



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 6, 2015

Dr. Johnny Hunt
Superintendent
Public Schools of Robeson County
410 Caton Road
Lumberton, North Carolina 28360

RE: OCR Complaint No. 11-15-1135
Letter of Findings

Dear Dr. Hunt:

This letter is to notify you of the disposition of the complaint that was filed February 10, 2015, with the District of Columbia Office for Civil Rights (OCR), U.S. Department of Education (Department), against the Public Schools of Robeson County (the District) and XXXX School (the School), in particular. The Complainant alleged that the District discriminated against her daughter (the Student) based on disability when it failed to evaluate her in fall XXXX.

OCR is responsible for enforcing 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 educational systems, regardless of whether they receive federal financial assistance from the Department. Because the District is a recipient of federal financial assistance from the Department and is a public entity, it is subject to the provisions of Section 504 and Title II.

During the course of this investigation, OCR reviewed information submitted by the District and the Complainant, and interviewed the Complainant and District and School staff. After carefully considering all the information obtained during the investigation, OCR determined that there is sufficient evidence to conclude that the District discriminated against the Student, as alleged. Pursuant to Section 303 of OCR's Case Processing Manual, the District signed the enclosed Resolution Agreement on August 3, 2015 which, when fully implemented, will resolve the allegation raised in this complaint. The reasons for OCR's findings are outlined below.

Legal Standards

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

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a) requires school systems to provide qualified students with disabilities a free appropriate public education (FAPE), defined as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. 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 to the same extent required under the Section 504 regulations.

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, document and carefully consider such information, 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.

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 academic performance, a group of knowledgeable persons should consider whether further evaluation or revisions to the student’s services or placement are necessary.

Background

The Student was enrolled at the School in the Kindergarten for the 2014-2015 school year.¹ At the beginning of the school year, the Student was given a state-wide assessment (Reading 3D/DIBELS) and scored in the “Green” level, indicating that the Student scored at or above grade level. The Student’s Classroom Teacher (the Teacher) told OCR that whenever the Student attended school, she was “fine” in the classroom, participated, and got along well with her classmates. However, from the start of the school year (August 25, 2014) through October 2014, the Student was absent for nineteen days due to illness.

The Student’s primary care doctor submitted a Request for Homebound Services for the Student dated October 30, 2014. The request was denied on November 7, 2014 because the School needed additional information. The Student’s doctor resubmitted the Request for Homebound Services, this time including additional information on the Student’s medical condition, citing “XXXX syndrome” as the reason for the request.² The form stated that the Student would be unable to attend school for approximately six weeks/months (neither option was circled).

¹ On September 4, 2014, the Student was given a Section 504 plan for XXXX that included moving to a different setting and taking medicine when the Student experienced symptoms. The Section 504 Plan provided that the Student would be educated in the regular education setting. It did not address attendance or absences from school.

² According to the National Institute of Mental Health, children with XXXX experience a sudden onset of symptoms including motor or vocal tics, obsessions, and/or compulsions and may also experience XXXX symptoms, mood changes, and fine/gross motor changes (e.g., changes in handwriting), along with other symptoms.

The Director of Student Services for the District, the Assistant Superintendent, and the Nurse Supervisor met to discuss the homebound request. None of these individuals worked at the School or knew the Student. According to the Nurse Supervisor, the Director of Student Services requested that the Nurse Supervisor contact the doctor in order to obtain more information regarding XXXX since the District personnel reviewing the homebound request still needed more information on the disease and why homebound was needed. After obtaining a full medical release from the parent, the Nurse Supervisor called the Student's doctor. The Nurse Supervisor told OCR that she could not remember the specific details of the conversation but that she recalled the doctor saying that the Student had symptoms of XXXX syndrome and recommending that the Student receive services at home instead of going to school. The Nurse Supervisor said to OCR that this conversation helped her better understand the reason for the homebound request and the District approved the homebound services on November 12, 2014. On the approval form, the beginning date was listed as November 3rd and the return date was listed as December 16th (approximately six weeks). The Director of Student Services told OCR that the District decided to provide the Student with an hour and a half of homebound instruction twice a week as this was the standard for the District for homebound services. The Director told OCR that this calculation was the result of the District's homebound practice and was not discussed at a meeting with individuals knowledgeable about the Student. The District did not schedule a meeting to discuss the Student's Section 504 Plan or otherwise take steps to review or revise the plan.

