



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

April 22, 2016

Dr. David Ross Renfrow
Superintendent
Johnston County Schools
2320 US 70 Business Hwy East
PO Box 1336
Smithfield, North Carolina 27577

Re: OCR Complaint No. 11-16-1062
Letter of Findings

Dear Dr. Renfrow:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on October 27, 2015, against Johnston County Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) in the dual enrollment program at XXXX School (the School) and Johnston Community College (the College). The Complainant alleges that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges that:

1. The District refused to intervene in the College's refusal to modify the Student's academic adjustments;
2. The School's 504 team refused to discuss a possible accommodation for doctor visits at the XXXX 504 meeting; and
3. The School's 504 team did not consider transportation for the Student for the current school year because the District does not offer transportation for any students at the School.

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. 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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District faculty/staff. After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding allegation 1, which the District agreed to resolve

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by fostering educational excellence and ensuring equal access.*

through the enclosed resolution agreement. However, OCR did not find sufficient evidence to support allegations 2 and 3.

OCR's findings and conclusions are discussed below.

Background

The Student is a high school student in a dual enrollment program at the School and College with a Section 504 plan for an XXXX

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipients of federal funding that operate a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to students with disabilities. A "program or activity" includes any state or local departments, agencies, special purpose districts, local educational agencies, and other school systems. 34 C.F.R. § 104.3. 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. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

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, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; 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; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Analysis

Allegation 1: The District refused to intervene in the College's refusal to modify the Student's academic adjustments

The Complainant alleges that staff at the School refused to help her make sure the Student was receiving appropriate services at the College. She further alleges that the School denies any involvement in the College disability process.

The District states that the Complainant raised concerns about the Student's College classes on several occasions with School staff. The District asserts that it was unaware that the Complainant's concerns were allegations that the College was not providing academic adjustments. The District also asserts that that the Complainant did not ask for other accommodations to be considered by the College.

School staff kept records of several conversations with the Complainant, Student, and College staff. On September 23, 2015, the School's Section 504 Coordinator received an email from one of the College instructors informing her that the Student had missed two days of class and had not turned in an assignment all semester. The Coordinator met with the Student and the School's principal regarding this email. The Coordinator noted that the Student informed the Coordinator of her plan to meet with the instructor and ask about the College's system for online assignment submission. The Student also provided that she had only missed one day of class. The Coordinator told the Student that "the instructor emailing and providing support is a gift" because the College instructors are not obligated to work with students who are absent and not turning in assignments. She encouraged the Student to "work with the instructor" since the instructor is working with her.

The Principal noted meeting with the Complainant on October 21, 2015, to discuss the Complainant's concern that the Student's College Instructors would not discuss the Student with the Complainant. The Principal told the Complainant about the September 23, 2015 discussion between the 504 Coordinator and the College instructor about the Student's missing work. The Principal also told the Complainant that the Principal and the 504 Coordinator met with the Student to suggest strategies to turn in work on time. The Principal further explained to the Complainant that it was the Student's responsibility to complete her College assignments and work with her College instructors.

OCR asked the 504 Coordinator about the discussion about the Student's missing assignments. The Coordinator connected the Student with a teacher at the School to help her get back on track. The Coordinator stated that she did not discuss the Student's performance with College staff because it was against College policy for her to discuss the Student with College instructors. She added that it was a privilege for the student to attend College courses, so it is her responsibility to contact College instructors for assistance with College courses. She provided that if the School's Section 504 team became aware of issues with College courses related to a student's disability, the student would be referred to the disability services coordinator at the College.

OCR also interviewed the Principal, who confirmed that the 504 Coordinator had the Student work with a teacher at the School to create a plan to address her missing College assignments. She also stated that students are directed to address disability-related issues with College courses directly with the College, although the School does have a liaison that also works with parents and students when they have a concern. She provided that the School and the College are two separate entities, but that the District pays for the College courses and the students receive high school credit for the College courses.

