



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

March 26, 2014

Dr. Heath E. Morrison
Superintendent
Charlotte-Mecklenburg Schools
P.O. Box 30035
Charlotte, North Carolina 28230

Re: OCR Complaint Nos. 11-13-1158 and 11-13-1171
Letter of Findings

Dear Dr. Morrison:

This letter is to notify you of the outcome of the discrimination complaints received by the District of Columbia Office of the Office for Civil Rights (OCR), at the U.S. Department of Education, on March 21, 2013, against Charlotte-Mecklenburg Schools (the District). The Complainant filed on behalf of her XXXX (Student 1, Complaint No. 11-13-1158) who is diagnosed with XXXX, and her XXXX (Student 2, Complaint No. 11-13-1171) XXXX. Both students formerly attended XXXX (the School).

The Complainant alleged that the District discriminated against Students 1 and 2 on the basis of disability by failing to comply with the process for providing a free appropriate public education (FAPE). Specifically, the Complainant alleged:

1. At Section 504 meetings for both students on XXXX, 2013, the District:
 - a. Refused to provide more than 10 hours of homebound instruction per month regardless of the students' individual educational needs, citing a North Carolina state requirement; and
 - b. Denied the Complainant's request to record class lectures and biology tutorials for Student 2.
2. The District failed to provide homebound instruction because the assigned teacher only transferred information and administered tests rather than instructing the students.
3. At Section 504 meetings for both students on XXXX, 2013, the District failed to consider and document information from a variety of sources in deciding to terminate homebound instruction for both students and in refusing to extend the school year for Student 2.

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

4. The District failed to include a math accommodation for Student 2 in the XXX, 2013, XXXX, 2013 and XXXX, 2013 Section 504 Plans, even though the District has previously acknowledged her need for this accommodation.

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 (FFA) 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 a public entity. Because the District is a recipient of FFA from the Department and is a public entity, we have jurisdiction over it under Section 504 and Title II.

OCR investigated the allegations by listening to recordings of meetings and reviewing documents provided by the Complainant and the District. We identified a compliance concern regarding Allegation 1.a, but we determined that a resolution agreement in a separate OCR complaint addresses the concern. We also identified concerns regarding Allegation 3 and the District's determination on May 9 that Student 1 no longer needs a Section 504 Plan. We did not find sufficient evidence to support Allegations 1.b., 2, and 4. The reasons for our determinations are explained below.

Legal Standard

The regulation implementing Section 504 requires public school districts to provide FAPE to students with disabilities. 34 C.F.R. § 104.33(a). The provision of an appropriate education is defined as the provision of 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. § 104.33(b)(1). A school district must conduct an evaluation of a student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement. § 104.35(a). In interpreting evaluation data and making placement decisions, a school district must draw upon information from a variety of sources, ensure that such information is documented and carefully considered, and 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. § 104.35(c). OCR interprets the Title II regulation to require public school districts to provide FAPE to at least the same extent as required under the Section 504 regulation.

Background

<XXXX THREE PARAGRAPHS REDACTED XXXX>

Allegation 1.a

The Complainant alleged that the District refused to provide more than 10 hours of homebound instruction per month regardless of the students' individual needs. At the XXX meetings, the School's Section 504 Coordinator (Coordinator) stated that the District's homebound services "typically" have a maximum of 10 hours of instruction per *week*. He wrote "10 hours per week" on each student's plan. Between the XXXX meetings and the XXXX meetings, the Coordinator amended each plan to state "10 hours per month" instead of "10 hours per week." At the XXXX meetings, he apologized for making a "typo" on the XXXX plans and stated that the District's homebound instruction is 10 hours per month. The Complainant argued that 10 hours per month was not enough to meet the students' needs. The District's Section 504 Compliance Specialist (Compliance Specialist) stated that the state only allows the District to offer 10 hours of homebound instruction per teacher pay period, which is a month. The principal stated that the team did not have the authority to offer more than that. The meeting notes from the XXXX meetings state: "Clarification of HB instruction at 10 hrs per pay period. Parent concerned that FAPE will not be met at this level."

