allegation 2: On XXXX, 2019, the Division discriminated against the Student on the basis of his disability when XXXX;

Allegation 3: In XXXX 2019, the Division discriminated against the Student when it failed to provide him with the appropriate amount of homebound instruction, including compensatory education due from the previous year, and graded him on assignments that were never provided to him by his homebound instructor;

Allegation 4: The Division denied the Student a FAPE when it delayed evaluating the Student for Assistive Technology a Behavioral Intervention Plan from February 2019 until May XXXX, 2019;

Allegation 5: The Division denied the Student a FAPE when it did not develop an IEP for his return to school from homebound instruction until September XXXX, 2019; and

Allegation 6: The Division discriminated against the Student when it failed to carefully consider the Student's physician's recommendation and placed him in a classroom for students with emotional disabilities rather than accommodate his learning disability in a general education classroom during the fall 2019 semester.

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

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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), 42 U.S.C. §§ 12131 et seq., 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; interviewed the Complainant and Division faculty/staff; and listened to audio recordings of IEP meetings.

Before OCR completed its investigation, the Division expressed a willingness to resolve the Allegation 3¹ 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 because OCR's investigation has identified issues that can be addressed through a resolution agreement.

OCR completed its investigation of Allegations 1-2 and 4-6. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegations.

OCR's findings and conclusions regarding Allegations 1-2 and 4-6 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegation 3.

Facts

During the 2018-2019 school year, the Student was in the XXXX grade at XXXX School (the School). He is currently in the XXXX grade at the School. At the time of the complaint filing, the Student was receiving services through an IEP, including homebound instruction due to his disability. He was classified as Specific Learning Disability (SLD) and Other Health Impairment (OHD).

Allegation 1: On XXXX, 2019, the Student's XXXX teachers denied the Student a free appropriate public education (FAPE) when they failed to allow him to use his "flash pass" to go to the bathroom as required by his IEP.

Legal Standard

¹ The Division expressed an interest in resolving the part of Allegation 3 related to the provision of homebound hours to the Student, not the portion related to the grading of assignments.

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.

Analysis

The Complainant alleged that on XXXX, 2019, the Student's XXXX teachers did not allow him to use his "flash pass" to go to the bathroom, in violation of his IEP. OCR reviewed the Student's February 15, 2019 IEP, which states that the "flash pass" is to be used when the Student is frustrated or needs assistance. While the IEP does not explicitly mention bathroom use as one of the scenarios in which a flash pass may be used, the Principal noted to OCR that all of the Student's teachers were made aware that the Student may need to use the bathroom frequently due to his disability, and that he should be permitted to use the flash pass for this purpose. The Principal also stated that the XXXX, 2019 incident was a one-time occurrence, and that both teachers were spoken to by administrators the following day to clarify any confusion regarding the implementation of the flash pass accommodation. Additionally, the Principal noted that the Student was in an altercation the following day, which resulted in a suspension, after which he went on homebound instruction and did not return to the School until the fall 2019 semester; as such, he was not in the XXXX class after the date at issue. OCR notes that the Student's XXXX, 2019 IEP now includes the use of the flash pass for "medical needs," which in the Student's case includes the use of the bathroom.

While OCR finds that the Student should have been permitted to use the flash pass to go to the bathroom on XXXX, 2019, OCR's review of the evidence does not indicate that the failure to allow the Student to use the flash pass on two occasions during a single school day constitutes a denial of FAPE. The Complainant confirmed to OCR that the Student did not miss any class on the day he was not permitted to use his flash pass for the bathroom, and made clear that the denial of the flash pass only occurred on one date. Additionally, OCR notes that the issue was addressed immediately with the two teachers involved, and that the Student's IEP has been amended to clarify that the flash pass accommodation is to be used for his medical needs. For these reasons, OCR finds insufficient evidence to support Allegation 1, above.

Allegation 2: On XXXX, 2019, the Division discriminated against the Student on the basis of his disability when XXXX.

Legal Standard

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.

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.

