



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 20, 2020

Via Email: XXXXX

Eric Williams, Ed.D.
Superintendent
Loudoun County Public Schools
Administration Building
21000 Education Court
Ashburn, VA 20148

Re: OCR Complaint No. 11-19-1451
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) received against Loudoun County Public Schools (the Division) on August 7, 2019. The Complainant filed the complaint on behalf of her daughter, a student (the Student) at XXXXXX School (the School).

The Complainant alleged that the Division discriminated against the Student on the basis of her disability, when it denied her an opportunity examine relevant records regarding the Student, including prior to Individualized Education Program (IEP) meetings for the Student, thereby denying the Student a free and appropriate public education (FAPE), from approximately February 2019 through the present. Specifically, the Complainant informed OCR that the records at issue are the checklist and monthly language samples identified as measurement tools for the Student's "Communication and Expressive Language" goal, as stated in her IEP(s).

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.

Summary of Investigation

During the investigation, OCR reviewed information and documentation provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the 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.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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 IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

If a school district fails to comply with the requirements of Section 504, OCR determines whether that failure resulted in a denial of FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

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.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing. Implementation of the analogous provisions of the IDEA is one means of satisfying this requirement.

Findings of Fact

On March 22, 2019, the Division developed an IEP for the Student that included the following goal for “Communication and Expressive Language”:

By March 2020, after listening to an unfamiliar fictional story (at her instructional level through grade level) and using no more than 2 prompts, [the Student] will retell the story, including a beginning (to include characters and setting), middle (to include problem), and ending (to include resolution), in 3 out of 4 trials, over 3 opportunities, *as measured by a checklist and a monthly student language sample.*

On April 10, 2019, the Complainant sent an email to the Student’s speech language pathologist, (the SLP) requesting, “if I could get work samples used in the session before I come in to get an idea what she had been working on.” On April 10, 2019, the SLP responded, “yes, I will leave some story samples in the front office for you.” In an email to the SLP and the School’s Principal (the Principal) on April 11, 2019, the Complainant reiterated that, “It is very important for me to review the data before the meeting so we can discuss to provide better support to [the Student] at the meeting and the school should be providing data prior to the IEP meeting.” On April 22, 2019, the Complainant again emailed the SLP requesting to see the language samples in addition to the checklist. In response, the Principal provided the Complainant with several dates to examine the records, but the Complainant reported that she was denied access to the checklist and monthly language samples when she arrived. The Complainant had also requested the monthly language samples from the Division’s XXXXX (Supervisor 1), on May 2, 2019.

The Complainant then requested assistance from the Virginia Department of Education’s (VDOE) Dispute Resolution Services. On May 7, 2019, the Director of VDOE’s Dispute Resolution Services informed the Complainant that she had “spoken with the coordinator in Loudoun County, and the school division will make the data available for your review.” On May 13, 2019, the Complainant sent an email to the Principal asking, “to review the rest of [the] speech data that were not available when I went in last time.” The Complainant confirmed that she was seeking to examine “a checklist and a monthly language sample that are listed in [the Student’s] IEP for 1st, 2nd and 3rd quarter.” After the School did not reply, the Complainant sent another email on May 21, 2019, requesting “an appointment to review the rest of speech data (a checklist/monthly student language sample) for 1st, 2nd and 3rd quarters that were not provided when I went in last time.” Additionally, the Complainant again requested the assistance of the VDOE. The VDOE then emailed the Division’s XXXX (AD 1), requesting that AD 1 “or someone from her office contact [the Complainant] and provide [the VDOE] with an update regarding the resolution of [the Complainant’s] concerns.”

On June 8, 2019, the Principal sent the Complainant an email stating, “[t]he checklist is not an issue – as this is a school designed checklist that is used in all of her classes. . . . I will defer to [SLP] and [AD 1] on the request for language samples as they can best address your needs.” The Complainant then accepted an invitation to meet with the Principal and SLP to examine the requested records on June 10, 2019. However, the information obtained indicates that the School did not allow the Complainant to examine the checklist or monthly language samples at the scheduled meeting on June 10, 2019. Instead, on June 21, 2019, the School asserted that all of the

information contained in checklists and monthly language samples was also present in the speech language data trackers. The Principal then told the Complainant, “I suggest you and [the SLP] come together at the beginning of next school year to determine your common definition and working understanding of the term ‘checklist’ so that there is not confusion.”

On August 7, 2019, the Complainant filed her complaint with OCR. On October 16, 2019, OCR issued formal Notification Letters to both the Complainant and the Division, informing both parties that OCR had determined the complaint was appropriate for investigation, as well as a Data Request Letter to the Division.

On October 25, 2019, then-counsel for the Division (Counsel) provided OCR with a copy of a letter that invited the Complainant to examine the records at issue. In the letter, the School Principal stated, “to the extent [the Division] maintains the ‘checklist’ and ‘monthly student language samples’ referred to in [the Student’s] communication-expressive language IEP goal, those records are also available for your inspection and review.”

On October 31 and November 11, 2019, the Division provided OCR with data partially responsive to OCR’s Data Request Letter. The Division’s Data Response did not include checklists for the Student for the 2018-2019 school year, but it included a checklist for the Student for September 3 through November 6, 2019. The checklist is a spreadsheet that contains a row which denotes specific information about a story, including the pages title, word count, beginning characters, beginning setting, middle problem, end resolution, and a section for comments.