In its narrative response to the complaint, the District stated that "the Students' respective Section 504 teams determined as a team that neither Student needed more than 10 hours of homebound services per month...". In fact, other than the Complainant contending that 10 hours per month was not enough, the teams did not discuss how many hours of instruction each student should receive based on their individual educational needs. Rather, the teams based their determinations on their understanding that District and state policy only allowed 10 hours of homebound instruction per month. OCR's concerns regarding the District's practice of limiting homebound instruction to 10 hours per month were resolved through a resolution agreement in OCR Complaint No. 11-13-1169. The agreement, signed on September 30, 2013, requires the District to revise its homebound instruction policies so that decisions about the amount of instruction will be based on students' individual educational needs, provide training on the revised policies to Section 504 Coordinators at each school, and provide compensatory education to students with disabilities who were placed on homebound instruction during the 2012-2013 school year and who were denied FAPE as a result of being limited to 10 hours of homebound services per month. We determined that this agreement resolves our compliance concerns regarding Allegation 1.a.

Allegation 1.b

The Complainant alleged that on XXXX the team denied her request to record classes for Student 2. The Section 504 regulation requires that districts document and carefully consider information from a variety of sources, including information and recommendations from parents, when making decisions about placement and services. 34 C.F.R. § 104.35(c). Furthermore, Section 504 requires that decisions about placement and services be based on the student's individual educational needs. § 104.33(b)(1).

At Student 2's meeting, the Complainant suggested that class lessons be recorded. The principal stated, "I don't think that's going to be something we can do. I know that [the XXXX teacher]... offered to do that and she's done that with you before, but I don't think that is feasible for every teacher to be able to do." The Coordinator stated that any accommodations had to be based on need. He stated that before the students went on homebound instruction, they were

performing in the C/B range in all of their classes. He further stated, “We try to determine what is really needed. In some cases what you’re suggesting might be needed, but in other cases it might not.” The XXXX stated that the homebound teacher acts as a liaison between the classroom teacher and the students, but the students can still email their classroom teachers, ask questions, get clarification, and generally have as much access as they need. She stated “the homebound teacher is there if they need the direct instruction component.” There was no further discussion of the Complainant’s request for the recording of classes. However, later in the meeting the Complainant requested study guides after noting that the school was refusing to record the students’ classes and they needed an overview of what to study. After an extensive discussion, the team agreed to put “teacher will make available study guides, notes, outlines, topics in class, or powerpoints covered in class” on both students’ Section 504 plans.

The meeting notes from the XXXX meetings do not mention that the Complainant requested recording of classes or explain why the team denied this request. The District’s response to the complaint states that the request

was denied by the Section 504 team because the team consensus was that requiring the Student’s teachers to record every lesson was not a reasonable accommodation...because the team felt strongly based on objective data that the Student did not need to have her classes recorded; she comprehended lessons in the normal course of going to class without the need for a recorded version of the class. Accordingly, the Section 504 team determined that recording lessons from every class was not a reasonable accommodation because she did not need it.

The evidence above indicates that the team discussed the Complainant’s request and gave some consideration to Student 2’s individual needs in denying the request. Therefore, we did not find sufficient evidence to conclude that the District violated Section 504’s procedural requirements. We understand the Complainant’s concern that the District appeared to base its decision on Student 2’s needs when she was in a school-based placement rather than her current needs in the homebound placement, but this concern is more appropriately addressed through due process procedures. OCR has a limited role in addressing disputes over the appropriateness of a student’s Section 504 Plan. Generally, OCR does not review the results of educational decisions made by a school district as long as the district complies with Section 504’s procedural requirements. Such decisions involve subjective determinations that cannot be made in the context of an OCR complaint.

Allegation 2

The Complainant alleged that the District failed to provide homebound instruction because the assigned teacher only transferred information and administered tests rather than instructing the students.

At the XXXX meetings, the Coordinator stated that for homebound services, typically a teacher brings homework and tries to clarify things for the student. He stated that the District’s homebound instruction is not subject-specific, so the teacher is not skilled in all subject areas. He described the teacher as “more of a transition person.” The District assigned one teacher to

provide homebound instruction to both students. At the XXXX meetings, the Complainant asked her if she would be teaching German. She replied, “I don’t teach German, I don’t teach biology. I can write down questions and confer with their teachers. But there will be a lot of things that I can’t answer myself.” The Complainant asked, “So the definition of instruction for the meaning of this 504 plan is what?” The principal stated, “She will provide the instruction that she can provide. If it’s an English question, she can help with that, or she can go back to the teacher and get clarification. Math she can do. This goes back to homebound not taking the place of them being in school.” The Complainant stated, “It still has to provide FAPE.” The principal replied, “It has to provide them what we can.” At another point during the XXXX meeting the XXXX described the homebound teacher as a “liaison” but stated that the students can still contact their classroom teachers directly. She also stated “the homebound teacher is there if they need the direct instruction component.” Later in the meeting, the principal gave an example of what the teacher might do: “[S]he’s going to say ‘okay [Student 2], here’s your German assignment, let’s talk about what the teacher says you need to do, you need to study up on section 5, let’s look at that and see if you have any questions for me about that, then while you do that I’m going over to [Student 1] and talk to him.’”

