



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

August 14, 2023

By email only to rshotwell@hcs.k12.nc.us

Dr. Rodney Shotwell
Interim Superintendent
Hoke County Public Schools
310 Wooley Street
Raeford, NC 28376

Re: Case No. 11-23-1238
Hoke County Public Schools

Dear Dr. Shotwell:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against Hoke County Public Schools, which we will refer to as the District. The Complainant filed a complaint on behalf of her son, whom we will refer to as the Student, a former student at [redacted content]. The Complainant alleged that in the fall of 2022, the School discriminated against the Student on the basis of disability when it failed to timely evaluate the Student to determine appropriate safety and behavioral supports after a decline in the Student's behavior (Allegation 1) and did not provide him with speech and occupational therapy services in his Individualized Education Program (IEP) (Allegation 2).

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. 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. The District receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant about her allegations.

Before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 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 school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

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OCR completed its investigation of Allegation 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

OCR's findings and conclusions regarding Allegation 2 are discussed below, as well as a summary of the evidence obtained by OCR during the investigation to date regarding Allegation 1.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. 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 is one means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP or placement are necessary.

The regulation implementing Section 504 does not impose a specific timeframe for completing an evaluation and determining placement. However, an unreasonable delay may result in discrimination against a student with a disability because it may have the effect of denying the student meaningful access to educational opportunities provided to students without disabilities.

Allegation 1: The Complainant alleged that in the fall of 2022, the School discriminated against the Student on the basis of disability when it failed to timely evaluate the Student to determine appropriate safety and behavioral supports after a decline in the Student's behavior.

Facts

The Student attended [redacted content] at [redacted content] School from [redacted content] until [redacted content] and had an IEP for [redacted content]. The Student's classroom teacher (the Teacher) documented that during the week of [redacted content], the Student exhibited behaviors such as [redacted content]. On [redacted content], she created an office referral for the Student for aggressive behavior for attempting to [redacted content] and for [redacted content] another student. On [redacted content], the Teacher emailed the School's Principal, Assistant Principal, and Exceptional Children's (EC) Coordinator a summary of the Student's behaviors and stated that

that the Complainant went to the EC office and requested an IEP meeting to address the Student's recent behaviors.

On [redacted content], the Teacher sent a text message to the Complainant stating that the Student [redacted content]. The Complainant responded to the Teacher that "[e]veryday he seems like he's getting a bad behavior report or getting sent home" and "if he is constantly getting sent home then he's not learning anything." She also expressed concerns that the School was not equipped to handle the Student's behaviors and requested the School consider having someone assist the Student during the school day.

On [redacted content], the School convened an annual IEP meeting for the Student. The IEP reflects that the Student "[redacted content]" and "inhibit his ability to access the curriculum." The behaviors included self-injurious behavior such as "[redacted content]" as well as "[redacted content]." During the meeting, the Complainant expressed concerns about the Student's safety and his coping skills. At the meeting, the team discussed changes to the Student's classroom and testing accommodations and added behavioral goals for coping skills, calming strategies with adult support, and refraining from [redacted content] behaviors and [redacted content].

According to text messages that the Teacher sent the Complainant, the Student continued to exhibit behaviors in [redacted content]. In [redacted content], the Complainant withdrew the Student from the School and enrolled him at the District's [redacted content] School (School 2) due to her concerns about the School's ability to keep the Student safe and manage his behavior.

On [redacted content], School 2 held an IEP meeting for the Student. The IEP reflects that staff at School 2 observed that the Student exhibited behaviors such as [redacted content] and noted that these behaviors continued to be a safety concern. The team recommended conducting a Functional Behavioral Assessment and discussed the development of a [redacted content] for the Student "to aid with [the Student's] behaviors and safety within the school setting." On [redacted content], School 2 developed a Behavioral Intervention Plan for the Student. The Complainant has not expressed concerns to OCR about the Student's behavioral needs not being appropriately addressed at School 2.

Analysis

OCR has a concern that despite the Student's significant behavior incidents in September and October, the School did not convene an IEP meeting until [redacted content] to address the Student's behavioral needs.

Before OCR completed its investigation of the complaint, the District expressed interest in resolving Allegation 1 pursuant to Section 302 of OCR's Case Processing Manual. On August 11, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the identified violations. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

Allegation 2: The Complainant alleged that in the fall of 2022, the School discriminated against the Student on the basis of disability when it did not provide him with speech and occupational therapy services in his IEP.

Facts

The Student's IEP required, in part, that the School provide the Student with [redacted content] of occupational therapy services and [redacted content] of speech-language therapy services in a special education setting. The Complainant initially alleged to OCR that the School failed to provide the Student with speech-language therapy services and occupational therapy services as required by his IEP. However, she later clarified that she did not have a concern that the School provided the services to the Student, but rather she did not know when and where the School provided them.

The Student's speech-language therapy session logs reflect that the speech-language therapist provided the Student with [redacted content] of speech-language therapy between [redacted content] and that the Student missed several sessions due to absences. The Student's occupational therapy plan session logs reflect that the occupational therapist provided the Student provided the Student with a [redacted content] of occupational therapy sessions per month between [redacted content].

Analysis

According to contemporaneous service logs from the speech language and occupational therapists, the District provided the Student with the required amount of services in the Student's IEP aside from the days the Student absent. The Complainant could not provide, nor could OCR otherwise find, evidence indicating that the Student did not receive the services pursuant to his IEP. Thus, OCR found insufficient evidence to substantiate that the School did not provide the Student with occupational therapy and speech therapy services, as alleged.

Conclusion

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. OCR would like to make you aware that individuals who file complaints with OCR 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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Amy Fellenbaum, the OCR attorney assigned to this complaint, at Amy.Fellenbaum@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

cc: Maura O'Keefe