Analysis

[THREE PARAGRAPHS REDACTED]

Therefore, OCR finds insufficient evidence to support Allegation 2, above.

Allegation 3: In XXXX 2019, the Division discriminated against the Student when it failed to provide him with the appropriate amount of homebound instruction, including compensatory education due from the previous year, and graded him on assignments that were never provided to him by his homebound instructor.

Analysis

The Complainant alleges that the Division failed to provide the Student with the hours of homebound instruction required by his XXXX, 2019 IEP. The Complainant also alleges that the Student was graded on assignments he was supposed to complete while on homebound instruction, but never did, during the fourth quarter of the 2018-2019 academic year. OCR's review of the Student's grade reports indicates that the Student was not graded on any assignments during the period in May 2019 where he was supposed to be on homebound instruction. The Principal also confirmed to OCR that no assignments during the May 2019 homebound period were factored into the Student's fourth quarter grades. Therefore, OCR finds insufficient evidence to support the allegation that the Student was graded on assignments that were not provided to him by his homebound instructor in May 2019.

OCR also reviewed the Student's XXXX, 2019 IEP, which states that he is to receive 240 minutes of special education services, and 3 hours of general education instruction per week while on homebound instruction beginning on XXXX, 2019. These weekly hours were confirmed by the Principal. The Division informed OCR that at a XXXX, 2019 IEP meeting, the Division proposed to provide "make-up" homebound hours for the Student, but that to date, not all of these hours have been provided. It noted that it believes that it owes the Student a total of 60 hours of homebound instruction for hours missed during the 2017-2018 and 2018-2019 school years. Given this, OCR has concerns that the Student was not provided with the required number of hours of special and general education during the month of XXXX, as alleged. Before OCR completed its investigation, the Division expressed a willingness to resolve the homebound issue in Allegation 3 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 because OCR's investigation has identified issues that can be addressed through a resolution agreement. The attached Resolution Agreement, when fully implemented, will resolve OCR's concerns related to Allegation 3.

Allegation 4: The Division denied the Student a FAPE when it delayed evaluating the Student for Assistive Technology and a Behavioral Intervention Plan from February 2019 until May XXXX, 2019.

Legal Standard

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Virginia state regulations generally require that all evaluations and decisions about eligibility be completed within 65 business days of the receipt of the referral by the special education administrator or designee (8VAC20-81-60(b)(1)(g)).²

Analysis

The Complainant alleges that the Division discriminated against the Student by delaying his evaluation for Assistive Technology (AT) services and a Behavioral Intervention Plan (BIP) from February 2019 to May XXXX, 2019. In its response to OCR's request for data related to this allegation, the Division provided documentation from the Student's February XXXX, 2019 IEP meeting, which includes the Complainant's consent for the Division to conduct a Functional Behavioral Assessment (FBA). The documentation from this IEP does not mention a request for AT services. The documentation provided also indicates that the IEP team met on May XXXX, 2019 to discuss the FBA results. The documentation provided includes email communications between the Complainant, the Complainant's advocate (the Advocate), and Division staff, which confirms that the meeting to discuss the FBA results was initially proposed by the Division for April XXXX, 2019, but the Complainant and Advocate had conflicts on that date, as well as two other dates in the month of April. OCR's review of the relevant documentation confirms that the evaluation was complete, and the Division attempted to schedule a meeting to review its results, less than 50 calendar days after the Complainant signed the consent form for the FBA on

² This legal standard also applies to Allegation 5, below.

February XXXX, 2019, and well within the 65 business day guidelines set by the state of Virginia.