The Complainant stated that the homebound teacher provided some assistance to Student 2 with math assignments, but otherwise she only administered tests and collected and distributed work. This description is consistent with the homebound teacher’s own descriptions of instructional sessions in her log.¹ The Complainant complained that the teacher did not have time to provide direct instruction to the students because she only had 10 hours per month with each student and much of that time was taken up by administering assessments. This concern was addressed through Allegation 1.a. The Complainant was also concerned about the teacher’s lack of subject-matter expertise and the District’s methods of delivering homebound instruction. It is not unusual for a homebound instructor to serve as a liaison with subject matter teachers and, absent evidence that the nature of a student’s disability required a different arrangement, this does not present a violation of Section 504. We did not find sufficient evidence of a procedural violation of Section 504 with respect to these concerns. Again, in the absence of a procedural violation of Section 504, OCR is not in a position to second-guess the District’s educational decisions related to instructional methodology and personnel. The Complainant’s concerns are more appropriately addressed through due process procedures.

Allegation 3

The Complainant alleged that during the May 9 meetings, the District failed to consider and document information from a variety of sources in deciding to terminate homebound instruction for both students and in refusing to extend the school year for Student 2.

Prior to the XXXX meetings, the Complainant provided letters from the students’ physician. <XXXX SENTENCES REDACTED XXXX> At the XXXX meetings, both students’ teachers reported that they were doing well in class before they stopped attending school and the teachers

¹ The log also notes that on April 23 the scheduled session did not take place because no one answered the door when the teacher arrived, and on May 7 the scheduled session did not take place because XXXX. The District’s response to the complaint states that on another occasion the Complainant cut short a homebound lesson to attend Student 1’s XXXX, but this is not mentioned in the teacher’s log.

did not notice anything amiss. During Student 2’s meeting, the Coordinator stated that the team normally leans heavily on a doctor’s recommendation, “so it would seem fitting to execute a plan until we know services may not be needed.” He stated that it was “best to err on the careful side.” During Student 1’s meeting, the Coordinator stated that the team has a diagnosis from a doctor regarding physical problems but there was nothing at the school level showing any indications of a “downslide” before he stopped attending. The Coordinator stated:

The general rule, though, is to lean on the side of the doctor when it’s physical. It says he can’t attend school, so we’re likely to go ahead and do it, I would just say for the record we will meet again to try and determine how their progress has been at home and try to figure out what happened and how these things suddenly occurred, if they were going on while they were attending school, so there are some questions unanswered. But if the doctor says they need to be at home, we go ahead and honor that.

However, at the follow-up meetings on XXXX there was no discussion of whether the students needed homebound instruction. Rather, the meetings were focused on adding accommodations to their Section 504 plans.

For the XXXX meetings, the Complainant provided updated physician referral forms dated May 8. Student 1’s form states that he will be unable to attend school for the remainder of the school year because of XXXX. <XXXX SENTENCE REDACTEDXXXX. Student 2’s form states that she will be unable to attend school for the remainder of the year because XXXX. At both students’ meetings, the teams went against the doctor’s recommendations and terminated homebound instruction. (Student 1’s team also determined that he was no longer eligible under Section 504, which will be addressed separately below.) Classroom teachers stated that the students were generally making good grades and XXXXX. They also stated that the students were not completing their homebound assignments in most classes and generally had failing grades. Teachers expressed concern that the students would not be able to complete their work by the end of the school year.

