



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

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

March 2, 2015

Dr. Merle P. Herndon
Superintendent
Halifax County Public Schools
1030 Mary Bethune Street, P.O. Box 1849
Halifax, Virginia 24558

Re: OCR Complaint No. 11-14-1313
Letter of Findings

Dear Dr. Herndon:

This letter is to notify you that the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), has completed its investigation of the above-referenced complaint. On August 27, 2014, OCR received a complaint filed against the Halifax County Schools (the District), in particular XXXX School (the School), on behalf of a student (the Student) at the School. Specifically, the Complainant alleged that during the fall 2013 semester, the School denied the Student a free appropriate public education (FAPE) by failing to properly evaluate him for a Section 504 Plan.

OCR has completed its investigation. Based upon our review of the information gathered, OCR has determined that there is sufficient evidence to conclude that the District discriminated against the Student as alleged. A summary of OCR's responsibilities and applicable legal standards, and a more detailed discussion of our determination regarding the allegation are set forth below. OCR has also attached the resolution agreement signed by the District, which, once fully implemented, will remedy the violation. OCR will monitor the District's implementation of the agreement.

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. OCR interprets the Title II regulation to require districts to provide a FAPE to the same extent required under the Section

504 regulation. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Factual Background

The Student was in the twelfth grade at the School during the 2013-2014 school year. According to records obtained from the School, the Complainant notified School personnel during the fall 2013 semester that the Student underwent a psychological evaluation in 2011, which revealed the diagnosis of Borderline Intellectual Functioning. At the same time, the Complainant indicated to the School her belief that the Student had Attention Deficit Hyperactivity Disorder (ADHD).

The School held two meetings for the Student during the fall 2013 semester: one on October 2, 2013, and one on October 21, 2013. Through inspections of the attendance sheets of these meetings, and through interviews with School and District personnel, OCR determined that these meetings were meant to establish the Student's eligibility for services and to determine what specific services would be provided. The Section 504 Plan that was developed as a result of these October meetings identified the Student's disability as ADHD and lists a number of related services, including: a) extended time; b) separate room testing; c) preferential seating; d) small group testing; and e) after school tutoring. The Section 504 coordinator informed OCR that the School did not ask for consent from the Complainant to evaluate the student for related aids and services during the fall of 2013.¹ The Section 504 Coordinator stated that the Complainant did give verbal consent for the School to review classroom strategies and to review the Student's School records.

The Section 504 Coordinator indicated to OCR that she attended both meetings in October and that the group relied on a 2011 medical report provided by the Complainant, which stated that the Student was diagnosed with Borderline Intellectual Functioning and did *not* have a diagnosis of ADHD. According to the Section 504 Coordinator, the group that met in October was not knowledgeable as to the Student's diagnosis of Borderline Intellectual Functioning, nor did they have specific knowledge about the Student's undiagnosed ADHD or the information found in the 2011 report. The group did not consult with or otherwise contact any individual who would have such knowledge during the fall 2013 semester. The 504 Coordinator explained that the Student's 504 Plan indicates ADHD as a diagnosis at the Complainant's insistence, but that the Complainant did not provide the District with any additional assessments. Additionally, the Section 504 Coordinator noted that the District did not conduct a formal evaluation of the Student due to the fact that the School did not have an Exceptional Children's Director (EC Director) in place at that time.

Discussion

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to each qualified individual with a disability in the school district's jurisdiction, regardless of

¹ Although the District provided OCR with a form titled "Permission for Screening," dated October 1, 2013 that contained a line for the Complainant's signature, and which was not signed, the Section 504 Coordinator clarified to OCR that the counselor included this form in the Student's file in anticipation of needing to conduct an evaluation at a later date.

the nature or severity of the individual's disability. 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 persons without disabilities are met and are based upon adherence to the procedural requirements of Section 504 pertaining to the educational setting, evaluation and placement, and the provision of procedural safeguards. OCR interprets the regulation implementing Title II as imposing substantially similar requirements to those found in the regulation governing Section 504. The Section 504 regulation, at 34 C.F.R. § 104.35, requires a school district to evaluate a student who because of 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.

OCR's investigation of a complaint like this one focuses on whether the school district has complied with the FAPE process requirements of Section 504 and Title II relating to educational setting, evaluation and placement, and procedural safeguards. In evaluating and placing a student with a disability, Section 504 requires a school district to: (1) draw upon a variety of sources in the evaluation process; (2) establish procedures to ensure that information obtained from all sources is documented and carefully considered; (3) ensure that each placement decision is made by a group that includes persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and (4) notify the parent or guardian of due process rights. Except in extraordinary circumstances, which are not present here, OCR does not investigate individual placement and other educational decisions made by a school system, but instead ensures that such decisions are made consistent with the above process requirements and are based on the student's individual educational needs (individuals have the option of filing for a due process proceeding to challenge the substance of such decisions). We interpret Title II as imposing similar requirements. Thus, in this case, OCR did not investigate whether the District was correct in failing or refusing to provide specific aids and services, but rather whether it followed the correct procedures in deciding what aids and services the Student needed.

OCR determined that while the District did provide the Student with related services, the District failed to evaluate the Student to determine the nature of his disability, which is essential for determining which services are appropriate, and also failed to convene a group of persons knowledgeable about the meaning of evaluation data in determining the related services for the Student. It is clear from the documentation provided to OCR and the information obtained through interviews with the Complainant and District staff that the District did not properly evaluate the Student during the fall 2013 semester. The Section 504 Coordinator stated to OCR that no evaluation was conducted because the District did not have an EC Director in place at the time and the related services listed for the Student were not the result of an informed discussion involving persons knowledgeable about the Student's disabilities, which appear to possibly include Borderline Intellectual Functioning as well as ADHD.² The Complainant believes that as

² OCR inquired as to what, if any, testing was performed during the Spring 2014 semester. The EC Director and the Instructional Facilitator noted that they performed "informal testing" to determine the Student's ability to comprehend reading material, but did no further evaluation of the Student because the Complainant did not provide her consent. The Complainant stated to OCR that she provided consent to District staff whenever it was requested and had the Student independently evaluated in May 2014, but decided at that point that there was no need to share the results of the evaluation as the Student was graduating the following month. Because OCR could not substantiate that the District ever requested consent from the Complainant to evaluate the Student and because the

a result of the District's failure to evaluate the Student, he suffered substantial academic harm during the fall semester, including failing both English IV and Biology. The Complainant informed OCR that while the Student has graduated from high school, he continues to struggle in these academic areas as a student at a local community college.

Conclusion

Based on the above discussion, we conclude that the District is in violation of Section 504 and Title II. As a result, OCR has entered into the attached resolution agreement with the District, which, when fully implemented, will remedy OCR's concerns related to the District's failure to evaluate the Student during the fall 2013 semester. OCR will monitor the District's compliance with the agreement.

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. 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 District may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. 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.

If you have any questions regarding the content of this letter, please contact Todd Rubin at (202) 453-5923 or Todd.Rubin@ed.gov, or Sebastian Amar at (202) 453-6023 or Sebastian.Amar@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader, Team III
Office for Civil Rights
District of Columbia Enforcement Office

District informed OCR that it failed to evaluate the Student because it did not have an EC Director in place, OCR could not substantiate that the failure to evaluate the Student was attributable to the Complainant not providing consent for evaluations.