OCR also reviewed documentation regarding the Complainant's request for an AT evaluation, which was made by the Advocate via email on March XXXX, 2019. In that email, the Advocate requested an IEP meeting to discuss the Student's iPad and an AT evaluation. The Division provided OCR with audio files of the May XXXX, 2019 IEP meeting, where the decision was made to postpone the AT discussion due to the fact that the meeting had gone on for an extended period of time. OCR also reviewed copies of the AT evaluation forms signed by the Complainant, dated June XXXX, 2019. The AT evaluation report was completed on August XXXX, 2019, and the Division attempted to schedule an IEP meeting for August XXXX, 2019. The meeting was ultimately scheduled for September XXXX, 2019, where the AT representative reviewed recommendations from the report. OCR finds that, given these circumstances, both the time lapsed between the initial March XXXX, 2019 request and the initial IEP date offered by the Division of April XXXX, 2019, and the time lapsed between the June XXXX, 2019 date when the Complainant signed the consent for the AT evaluation, and the initial date of August XXXX, 2019 offered by the Division for the IEP to discuss the evaluation results, falls well within the appropriate timeframes, and do not indicate an unreasonable delay on the part of the Division.³ Therefore, OCR finds insufficient evidence to support Allegation 4, above.

Allegation 5: The Division denied the Student a FAPE when it did not develop an IEP for his return to school from homebound instruction until September XXXX, 2019.

Analysis

The Student's May XXXX, 2019 IEP indicates that he is to begin receiving homebound instruction on May XXXX, 2019, and that the homebound instruction will conclude on September XXXX, 2019. The data reviewed by OCR confirms that the Division attempted to schedule an IEP meeting for August XXXX, 2019, prior to the Student's return from homebound instruction, but that the Advocate was unable to meet on that date, nor was she able to meet on September XXXX, or the afternoon of September XXXX. An IEP meeting was ultimately held on September XXXX, 2019. OCR's review of the documentation finds that the delay in convening an IEP meeting prior to the Student's return from homebound instruction was not caused by the Division, but rather by scheduling conflicts on the part of the Advocate, which pushed the date of the IEP meeting from August XXXX, into September. Additionally, OCR has insufficient evidence to indicate that the delay of 12 days from the time the Student was to return from homebound instruction to the date the IEP team met, without more, was sufficient to amount to a denial of FAPE, particularly considering that the Student had a prior IEP in place. Therefore, OCR finds insufficient evidence to support Allegation 5.

Allegation 6: The Division discriminated against the Student when it failed to carefully consider the Student's physician's recommendation and placed him in a classroom for students with emotional disabilities rather than accommodate his learning disability in a general education classroom during the fall 2019 semester.

³ OCR notes that the School's Summer break took place between June 11, 2019 and August 26, 2019.

Legal 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

The Complainant alleges that the Division failed to consider the Student's physician's recommendations when the IEP team decided to place the Student in a classroom for students with emotional disabilities (ED) for the fall 2019 semester. OCR interviewed the Principal, who confirmed that the IEP team considered documentation from the Student's physician, which recommended a gradual return to full time in-class instruction. The Principal also confirmed that while the IEP team proposed placing the Student in a classroom for students with emotional disabilities, the Complainant disagreed with the proposal and the Student was never placed in the ED classroom. Additionally, the Principal noted that the IEP team took the physician's recommendation to gradually transition the Student back to school and implemented that recommendation. The Student's September XXXX, 2019 IEP states that the team considered medical documentation recommending the Student's gradual transition back to school⁴. Therefore, OCR finds insufficient evidence to support Allegation 6, above.

Conclusion

On December 9, 2019, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address Allegation 3. The provisions of the Agreement are aligned with the Allegation 3 and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to convene a meeting to determine the number of homebound hours due to the Student for the month of May 2019, develop a plan for delivery of those homebound hours, and complete the delivery of the outstanding hours. The Agreement also requires the Division to provide training on Section 504 and Title II to administrative staff and special education staff at the School. 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

⁴ OCR's review of the September XXXX, 2019 IEP also found that the Division considered the least restrictive environment for the Student.

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.

The Complainant has a right to appeal OCR's determination Allegations 1-2 and 4-6 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the Division. The Division has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Division.

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 Sebastian Amar, the OCR attorney assigned to this complaint, at 202-453-6023 or Sebastian.Amar@ed.gov.

Sincerely,

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

Enclosure

cc: XXXX