



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 30, 2016

Via Email: wroyster@greenville.k12.sc.us

Dr. W. Burke Royster
Greenville County Schools
301 E. Camperdown Way
Greenville, South Carolina 29601

Re: OCR Complaint No. 11-16-1209
Letter of Findings

Dear Dr. Royster:

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 March 4, 2016 against Greenville County Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged the following:

- (1) In October 2015, the School denied the Student a Section 504 Plan on the erroneous basis that students with XXXX were not eligible for Section 504 Plans in South Carolina;
- (2) Once a Section 504 Plan was created in January 2016, the Student's teacher did not implement the provisions of the Section 504 Plan; and
- (3) The District failed to provide the Student with a Free Appropriate Public Education (FAPE) by not offering the Student any compensatory services to address the missed assignments due to not receiving accommodations for most of the 2015-2016 school year.

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.

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and the following District staff:

- the Student’s fourth grade teacher (the Teacher);
- the School social worker (the Social Worker);
- the School guidance counselor/Section 504 coordinator (the School Coordinator); and
- the District Section 504 coordinator (the District Coordinator)

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns regarding Allegations 1, 2, and 3, all of which the District voluntarily agreed to resolve through the enclosed resolution agreement.

OCR’s findings are discussed below.

Background

The Student transferred from XXXX where he had a Section 504 Plan in place due to his diagnosis of XXXX, and enrolled at the School as a XXXX grader on May 12, 2015. The Complainant and the School agree that the Student’s third grade teacher received and implemented the XXXX Section 504 Plan through the end of the Student’s XXXX grade year. However, the Complainant alleged that the Student’s XXXX grade teacher (the Teacher) did not implement the BCPS Section 504 Plan during the first half of the 2015-16 school year and that he subsequently did not implement the Section 504 Plan that was developed by the District on January 28, 2016. Per the Complainant’s request, the Student transferred to a different XXXX grade teacher on February 29, 2016. The Complainant and the School agree that the new XXXX grade teacher implemented the Student’s Section 504 Plan that included accommodations to enable the Student to make up work when he was absent due to XXXX. However, the Complainant alleged that because the Student had not received accommodations from August 2015 to March 2016, the Student was significantly behind in his academics and required compensatory services that the District did not offer to him. The Student was withdrawn from the School on April 14, 2016, for reasons unrelated to the allegations raised in this complaint.¹

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. 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.

¹ The Complainant has two other children who were enrolled at the School and who also have XXXX. The Complainant said that she was told by the School Coordinator in October 2015 that none of the children qualified for a Section 504 Plan. But, the Complainant did not raise allegations concerning the other two children because she stated that their teachers implemented the BCPS Section 504 Plan and accommodated the children when they were absent.

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.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. South Carolina state regulations, like the federal IDEA regulation, require that school districts conduct initial evaluations within 60 days of receiving parental consent (SC State Board of Education Regulation 43-243(IV)(B)(1)(c)(1)).

Analysis

Allegation 1

The Complainant alleged that on October 22, 2015, the School denied the Student a Section 504 Plan because the School Coordinator erroneously stated that students with XXXX were not eligible for Section 504 Plans in South Carolina. The School denied that the School Coordinator ever told the Complainant that the Student was ineligible and asserted that the Student's 504 Plan from XXXX was implemented until the 504 team met in January 2016 to reassess the Student's individual needs. OCR first investigated whether the School provided the Complainant with misinformation regarding the Student's eligibility and second whether the School provided the Student with FAPE by implementing the accommodations listed in the XXXX 504 Plan.

Eligibility

The Complainant told OCR that a 504 meeting was scheduled for October 22, 2015, but when she asked if she could participate by phone rather than in person, the School Coordinator told her that the meeting was unnecessary. According to the Complainant, the School Coordinator apologized and said there was nothing she could do because she had recently learned based on output from a computer system that students with XXXX were not eligible for 504 Plans in South Carolina; only students with diseases like XXXX or a major learning disability were eligible for 504 Plans. The Complainant said she contacted the District Coordinator who apologized for the misinformation and explained that the School Coordinator was new and had made a mistake, but that she would make sure the School Coordinator knew that the Student was

eligible. The Complainant said that she also contacted the District's ombudsman on December 1, 2015 to look into the matter. In January, the Student's 504 meeting was rescheduled for January 28, 2016.