The Student's Homebound Instructor stated to OCR that she started homebound instruction with the Student on November 21, 2014. Both the District and the Complainant told OCR that in January 2015, the Student returned to the School for one day (January 6th according to the Complainant). The District's narrative response states that on January 5th, a homebound request was resubmitted to the District, and on January 27th, the District received another request from the Student's doctor, this time requesting five months on homebound. On January 29th, the District approved the request; according to the District's narrative response, the homebound was only approved for a six week cycle until medical appointments at Duke were completed (the Complainant reported to OCR that she began taking the Student to Duke in January for treatment). The homebound approval form listed January 5th as the start date and February 16th as the return date. On February 25th, in a fax to the School from the Director of Student Services including an updated homebound approval form, the District extended the return date to March 27th to accommodate upcoming doctor appointments at Duke.

On March 12, 2015, the Student's doctor sent a letter to the School further explaining the Student's condition. The letter stated in part, "Due to her illness, any illness can trigger an XXXX episode making it difficult for the patient [to] handle educational instruction" and elaborated that the Student "would be best suited for only 2 hours a day at this time for educational instructions." Further, the letter described XXXX as a XXXX. The letter also stated that the Student would be going to XXXX for further research treatment on her condition. On March 25th, the Complainant emailed the Assistant Superintendent saying that she had taken the Student to Duke the previous day where the Student's XXXX was scheduled. On March 26th,

the School approved another cycle of homebound services, with the return date listed as April 24th. However, the Student remained on homebound for the remainder of the School year.³

The Director of Student Services informed OCR that she spoke to the Complainant frequently since the beginning of the homebound services. According to the Director of Student Services, the Complainant indicated to her that she was worried about the Student being behind academically because of her illness since the illness caused the Student to be unable to physically access her education. The Director of Student Services stated to OCR that the Complainant also noted that she felt that the Student could not perform as well as a student who could be in the classroom with no medical conditions. Based on the Complainant's concerns, the Director of Student Services stated to OCR that she discussed informal accommodations with the Complainant, such as giving the Student breaks (if needed) during homebound instruction and extending the homebound sessions in order to make up for the breaks. The Director of Student Services told OCR that she instructed the Student's Homebound Instructor to implement the informal accommodations for the Student. However, the District did not take steps to review or revise the Student's Section 504 Plan or discuss whether the instructional schedule and hours were appropriate for the Student.

The Homebound Instructor noted to OCR that, during some sessions in XXXX, the instructional time was impacted because the Student was not feeling well and would put her head down, saying aloud that she was not feeling well. The Homebound Instructor told OCR that on occasions when the Student would put her head down and not want to work because she was feeling ill, the Homebound Instructor would try to encourage the Student or give the Student a break. The Homebound Instructor reported to OCR that sometimes these methods worked, but other times they did not. When it was impossible to get the Student to work, the Homebound Instructor said she would leave but did not report it to anyone at the School. When OCR spoke to the Homebound Instructor on June 2nd, 2015, she stated that episodes of the Student putting her head down and not being able to work had not happened approximately five weeks before that interview but prior to that had been occurring about twice a month. The Homebound Instructor informed OCR that as far as she knows, the Student has received all of her homebound hours.