Student 2

<XXXX FOUR PARAGRAPHS REDACTED XXXX>

Student 1

<XXXX FIVE PARAGRAPHS REDACTED XXXX>

Analysis

Changing the students’ placements from homebound instruction to the regular school environment was a significant change in placement, so the District was required to conduct a reevaluation prior to terminating homebound instruction. The group of persons making evaluation and placement decisions must carefully consider information from a variety of sources and include persons knowledgeable about the student and the meaning of the evaluation

data. Neither the XXXX meetings nor the initial meetings to place the students on homebound instruction were attended by a psychologist, nurse, or other medical professional with knowledge about the students' disabilities. The team chose not to follow the recommendations of the students' doctor when it terminated homebound instruction, but it did not conduct its own assessment of the students' medical conditions. It did not attempt to contact the students' doctor to obtain more information and it did not attempt to have its own personnel evaluate the students. The Complainant suggested that the school psychologist talk to Student 2 to assess her current state, but the team did not respond to this suggestion.

Instead of considering the students' current medical conditions, the team's discussion focused on teacher observations of how the students functioned several months ago before they were placed on homebound instruction. These observations led the team to question the initial decision to place the students on homebound instruction and to question the cause of the students' XXXX, but the team did not consider input from anyone knowledgeable about the nature of the students' disabilities. There was no current information considered by the team that contradicted the information provided by the students' doctor. Except for the Complainant and the homebound teacher, and another teacher XXXX and stated that the students appeared to be happy, no one at the meeting had face-to-face interactions with either student since they stopped attending school in XXXX. The input provided by the Complainant, the students, and the homebound teacher indicated that both students were currently exhibiting symptoms of XXXX and other medical conditions.

The team also based its decision on the students' poor academic performance in the homebound placement. The team stated that the students would perform better and have a better chance of completing their work by the end of the year if they returned to school. However, a student who is physically or psychologically unable to attend school must remain in a homebound placement regardless of his or her academic performance in that placement. If a student is performing poorly in a homebound placement but is unable to return to school, it would be appropriate for the team to consider whether the amount or type of homebound services provided to the student should be changed in order to ensure that the student is receiving FAPE in the homebound placement. The team failed to do so here. It did not consider whether the students' poor performance resulted from the Division's failure to provide FAPE (see allegation 1 above). It also failed to consider changing the amount of homebound instruction, providing related services such as counseling, or providing additional accommodations, such as recording classes or Skyping classes as the Complainant suggested multiple times, to address the students' poor academic performance. During Student 1's meeting the Coordinator went so far as to suggest that Student 1 give up on the school year altogether to focus on his health, which obviously would not provide FAPE.

For the reasons above, OCR determined that the District did not conduct a proper reevaluation prior to changing the students' placements because the team did not include individuals knowledgeable about the students' disabilities and failed to carefully consider current information from a variety of sources.

The Complainant also alleged that at the Section 504 meeting on XXXX, the District failed to consider and document information from a variety of sources in refusing to extend the school year for Student 2. For the reasons explained below, OCR determined that this issue is resolved.

During the XXXX meeting, the Complainant requested that the team extend Student 2's school year beyond the last day of school (June 7) to give her more time to complete the quarter's worth of work she missed and XXXX. The team refused to extend the school year but stated that Student 2's teachers would "work with her" and make individual plans to complete her work by the last day of school. The meeting minutes state: "[Complainant] is requesting extended time to the end of the school year, beyond June 7th. Discussion: teacher individual plans will need to address this to allow her to complete on time needed." However, on XXXX the Complainant signed a resolution agreement with the District for a pending IDEA due process complaint that provided for an extension of the school year by at least one week for Student 2. The agreement states:

[Student 2] will have the opportunity to take any missed quizzes, tests, Common Exams, and End of Course exams in the courses she is currently enrolled from June 6th-June 14th, 2013. The goal is June 14, 2013; however, if [Student 2] is making steady progress and cannot complete the tasks above it will be determined by [the principal] if an extension is granted for up to at least one day. ... [Student 2] will have the opportunity to complete any work and have it turned in by June 14, 2013. ... [Student 2]'s grades will be determined based upon the grades earned from the work completed, and the scores/grades from the quizzes, test, Common Exams and End of Course exams completed.

Based on the resolution agreement for the due process complaint, OCR considers this allegation to be resolved. If the Complainant believes that the District failed to abide by the terms of the resolution agreement, the Department's IDEA regulations provide that such agreements are enforceable in a state court of competent jurisdiction or in federal court. 34 C.F.R. § 300.510(d). In North Carolina, such agreements are also enforceable through the state complaint process (see <http://ec.ncpublicschools.gov/parent-resources/ecparenthandbook.pdf>, page 15).