The Data Response also included the Student’s monthly writing samples for September, October, and December 2019. The supplement also included “speech language data” for the 2018-2019 and 2019-2020 school years. The language samples consist of a number of phrases like “Different panel formed,” “3.7 billion live in South/East Asia,” and “In the middle the devil gobbled up one of the sisters.” Of the three “writing samples” provided to OCR, the samples for September and October appear to be non-fiction and the sample for November appears to be fiction. The speech language data is a spreadsheet which has a row designating specific data about the service provided like the service date, service time, length (“minutes”), goals or objectives, percentage correct, number of trials, and number of prompts.

In the interim, OCR also contacted the Complainant to determine if she had examined the requested documents as offered by the School Principal in the Division’s letter, dated October 31, 2019. On November 27, 2019, the Complainant informed OCR that she had been allowed to examine certain educational records, but not the checklists or language samples. The Complainant also provided a copy of her correspondence with the School, in which she stated on November 15, 2019, “I would like to double-check that we can review the speech and other data for the first quarter in addition to the ‘checklist’ and ‘monthly student language samples’ listed under [the] speech goal in [the Student]’s IEP.” On the same day, the Principal replied, “Yes, we have all of that currently collected and available for you to review.” However, the Complainant asserted that when she arrived to examine the records, the Principal had delegated the task to an assistant principal (the AP), and the AP had been told that the Complainant would only be reviewing “the speech and Progress Report data for the first quarter of this school year, meaning 2019-2020.” As a result, the

Complainant informed OCR that she was not permitted to examine the Student’s checklists or monthly language samples; and to date, she has not been permitted to do so.¹

Thereafter, the Division contacted OCR and formally requested to resolve the complaint pursuant to Section 302 of the *Case Processing Manual*.

Analysis

In its analysis, OCR considered the following: (1) whether the Division possessed or maintained the records requested by the Complainant; (2) whether the records requested by the Complainant were relevant records, such that the Division was required to provide the Complainant with an opportunity to examine them, as required by Section 504, at 34 C.F.R. 104.36; and (3) whether any failure to provide the Complainant with such an opportunity impeded the Complainant’s ability to meaningfully participate in any actions regarding the identification, evaluation, or educational placement of the Student (i.e., such that the Complainant was not able to be knowledgeable about the Student and the meaning of the evaluation data, as required by Section 504, at 34 C.F.R. 104.35) and/or resulted in a denial of FAPE to the Student.

Based on the evidence obtained to date, OCR determined that the Division possessed and maintained at least some of the records requested by the Complainant, as stated in inquiry (1). OCR also determined that the records requested were relevant records, such that the Division was required to provide the Complainant with an opportunity to examine them, as stated in inquiry (2). However, the Division requested to resolve the complaint before OCR before OCR made a determination regarding inquiry (3). OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement.

Conclusion

On August 19, 2020, 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 provide the Complainant an opportunity to examine all of the Student’s speech language records, including all speech language checklists and language samples, as required by the Student’s IEPs, that are maintained by the Division for the 2018-2019 and 2019-2020 school years. The Division will coordinate a mutually agreeable date and time with the Complainant for the examination. After the Complainant completes the examination of the Student’s records, the Complainant may request the status of any record that the Complainant

¹ To the extent that the Complainant raised a concern that the Division may have failed to implement the Student’s IEP, because this is not an allegation that OCR processed and determined that was appropriate for investigation, OCR did not address the Complainant’s concern here. However, to address her concern, the Complainant may file another complaint with OCR or request an impartial hearing, such as a due process hearing. The Complainant may find information about Virginia’s IDEA due process procedures at http://www.doe.virginia.gov/special_ed/resolving_disputes/due_process/index.shtml.

believes is missing from the Student's educational records. If the record(s) identified by the Complainant is not in the possession of or has not been maintained by the Division, the Division will inform the Complainant which specific records are not available, in writing. As part of monitoring the Agreement, OCR may also conduct an onsite visit to the Division to examine the Student's records.

The Agreement also requires the Division to convene an IEP meeting for the Student to determine if the Student was denied a FAPE during the 2018-2019 and 2019-2020 school years. During the meeting, the IEP team will consider whether the Complainant's inability to examine the Student's speech-language checklists and monthly language samples during that timeframe impacted her opportunity to meaningfully participate in any actions regarding the identification, evaluation, or educational placement of the Student. If the IEP team determines that the Student was denied a FAPE, then the IEP team shall consider whether the Student requires any compensatory services, to be provided by the end of the 2020-2021 school year.

In addition, the Agreement requires that during the 2020-2021 school year, the Division will provide the Complainant with an opportunity to examine the Student's relevant records, as required by the regulation implementing Section 504, at 34 C.F.R. § 104.36.

Lastly, the Agreement requires that the Division will provide training to specific individuals at the Division and the School, who were involved in the instant OCR complaint and who OCR previously identified to the Division as required recipients of the training, regarding the right of parents/guardians of a student to examine that student's relevant records, as required by the regulation implementing Section 504, at 34 C.F.R. § 104.36, and the Division's policies, procedures, and practices pertaining to the same.

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 the OCR attorneys assigned to this complaint: Steve Nabors, at 202-453-5729 or steve.nabors@ed.gov; and Jacob Griffith, at (202) 453-5730 or jacob.griffith@ed.gov.

Sincerely,

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

cc: XXXXXX
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