



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.
WASHINGTON, DC 20202-1475

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

March 26, 2014

Freddie Williamson
Superintendent
Hoke County Schools
310 Woodley Street
Raeford, North Carolina 28376

Re: OCR Complaint Nos. 11-14-1016 and 11-14-1076
Letter of Findings

Dear Dr. Williamson:

This letter is to inform you of the outcome of the above-referenced complaints. The Complainant filed these complaints with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), on November 19, 2013, and December 31, 2013, against Hoke County Schools (the District). The complaints were filed on behalf of the Complainant's son (the Student), who attends the District's XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability (XXXX) when:

1. The Student's Section 504 Team determined that the Student's plan was not implemented and he was permitted to make-up the affected work. However, the time it took the Student to make up this work placed him further behind in his courses, particularly in XXXX for which he received a poor grade;
2. The Complainant attempted to file an internal grievance about these concerns but the District would not accept the grievance; and
3. The District did not provide the Student a Section 504 Plan for the disabling condition XXXX.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including 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. Since the District receives Federal financial assistance from the

Department and is a public entity, we have jurisdiction over it pursuant to Section 504 and Title II. Because the Complainant alleged discrimination under these laws, we have jurisdiction over the allegation.

In making our determinations concerning this complaint, we evaluated the documents and verbal information provided by the Complainant. We also considered the District's data submissions and interviewed District staff.

Allegations 1 and 3

The Section 504 regulation, at § 104.33(a), requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. Section 104.33(b) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met. OCR has determined that implementing an appropriately developed Section 504 Plan is one means of meeting this standard. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

During OCR's investigation, the District expressed a willingness to resolve the allegations. Pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the District. On January 21, 2014, the District held a meeting to review the Student's Section 504 Plan XXXX. XXXX this accommodation was added to his Section 504 Plan. OCR reviewed the documentation of this meeting, including the list of attendees and meeting notes, and found that this meeting complied with the Section 504 procedural requirements.

Additionally, the District took steps to remedy the claim that the failure to implement the Student's Section 504 Plan at the start of the 2013-2014 school year could have resulted in the Student not passing XXXX. On January 15, 2014, the District's attorney submitted a letter to OCR stating that the District registered the Student to retake XXXX during the second semester of the 2013-2014 school year, and OCR confirmed this was done. The District agreed to ensure that the Student's Section 504 Plan would be implemented from the start of the course. If the Student earned a "C" or better, the District would expunge the XXXX grade from the fall of 2013-2014 school year from his transcript. A copy of the January 15, 2014, letter is enclosed with this letter. The District has agreed to provide OCR with a copy of the Student's final transcript for the 2013-2014 school year by July 1, 2014, so that OCR can verify the District has followed through with this commitment.

After the District takes these required steps, this will resolve any of the concerns raised by this allegation. The provisions of the January 15, 2014, letter are aligned with the issues raised in the complaints, information obtained during the course of OCR's investigation, and are consistent with the applicable regulations. As explained above, OCR will monitor implementation of the January 15, 2014, letter.

OCR will not close the monitoring of this case until OCR determines that District has fulfilled its terms and is in compliance with the regulations implementing Section 504 at 34 C.F.R. Part 104 and Title II at 28 C.F.R. Part 35. The District understands that it agrees to provide data and other information in a timely manner about the planned training. Further, the District understands that during the monitoring of this agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with Section 504, Title II, and the relevant regulations.

OCR notes that during the investigation of this complaint OCR found that the School's Section 504 Coordinator was not typically communicating with the teachers of students with Section 504 plans about the disability-related aids and services each student needed. Instead the 504 Coordinator was waiting until a few weeks into the school year.¹ Once this concern was identified, the District took immediate action. The District's Executive Director for Student Support Services issued a memo to all District Section 504 Coordinators on January 13, 2014, setting the start of the school year or start of the semester as the deadline to make teachers aware of the Section 504 Plans in place for their students.

Allegation 2

The Section 504 regulation, at Section 104.7(b), requires the adoption of a grievance procedure by a recipient that employs fifteen or more persons that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. Additionally, Title II regulation, at Section 35.107 (b) requires a public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II.

The District has adopted a grievance procedure, which can be found on the District's website under School Board Policies 1740/4010. This process requires a parent to raise his or her concerns in writing to a building principal. On November 1, 2013, the Complainant sent a letter to the District's Superintendent raising concerns about the Student struggling in XXXX because he fell behind at the start of the year when he was not provided accommodations for the first few weeks of school. The Complainant provided OCR a copy of this letter and told OCR that she never received a response. The District informed OCR that it was not aware of the complaint and did not have any records of receiving the letter.²

In response to this allegation, the District's attorney issued a memorandum on February 6, 2014, to all District Administrators and Principals reminding them of the need to trigger the grievance procedures specified in 1740/4010 when complaints are filed. Additionally, the District provided training on the District's grievance procedures to principals and district administrators at a meeting on February 6, 2014. These actions resolve this allegation.

¹ In the case of the Student, this may have resulted in his Section 504 Plan not being implemented in the first few weeks of school. However, prior to the Complainant filing this OCR complaint, the Student's Section 504 team convened and determined that he was permitted to retake tests and make up assignments for which he was not provided accommodations. The concerns specific to the Student are addressed through the District's actions described above.

² The substance of the complaint is now resolved, as described in the discussion of Allegation 1.

Conclusion

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 despite the fact that OCR has not found a violation.

We have advised the Complainant that the District may not harass, coerce, intimidate, or discriminate against an individual who has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another 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 OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We wish to thank the District's attorney, Nick Sojka, for all of his help during our investigation. If you have any questions, please contact Judith Risch, the assigned attorney, at (202) 453-5925, or Judith.Risch@ed.gov.

Sincerely,

/S/

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

Enclosure

cc: Nick Sojka, Attorney