The dual enrollment program in which the Student is enrolled is a program covered by Section 504. The School is run by the District, and all students are enrolled in the District. The District covers the tuition for the College courses, and the students receive high school credit for them. The College courses are therefore included within the District program, and the District has an obligation to ensure that students with disabilities receive FAPE within their College courses. The District's policy of referring Students directly to the College for disability-related issues therefore violates Section 504 and Title II. The District must update its policy to treat these issues as they would any issues that arise within students' high school courses.

With regards to the Student, there is sufficient evidence to conclude that the District's response to the issues raised by the Complainant violated Section 504. The Complainant alleges that the District refused to intervene in the College's refusal to modify the Student's academic adjustments. After conducting interviews with the Complainant and School staff, OCR concludes that there is insufficient evidence to find that the Complainant voiced the specific concern that the College refused to modify the academic adjustments that the College wrote for the Student. However, there is sufficient evidence to find that the School was aware that the Complainant had concerns about the Student's ability to succeed in her College classes, and that the School was aware that the Student was in fact having some issues with turning in assignments in her College classes. The School's 504 team should have addressed these concerns, and if the team concludes that the Student is not receiving FAPE in her College courses, it has an obligation to provide accommodations to ensure that the Student receives FAPE in those courses.

Allegation 2: The School's 504 team refused to discuss a possible accommodation for doctor visits at the November 23, 2015 504 meeting.

The Complainant alleges that at a Section 504 meeting on XXXX, she and her husband requested an accommodation for extra absences for doctors' visits, and that there was no response from the School principal. The Complainant further provided that when she asked to discuss absences at the 504 meeting, the principal responded that she was not leading the conversation. When another staff person asked the principal directly for her opinion, the principal did not respond. The conversation ended there.

The District asserts that the Complainant did not request an accommodation for doctors' visits at the Section 504 meeting, but does provide that the Student's father asked whether absences could be excused with a doctor's note and that the Complainant asked a question about excused absences in classes at the School. The District states that the 504 Coordinator asked the Principal to address the question, as it related to absences and attendance, but that the Principal did not answer because the Complainant stated that there was a county policy that answered her question, and there was no further discussion. The District further provides that the issue is a "non-issue" because the Student's attendance has been good in both College and School classes.

A Section 504 Eligibility Determination Report from the November 23, 2015 meeting states that the Student so far had five absences for the 2015-2016 school year. The discussion of absences for doctors' visits was not recorded in the meeting minutes or other meeting documentation.

OCR interviewed all of the School staff present at the November 23, 2015 meeting. The 504 Coordinator told OCR that the Complainant's husband asked the Complainant if something could be done about the Student's excessive absences for doctor's appointments. The Coordinator said that the Complainant responded to her husband that there was nothing to discuss because they get doctor's notes and that it was handled. The 504 Coordinator said that the discussion ended there, and no questions regarding absences were directed to School staff. The general education teacher present at the meeting told OCR that he could not remember the meeting that well, but believed that the Complainant's husband brought up that the Student had not missed many high school classes, and that the Complainant replied that there was not an

issue at the high school, because it was the college that allowed fewer absences. The teacher did not believe that the Complainant was concerned about the absences, and the team did not address it as a concern. He also noted that absences were not a concern of School staff.

The principal recalled the Complainant's husband asking the 504 team if its members could speak to the College about the Student missing some of her College classes. The principal further recalls the Complainant telling her husband that there was a policy for that, ending the conversation.