When OCR spoke to the Homebound Instructor about the Student's academic performance, she said that in her opinion, the Student was performing on grade level when homebound first began in November. However, the Homebound Instructor told OCR that after the Student had surgery in December, the Student went through a "lull" and could not remember words, could not remember lines from one line to another when reading, could not do math, and had terrible handwriting. The Homebound Instructor told OCR that the Student was an active child both before surgery and after she recovered from surgery. The Homebound Instructor stated that, based on her experience, the Student's activity level and low attention span were typical of a

³ OCR notes that, during the provision of homebound services, little to no communication existed between the Teacher, who provided assignments for the Student, and the Homebound Instructor, who delivered instruction. Both the Teacher and the Homebound Instructor told OCR that in the beginning of the year, the Homebound Instructor would pick the folder up from the Teacher's classroom and speak with her, but later in the year (beginning in March) the Homebound Instructor would pick the folder up from the office. Related to this lack of communication, when OCR inquired of the Teacher about the Student's academic progress, she stated that she could not discuss her progress and could not base any assessment on the work that was completed.

kindergarten student for the most part, but that most kindergarten students were able to keep their attention when she worked with them one-on-one, whereas the Student struggled to do this. The Homebound Instructor told OCR that she did not report these concerns to the School because, as discussed above, she did not have much interaction with the Teacher. She did state, however, that she reported some of these concerns to the Homebound Director.

The Guidance Counselor and the Teacher informed OCR that the Student did not receive a first nine weeks report card because the Student was on homebound when the end-of-quarter assessments were given and the Teacher did not have enough information to assess the Student. Similarly, the Teacher reported that the Student was not able to complete the mid-year assessment (January) or the end-of-year assessment (April/May) because the Student was not in school and the assessment needed to be administered by the Teacher; these assessments covered reading and language arts. However, the Teacher explained to OCR that the assessments given at the end of each nine weeks (which include reading and math) are able to be administered by a homebound teacher.

The Teacher reported to OCR that the Student's assessment from the end of the second nine weeks indicated that the Student was performing below grade level. On January 27th (after the second nine weeks), the School sent the Complainant a letter stating that the Student was not performing at grade level and may be retained at the end of the year. The letter listed academic concerns as "Recognize letters out of order (lower/uppercuse). Sounds of each letter, recognize/write numbers 1-20. Count to 100 by the end of the school year. Recognize 2D/3D shapes. Kindergarten sight words." The Teacher told OCR that she was involved in the drafting of this letter and that it was based on the Student not being in class and not being individually assessed. The Teacher told OCR that January 2015 was the last time she spoke with the Complainant regarding academics.

For the assessment at the close of the third nine weeks, the Teacher reported that the Student still was not performing on grade level in some areas. When OCR spoke to the Teacher on June 2nd and asked if the Student was currently performing on grade level, the Teacher responded that for reading, she did not know because she did not work with the Student. The Teacher said that for math and writing, the Student is performing below grade level. The Guidance Counselor also told OCR that after reviewing the assessments, she believed that the Student was not where she needed to be academically and that the Student was below grade level in reading and math.

The Exceptional Children (EC) Director/504 Coordinator for the District told OCR that she had not been aware of the Student or her situation until this complaint was filed. On February 18th, 2015, the Complainant emailed the EC Director/504 Coordinator asking for an assessment for the Student for the EC program "because of continued needs for support of her medical condition and by her inability to keep up with school work due to her medical needs." The EC Director/504 Coordinator replied via email asking what the Student's medical condition was, and the Complainant responded that the Student has PANDAS/PITANDS. There is no record of the District's response to this e-mail.

Analysis and Conclusions

If the District has sufficient information to believe that the Student may need special education or related aids and services due to a disability, it is required to evaluate the Student under Section 504. At the beginning of the 2014-2015 school year, the District conducted an initial evaluation, identified the Student as a student with a disability based on a medical condition (migraines), and placed the Student in a regular education setting with accommodations. Several months later, the District knew that the Student had been absent for nineteen days due to illness from the beginning of the school year through October. By November 10, 2014, the District knew that the Student had been diagnosed with XXXX by her doctor and that the doctor had recommended homebound instruction. While being assigned homebound services does not automatically trigger Section 504 obligations, in this case the Student was already identified as a student with a disability for medical reasons and the District had clear notice that the request for homebound services was related to a newly-diagnosed chronic impairment. The District was also on notice that the Student had frequently been absent from school for medical reasons, which was not addressed in her existing Section 504 Plan. OCR finds that the District had sufficient information as of November 2014 to warrant reevaluating the Student as required under Section 504 to determine whether the Student may need additional or different regular or special education or related aids and services.