Allegation 4

The Complainant alleged that the District failed to include a math accommodation for Student 2 on the XXXX, XXXX, and XXXX Section 504 Plans, even though the District has previously acknowledged her need for this accommodation. OCR did not find sufficient evidence to support this allegation.

At the beginning of the 2012-2013 school year, Student 2's IEP provided the following modifications in her English and math classes: time and a half for tests, quizzes, and long classwork assignments; graphic organizers; preferential seating near the board; and study guides. She was also entitled to receive modified assignments and an extra copy of her textbook in math. The Complainant told OCR that Student 2's XXXX teachers continued to provide some modifications after she was exited from special education in XXXX, including allowing her extra time on XXXX quizzes, but ceased this practice in XXXX. When interviewed in connection

with another complaint filed by the Complainant (11-13-1129), the XXXX teacher said that she gave the entire class extended time to complete assignments and sometimes gave the Student time even beyond that.

The Complainant told OCR that the District acknowledged Student 2's need for math accommodations at a resolution meeting for a due process petition on XXXX, 2013. OCR listened to the recording of this meeting. Several times during the meeting, the School's EC Department Chair stated that Student 2 requires extended time on math assessments. There were no other statements made by District staff regarding the Student's need for math accommodations.

At the XXXX meeting, the team agreed that Student 2 did not need any instructional accommodations for homebound services because she was doing well in school. The Complainant, EC Department Chair, and math teacher did not participate in this meeting. The XXXX plan was never implemented because Student 2's homebound services did not begin until after her plan was updated at the XXXX meeting.

On XXXX, the team added the following accommodations: extended time (7 days) to return homework, 60 minutes additional time for tests and time-and-a-half for quizzes, "teacher will adapt assignments for home instruction, to stay aligned with standard course of study," "teacher will make available study guides, notes, outlines, topics in class, or powerpoints covered in class," and physical education courses will be modified for homebound needs. During the meeting, the Complainant requested "reduction of math homework" and stated that Student 2 "has been given a reduction of 15 problems per night since the beginning of school even after the IEP was discontinued, so that is the accommodation that I would like to continue moving forward for homework." The team discussed that the math teacher was not available to give input, and they discussed the potential need for modified assignments in other subjects such as biology. After an extensive discussion about wording, the team came to a consensus on "teacher will adapt assignments for home instruction, to stay aligned with standard course of study." At the very end of the meeting as team members were beginning to leave, one team member stated that the team decided that modified assignments were not needed because Student 2 would have extended time and the team did not want to adjust the curriculum. However, the same team member then pointed to "teacher will adapt assignments" and stated "I thought the teacher was already doing that anyways, so it can continue. If there were 30 problems and they were all the same, they could make the determination that she is at home and she only needs to do however many."

On XXXX, the team changed the accommodations on Student 2's plan to the following:

- "Extended time to return daily homework. Each teacher will meet with [Student 2] to determine the plan for returning work."
- XXXX
- Time-and-a-half for testing

The meeting notes from the XXXX meeting also state: "Parent asked how we were going to address how she is going to complete her work in the end of the year. Algebra: Willing to reduce her amount of homework by a percentage such as 25%. ... [Principal] suggested a

reduction of assignments in all classes.... Each teacher will need to set up an individual plan to assist [Student 2] in making up her work.”

The evidence above indicates that the District did not include accommodations for any subjects on Student 2’s XXXX Section 504 Plan, but this did not result in a denial of FAPE because the plan was revised on XXXX before implementation began. Both the XXXX and XXXX Section 504 Plans provided extended time and a mechanism for the reduction of homework assignments. The XXXX meeting minutes specifically discuss a reduction of math homework assignments. Therefore, we did not find evidence to conclude that the District failed to include math accommodations on Student 2’s Section 504 Plans.

Additional Concern

In the course of our investigation, we identified an additional concern that the District failed to follow required procedures in determining that Student 1 no longer needed a Section 504 Plan. The District’s response to the complaint states that on XXXX the team determined that Student 1 “should be exited from 504 services altogether, as he no longer qualified for such services.”