Considering each of the statements made during the interviews with OCR and the written notes from the November 23, 2015, 504 meeting, OCR finds insufficient evidence to conclude that the Complainant or her husband requested an accommodation for doctor's visits. All interviews confirm that the Complainant or her husband raised the topic of absences at the Section 504 meeting; however, there is insufficient evidence to conclude that the Complainant or her husband requested that the Section 504 team consider a possible accommodation for excessive absences due to doctor's visits. The School staff each stated that they believed the discussion was concluded after the Student's parents conducted a side conversation regarding the absences. The District's written response also provided that the School staff did not have any independent concerns about excessive absences that would have triggered a duty to discuss absences at the 504 meeting. OCR therefore concludes that there is insufficient evidence to find that the 504 team refused to discuss a possible accommodation for doctor's visits.

OCR would like to note that the Section 504 team has a duty to consider any potential absence issues in both the Student's School and College courses as a possible FAPE issue, as explained in the section above regarding allegation 1.

Allegation 3: The School's 504 team did not consider transportation for the Student for the current school year because the District does not offer transportation for any students at the School.

The Complainant alleges that transportation is not provided for any students enrolled in the dual enrollment program and that this violates the Student's rights, but that she decided to drive the Student to school every day because the Student "does not desire to drive in any capacity out of anxiety." The Complainant said that the 504 team mentioned transportation, but told her that the School does not offer transportation for any students. She alleges that the team never discussed transportation as part of the Student's disability-related services.

The District confirmed that it does not provide transportation for students at the School. The School's admissions website states twice that students must provide their own transportation.¹ The School's online FAQ reiterates that the school does not provide transportation.² The District's Board of Education Policy Manual states that "Transportation shall be provided from the student's home to and from school for those 'children with special needs,' . . . where necessary to meet the child's special needs."

¹ <http://jcmch.johnston.k12.nc.us/cms/One.aspx?portalId=3026331&pageId=3496056>.

² https://docs.google.com/document/d/181_7TemRhp8Drwh-6J8kC_VGyX7boqz_eFhnWxHwBts/edit

OCR reviewed all records of communications the School had with the Complainant regarding transportation. The School's 504 Coordinator took notes of an August 6, 2015 phone conversation with the Complainant. She notes that the Complainant had a concern about the expense of dropping the Student off for school, picking her up at her break, taking her back to the School, and then picking her up after school. The Coordinator suggested that the Student stay at the School during the breaks, so that the Complainant would only have to make two trips to the School per day. The Section 504 meeting notes from meetings on December 8, 2014, and November 23, 2015 do not include any requests for transportation or other discussion of transportation. The meeting minutes from the November 23, 2015 meeting did note that the Student "struggles with walking, communicating, & seeing (vision is decreasing)." The minutes further note that the Student's autism affects "all aspects of her life."

In an interview with OCR, the principal confirmed that transportation was not discussed at any Section 504 meetings, but that she had informed the Complainant that the School did not provide transportation. She stated that if transportation were requested by a student with a disability on the basis of disability, the School would submit that request to the special education department. The 504 Coordinator also confirmed that transportation was not discussed at the Student's 504 meetings. She further stated that if a request for transportation were made on the basis of disability, that request would be considering by the IEP team or Section 504 team.

There is insufficient evidence here for OCR to conclude that the School failed to consider transportation for the Student in violation of Section 504 or Title II. There is insufficient evidence to find that any concerns regarding transportation were brought to the attention of the Section 504 team by the Complainant or School staff. Therefore, the Section 504 team did not violate any obligation to consider the transportation needs of the Student.

However, OCR would like to note a concern with a potential failure to inform families of students with disabilities of the availability of transportation as necessitated by a student's disability. All School staff emphasized that parents, including the Complainant, are told through multiple means that the School does not provide transportation. The Complainant was never informed that students who may need transportation in order to receive FAPE can be provided transportation. The District should ensure that families of students with disabilities are aware of the District's policy requiring transportation for students who need it based on disability.

Conclusion

On April 20, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on April

20, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 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, 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Nicole Dooley, the OCR attorney assigned to this complaint, at 202-453-5675 or nicole.dooley@ed.gov.

Sincerely,

/S/
Michael Hing
Supervisory Attorney
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Kara Acree, District Attorney