Furthermore, Section 504 requires an evaluation of a student with a disability prior to a significant change in placement. Moving a student from the regular educational setting to homebound instruction based on a new diagnosis could constitute a significant change in placement. While several high-level District administrators discussed the request and ultimately approved homebound instruction after the Nurse Supervisor spoke to the Student's doctor, the District did not conduct a sufficiently thorough evaluation. In particular, the District did not convene a group that included persons knowledgeable about the Student to discuss her needs related to her new diagnosis, determine whether additional or different aids or modifications would be necessary on homebound instruction, and determine what instructional schedule and number of hours would be appropriate to meet her individual educational needs and ensure she received FAPE while homebound. Instead, the District unilaterally assigned a standard number of hours of homebound instruction without considering her individual needs.

The District continued to approve homebound requests from the Student's doctors throughout the school year. However, the District failed to convene a group of knowledgeable persons to consider whether further evaluation or revisions to the Student's services or accommodations were necessary after the District had reason to believe that the homebound instruction she received may not be meeting her individual needs. After homebound services began, the Director of Student Services spoke frequently with the Complainant regarding the Student's homebound experience and knew the Complainant was concerned with the Student's ability to physically access her education. As a result, the Director of Student Services discussed informal accommodations for the Student, such as giving the Student breaks, with the Complainant and instructed the Homebound Instructor to implement those accommodations. The Homebound Instructor followed the Director of Student Services' instructions and gave the Student breaks when the Student was feeling ill, but sometimes this did not work and the Homebound Instructor ended the homebound session. The Homebound Instructor did not report these incidents to the School. On February 18th, the Complainant emailed the EC Director/504 Coordinator requesting an assessment of the Student for the EC program "because of continued needs for support of her

medical condition and by her inability to keep up with school work due to her medical needs.” On March 12th, the Student’s doctor sent a letter to the District making it aware of the difficulties and complications associated with PANDAS, particularly in regards to education.

The District knew that the Student began the year on or above grade level as indicated by placing in the “Green” level on the beginning-of-the-year statewide assessment. The results of the second nine weeks assessment indicated to the Teacher that the Student was not performing at grade level, and after the second nine weeks the School sent home a letter to the Complainant indicating that the Student may be retained at the end of the year. When OCR last spoke to the District, the Student’s Teacher stated that the Student was not performing at grade level for math or writing (but that she could not make an assessment for reading) and the Guidance Counselor believed the Student was below grade level in reading and math. In summary, the District should have reevaluated the Student in response to concerns voiced by the Complainant to the District, information that the informal modifications made by the School were not effective, continued requests for further homebound services and notice of continued medical treatment, concerns noted by the Homebound Instructor, and the Student’s below-grade-level academic performance leading to a retention letter after the second nine weeks. Based on all the above, OCR finds that there is sufficient evidence to conclude that the District discriminated against the Student when it failed to evaluate the Student, as alleged.⁴

Conclusion

Pursuant to Section 303 of OCR’s Case Processing Manual, the District signed the enclosed Resolution Agreement on August 3, 2015 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issue raised by the Complainant, the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of 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.

⁴ As a result of the District’s failure to reevaluate the Student between November 2014 and June 2015, OCR has concerns that the District may have denied the Student appropriate educational services. We note that the District eventually scheduled an EC evaluation for June 2015 to determine the Student’s IDEA eligibility. School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. However, in this case, the District did not schedule the evaluation in a timely manner, and it did not appear that the evaluation would fulfill the District’s Section 504 obligation to determine whether the Student needed additional related aids or services if she was determined ineligible for special education.

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, please contact Jan Gray, the OCR attorney assigned to this complaint, at 202-453-6028 or via e-mail at Jan.Gray@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure