



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

January 8, 2014

Mr. David D. Durastanti
Superintendent
Hardee County School District
1009 North 6th Avenue
Wauchula, Florida 33873

Re: Complaint #04-13-1389

Dear Mr. Durastanti:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint that the Complainant filed against Hardee County School District (District) alleging discrimination against XXXXXXXXXX (Student) on the basis of disability (XXXXXXXXXXXXXXXXX). Specifically, the Complainant alleged that the Student was denied a free appropriate public education (FAPE) when the District failed to reevaluate XX after XX was involuntarily withdrawn from the Florida Virtual School in or around XXXX or XXXXX of XXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Based on the above, OCR opened the following issue for investigation:

Whether the District denied the Student a FAPE when it failed to reevaluate the Student after XX was withdrawn from Florida Virtual School in or around XXXX or XXXXX of XXXX, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.33(a) and (b)(1), 104.35(a) and (d), and Title II and its implementing regulation at 28 C.F.R. §35.130.

During the course of OCR's investigation of this complaint, the District offered to resolve this complaint through a voluntary resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Based on the foregoing, OCR accepted the District's offer to resolve this complaint and the District entered into the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint.

OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. Further, the Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this complaint, please contact Mr. Michael Bennett, Investigating Attorney, at (404) 974-9274 or Wendy Gatlin, Compliance Team Leader, at (404) 974-9356.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director

Enclosure