The School Coordinator denied this allegation and explained that she provided the Teacher with a copy of the XXXX 504 Plan at the beginning of the school year and contacted the Complainant multiple times to schedule a 504 meeting. She said that she cancelled the October 22nd meeting because the Complainant was unavailable and had not yet been able to get the diagnosis paperwork from the Student's doctor. OCR received a copy of the "Authorization for Release of Information" form that was signed by the Complainant on October 26, 2015 and the "Documentation of Diagnosis" form that was signed by the School Coordinator and the Student's doctor on October 29, 2015. On October 30th, the School Coordinator contacted the Complainant who stated that she was having a difficult time and would let the School Coordinator know when she could come in for a meeting. The two documents and the School Coordinator's record of contact support her statement that she helped the Complainant obtain paperwork from the Student's doctor and then attempted to reschedule the meeting. But, the School Coordinator admitted to OCR that the paperwork was not necessary for the meeting to take place in the first place.

The School Coordinator told OCR that she next spoke with the Complainant on November 23rd and they confirmed that the 504 meeting would be rescheduled for December 1st. OCR received a copy of the December 1st meeting invitation. The School Coordinator said that she, the Teacher, and the assistant principal convened on December 1st but that the Complainant did not show up. The School Coordinator said that she did not recall anybody contacting the Complainant to check on her whereabouts nor did she recall the Complainant ever mentioning why she was unable to attend the December 1st meeting. The School Coordinator's next contact with the Complainant was on December 10, 2015, during which time they spoke about scheduling the meeting for after winter break.

The District Coordinator told OCR that the Complainant contacted her in December to complain that the 504 meeting had not yet occurred. The District Coordinator said that she then followed up with the School Coordinator who told her the Complainant did not show up for the scheduled meeting. She said she spoke with the School Coordinator about the Documentation of Diagnosis form but did not recall the Complainant or the School Coordinator saying anything about students with XXXX not being eligible. The Complainant vehemently denied having any conversation with the School Coordinator about scheduling a meeting for December 1st and said she never received the meeting invitation. She asserted that the School and District Coordinators were trying to cover the fact that the School dropped the ball and failed to timely reevaluate the Student as the Complainant had requested them to do.

Because of the conflicting evidence, OCR has a compliance concern as to whether or not the School Coordinator gave the Complainant misinformation about 504 eligibility and unnecessarily delayed the 504 meeting. On the one hand, the Complainant clearly and consistently articulated to OCR the detailed conversation that she had with the School Coordinator, and it is unclear to OCR why the October 22nd meeting was cancelled since it could have been held without the paperwork and with the Complainant's participation by phone. On

the other hand, the School and District Coordinators deny that the Complainant was misinformed and there are two forms that show that the School Coordinator helped obtain diagnosis paperwork after the October 22nd meeting was cancelled. There is also conflicting evidence as to whether or not the December 1st meeting was properly scheduled. Before OCR requested additional information to make a determination, the District agreed to voluntarily resolve this part of Allegation 1.

FAPE

OCR next analyzed whether the Student was provided with FAPE from the start of the 2015-16 school year up until the 504 meeting on January 28, 2016. Specifically, OCR looked at whether the School provided the student with special transportation services and implemented the following two accommodations that were listed in the BCPS 504 Plan:

- 1) Opportunity to make up missed work/or extended time when care interrupts learning/assessments, as needed; and
- 2) Opportunity to get instruction that was missed due to hospitalizations/being too ill to come to school/class time missed; home and hospital program, as needed

The Student had XXXX from the beginning of the 2015-16 school year through April 6, 2016. Based on conversations with the Complainant and School staff and a review of documents, OCR understands that these absences were due to a combination of factors including difficulty with transportation, doctor's visits XXXX that did not require a doctor's visit but did render the Student unable to attend school, and several family issues unrelated to the Student's medical condition. Meeting notes from January 28, 2016 state that the Complainant "takes responsibility for the number of absences due to personal reasons." Because it is impossible for OCR to determine how many absences were due to the Student's medical condition and how many class periods the Student missed due to visits to the nurse's office,, OCR looked at whether in general special transportation was made available to the Student and whether the accommodations were implemented whenever the Student was not in class.

Transportation

The XXXX 504 Plan included a Request for Special Transportation Services and a determination by the 504 Team Chairperson that special transportation was required for the Student. The form did not provide details as to what the transportation entailed. The Complainant told OCR that the District provided transportation, but that the bus company rejected her request for a disability bus because they said it was not available in the area. The bus driver required the Student to wait outside for the bus even though the Complainant told her that the cold weather aggravated the Student's medical condition. The Complainant said the School told her that transportation was a separate entity and that they could not intervene, but that in December, one week before she had to appear in truancy court, the bus company said that they would allow the Student to wait inside for the bus. The Complainant said that the bus took a long time to warm up and the Student would have to sit in a very cold setting for the first 25 minutes of his 50 minute ride. The Social Worker told OCR that transportation was one of many issues causing the Student's poor attendance and that the Complainant did not cooperate or respond to him and other School staff

when help was offered. The School Coordinator told OCR that the Student struggled with attendance even after she spoke with the bus company it was agreed that the Student could wait inside. The 504 Plan created on January 28, 2016 included transportation as an accommodation and specified that the Student needed the “opportunity to avoid exposure to extreme temperatures. Bus driver should allow the opportunity for [the Student] to walk from [his] porch to the bus without driving away.”