After the team determined that Student 1’s homebound services should be terminated and he should return to school, the Complainant left the meeting. The team then discussed whether he would need accommodations in the school setting. Teachers stated that he never needed extended time on quizzes or tests. The homebound teacher raised a concern about Student 1 being unable to get out of bed on some days; other team members responded that the absence policy allows 5 days to make up work and that the school had agreed to give him extra time anyway. The Assistant Principal stated that the school does not “have an accommodation for organization, and...that may be how his XXXX manifests itself.”² She suggested a “safe place” to XXXX. The Compliance Specialist stated:

So we don’t have enough information on what this XXXX is and how it really manifests in the school setting. ... I’m hearing on the consensus, you’re basically saying “yes, he does have XXXX, yes he XXXX,” however...from what I’m hearing it’s not being substantially limiting in that when he’s here and he’s on point and you are working with him he is maintaining as if his same peer group is there, average student...

The XXXX asked if the team had ever seen him off his XXXX medication, and team members said no. The team then discussed how Student 1 was “fine” at school and the Coordinator argued that he was not in fact a trigger of XXXX. He stated: “So I’m saying that our information that

² At the beginning of Student 1’s meeting on XXXX, the team argued about whether to document that Student 1 had a diagnosis of XXXX. The Coordinator initially refused because the most recent doctor’s referral form did not include XXXX in the list of Student 1’s diagnoses, even though XXXX was listed in the original doctor’s letter from XXXX and even though Student 1 took XXXX medication at school. The Coordinator also stated that XXXX was the “predominating disability” and that it was “not as critical” to document other impairments. The XXXX stated that under the old NC Wise system they just checked off the primary impairment, but this year the District has started documenting all of a student’s impairments. The Coordinator still refused to document XXXX because it was only listed in the doctor’s letter and not on an official form. After another lengthy argument, the Compliance Specialist agreed with the Complainant that all diagnoses, including XXXX, should be documented.

we know is facts says this, everything else that [the Complainant] says we're speculating. We don't know these things as fact, we know the things that we disputed as false and true, so I think [exiting him from Section 504 is] appropriate." The team then agreed that Student 1 be exited from Section 504 because his disability is not substantially limiting his performance. The XXXX stated that "this plan can be reviewed, reinstated if evidence proves he does need support."

The District's eligibility determination paperwork states that Student 1's XXXX does substantially limit a major life activity because his XXXX make it difficult for him to access the curriculum. The paperwork then states that Student 1 does not need accommodations, services, or supports because "the team found that [Student 1] functioned totally normal while he attended school. And, CMS Homebound Services is not appropriate under Section 504." The team checked "not eligible" at the end of the paperwork.

Analysis

Based on the eligibility determination paperwork, it appears the team ultimately determined that Student 1 is a student with a disability who does not need any services or supports. The team determined that Student 1 did not need services or supports despite the information from Student 1's doctor and the following additional information:

XXXX

As discussed above, the team did not attempt to contact Student 1's doctor or get input from a psychologist or nurse. Therefore, the District's evaluation violated Section 504 because it did not consider current information from a variety of sources, particularly individuals knowledgeable about the nature of his disability. The XXXX stated that the team did not have enough information about Student 1's XXXX and how it manifested in the school setting, suggesting that further evaluation was needed. The Assistant Principal appeared to acknowledge that Student 1 may need accommodations to address organization, but stated that the School does not offer such accommodations. The homebound teacher reminded the team that Student 1 could not get out of bed on some days, but the team did not discuss whether the Student would need accommodations to address frequent absences. One teacher noted that the absence policy allows 5 days to make up work and the team was agreeing to give him more time, which seems to acknowledge that an accommodation may be needed but that it would be handled informally outside the auspices of a Section 504 Plan.

Conclusion

To resolve the concerns identified above, the District voluntarily entered into the attached Resolution Agreement, signed on March 21, 2014, pursuant to which it agreed to:

- Provide training for the School's Section 504 Coordinator and an administrator at the School; and
- If Student 1 returns to the District, offer to conduct a new evaluation to determine whether he needs services and supports.

Once the Resolution Agreement is fully implemented, the District will be in compliance with Section 504 and Title II with respect to the issues addressed herein. OCR will monitor the District's progress on implementing the Resolution Agreement. Failure to implement the Resolution Agreement could result in OCR's reopening the complaint investigation.

This concludes OCR's investigation of this 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.

We remind the District that it is not permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Deborah Kelly, the OCR investigator assigned to this complaint, at (202) 453-5919 or Deborah.Kelly@ed.gov, or Sarah Morgan, the OCR attorney assigned to this complaint, at (202) 453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

/s/

Rachel Glickman
Team Leader, Team IV
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Jonathan Sink