Opportunity to make up missed work and get instruction / Extended time

The Complainant told OCR, and School staff confirmed, that the Teacher received a copy of the XXXX Section 504 Plan from the School Coordinator at the beginning of the school year. The Complainant said that she went over the XXXX Plan with the Teacher many times and requested that the Student be accommodated with extra time to make up missed work and that the work be sent home, but that the Teacher said he expected the Student to make up the work during the 20 minutes of time in the morning when the rest of the class was working on other activities and not receiving direct instruction. She stated that when she raised concerns about the Student’s low grades and missing work, the Teacher agreed with the concern but did not offer any solutions aside from suggesting that the Student should be in class every day, which the Complainant explained was impossible due to XXXX.

The School Coordinator told OCR that she provided the Teacher with the XXXX 504 Plan with the understanding and expectation that all of the accommodations would be implemented in the interim while the team waited to meet to reassess the Student’s needs. In their narrative, the District stated that the Student was provided with classroom notes and instruction when he returned from absences and that the Teacher used an online educational tool called Class Dojo that included tutorials and instructions for what had been taught each day as well as homework assignments that students and parents could access. The Teacher told OCR that when the Student returned from an absence, his work would be in a folder and the expectation was that he would complete it during non-instructional time during the day (i.e. times when the Teacher was not directly teaching a lesson). Specifically, the Teacher said that the Student had 10-20 minutes in the morning when the rest of the class would work on review work and 15-20 minutes during independent reading time. The Student could raise his hand if he needed help or could ask a classmate, but otherwise the Student was not provided with individualized instruction from the Teacher. The Teacher also said that homework assignments would typically be to complete a computer printed worksheet that he handed out to the students or to study notes and that he would not put the worksheet or the actual notes on Dojo, but rather just a description of the task.

Home and hospital program

The Complainant said that under the XXXX 504 Plan, whenever the Student had two or more consecutive absences, he received one hour of home tutoring per day missed under the home and hospital plan; his absences were excused and he did not miss instruction. She said that when she asked the District for homebound services, the School Coordinator gave her the paperwork but that the Student’s doctor told her it was the wrong paperwork and she went back and forth for months between the medical facility and the School with little help from School staff. When the Student withdrew from the School, homebound services were still not in place even though the

Complainant said that the social worker at the medical facility told her that the Student would be eligible if he missed two or three consecutive days of school. The District stated that the Complainant never submitted the paperwork for medical homebound instruction nor did she seek additional information. However, the Social Worker and the School Coordinator said that the Student was ineligible for homebound because the Student's doctor did not allow for intermittent homebound and did not list XXXX as a chronic condition that would allow for students to be taught at home. OCR received documentation that indicates the District Coordinator told the School Coordinator to fax information to the medical facility on March 10, 2016, but it is unclear from the data whether staff from the medical facility responded prior to the Student withdrawing from the School.

The conflicting evidence causes OCR to have a compliance concern as to the extent to which the XXXX 504 Plan was implemented from August 2015 through January 2016. On the one hand, the School did not hold a formal 504 meeting and agree to accept the XXXX Plan Student.² The Student was not afforded a disability bus nor was he provided with special transportation accommodations until December 2015. It is questionable as to whether he was given a reasonable amount of time to make up missed work and receive instruction when he was absent. He also was not provided with a homebound tutor. On the other hand, the School Coordinator and the Teacher said that they understood that the expectation was for them to implement the XXXX 504 Plan. The XXXX 504 Plan did not specify any accommodations with regard to transportation and it is undisputed that the Student was provided with bus service throughout the year. It is also unclear as to how many, if any, absences or tardies were due to the Student not being able to wait outside for the bus. It is also unclear as to whether the medical facility or the School was responsible for the Student not receiving homebound services. Before OCR requested additional information to make a determination, the District agreed to voluntarily resolve this part of Allegation 1.

Allegation 2

The Complainant alleged that from January 28, 2016, through the end of February 2016, the Teacher did not implement the provisions of the Section 504 Plan that was created by the School. Specifically, the Complainant expressed concern that the Teacher continued to not provide adequate opportunities for the Student to make up work that he missed when he was absent due to XXXX related symptoms, that he was not given extra time to make up tests, and that the Teacher did not communicate with her regarding the Student's poor grades and anxiety issues. OCR looked at whether the following two accommodations were implemented:

² OCR Guidance provides that if a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

- 1) Alternative Teaching Strategies – Offer opportunity to make up missed work or have extended time when care interrupts learning/assignments. Send make-up work home for parent to assist student.
- 2) Communication – Contact parent on cellular phone if there is an issue.

The Student was absent 11 days between January 28th and March 1st. The Complainant asserted that the Teacher only sent home a packet of work once during this time and that was only after she had complained to the administrators about the Teacher not implementing the 504 Plan. Emails indicate that the Teacher first sent a packet of work home on February 11th even though the Student had been absent on February 4th, 9th, and 10th. Another email indicates that the Complainant received a packet on February 19th after the Student had been absent for four days. The Teacher told OCR that he sent three or four packets of work home, including worksheets and notes, but that they were never completed and returned.

A February 21, 2016 email from the Teacher to the Complainant raises a question as to whether the Teacher was fully implementing the Alternative Teaching Strategies provision of the 504 Plan. Expressing concern about the Student's grades because the Student had been out of school for a week, the Teacher wrote:

...the graded assignments he needs to complete are beginning to pile up. Unfortunately because they are graded they must be completed at school and cannot be sent home...I want to see [the Student] succeed and **it's incredibly important that he attends class on a regular basis so that he can get the notes he needs for science and social studies and practice for math, reading, and language arts.** (emphasis added)

The email mentions the Student attending study hall to work on assignments instead of going to music club one day, and the Teacher told OCR that the "graded assignments" were tests and quizzes that could not be sent home. The Teacher, however, should have been aware that due to the Student's disability, it might have been impossible for him to attend class on a regular basis. The Student was supposed to be able to be able to complete assignments at home, to the greatest extent possible, and should have received notes and practice so that he could prepare for tests when he was absent. In an email reply to the Teacher on February 22, 2016, and in conversations with OCR, the Complainant said that she had repeatedly asked the Teacher to make accommodations when the Student missed class, but that the Teacher refused to do so. When OCR asked the Teacher what could have been done to help the Student improve, the Teacher said that the only thing would have been for the Student to be present in the classroom.

In March 2016, the Student transferred to a different teacher and his grades went from D's and F's to B's and C's. An email on March 14, 2016, from his new fourth grade teacher to the Complainant shows that she implemented the accommodations. The email states:

I have some other work that I'm going to send home, along with notes he needs to study for some tests that he missed.... I've updated his notebooks so he has everything he needs to study....

He will not be penalized; he's going to have time to make everything up.

With regard to communication, the Complainant told OCR that she had multiple in-person and telephone conversations with the Teacher and that she sent him messages via the Class Dojo platform. She was upset though because the Teacher told an outside provider that the Student seemed anxious and withdrawn and might need therapy but did not tell the Complainant. The Teacher agreed that he exchanged messages with the Complainant through Dojo, but the District stated that they were unable to access the Teacher's Dojo account and therefore could not submit this data as requested to OCR. The Teacher could not recall calling the Complainant and said that the majority of contact was via email.

Based on the evidence thus far, OCR has a compliance concern as to the extent to which the Teacher implemented the Alternative Teaching Strategies of the 504 Plan. There is evidence to indicate that the Teacher expected the Student to attend school on a regular basis and did not provide him with all of the notes and practice work that he needed. But, because OCR did not view the actual packets that were sent home, it is not possible to determine exactly how many packets there were and whether they covered the entire time period that the Student was absent. Although the Teacher did not contact the Complainant by cell phone, OCR acknowledges that the Complainant may have had difficulty with her phone during this time and that the Complainant and Teacher were in contact via Dojo and email. Before OCR requested additional information to make a determination, the District agreed to voluntarily resolve Allegation 2.

Allegation 3

The Complainant alleged that the District failed to provide the Student with FAPE by not offering the Student any compensatory services to address the missed assignments due to not receiving accommodations for most of the 2015-16 school year. She said that the Student was on honor roll in his previous district but because of his lack of accommodations he had fallen behind, lost interest in school, and had received poor grades in all of his subjects. The School acknowledged that no compensatory services were offered to the Student but stated that they were not obligated to do so because the Student had not been denied FAPE.

During the course of the investigation, the District agreed to resolve Allegations 1 and 2 and thus agreed to resolve Allegation 3 by providing compensatory services to the Student to address the education he missed from the beginning of the school year through the end of February 2016.

Conclusion

On September 30, 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 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 by the District on September 30, 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, please contact Dana Russo, the OCR attorney assigned to this complaint, at 202-453-6559 or dana.russo@ed.gov.

Sincerely,
/S/

Michael Hing
Supervisory Attorney, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXX