



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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Dr. Kathy Murphy
Superintendent
Monroe County Public Schools
65 Alabama Avenue
Monroe County Courthouse, Room 127
Monroeville, Alabama 36460

Re: OCR Complaint #04-13-1987

Dear Dr. Murphy:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint received by this office on September 3, 2013, in which the Complainant alleged that the Monroe County Public Schools (District) discriminated against his son (Student) on the basis of disability by denying him a free appropriate public education (FAPE). Specifically, the Complainant alleged that, during fall 2013,: 1) the District failed to fully implement the Student’s Section 504 Plan regarding: Item X, teachers notifying the XXXXXX if the Student begins XXXXXXXX XXXXXXX XXXXXX XX; Item X, teachers notifying the XXXXXXX XX XXXXXX X XXXX XXXXXX XXXXXXX XXXXXX; and Item XX, teachers XXXXXXXX XXXXXX XXXXXXXX XX XX XXXXXXXX XX XXXXXX XXX XXXXXX XXXX XXXXXXXX XXXXXX/XXXXXX. As a result, the Student is failing all of his classes; and 2) the District failed to provide the parents with a copy of the Section 504 procedural safeguards.

Based on the allegations, OCR investigated the legal issues of:

1. Whether the District denied the Student a FAPE by failing to fully implement his Individualized Education Program (IEP), in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) and the Title II implementing regulation at 28 C.F.R. § 35.130(a) and (b); and
2. Whether the District failed to provide the Complainant with Section 504 procedural safeguards, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During OCR’s investigation of this complaint, the District offered to voluntarily resolve Issue 1. 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 or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will

require the District to take actions to remedy any compliance concerns regarding the District's provision of a FAPE to the Student.

On May 9, 2014, OCR received the enclosed signed Agreement that, when fully implemented, will resolve Issue 1. OCR will monitor the District's implementation of this 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Regarding Issue 2, OCR's investigation included a review of documents provided by the District and the Complainant. Additionally, OCR conducted interviews with the Complainant. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. After a thorough review of the evidence, OCR determined that there is insufficient evidence of noncompliance with Section 504 or Title II as alleged in Issue 2. The factual and legal bases for OCR's determination are set forth below.

Issue 2 – Failure to Provide Procedural Safeguards

The Complainant alleged that, at the August 27, 2013, Section 504 meeting, the District failed to provide him with a copy of the procedural safeguards.

Background

The Student is enrolled in the XXXXX XXXXX at XXXXX XXXXXXX XXXX XXXXXXX (School) for the 2013 - 2014 school year. The Student's most recent Section 504 Plan, dated XXXXXXX XX, 2013, states that he was identified by a group of knowledgeable people as a student with a disability [XXXXXXXXXXXX XXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX, XXXX XXXXXXXXXXX, and XXXXXXXXXXXXXXXXXXXXXXXXXXXX].

Legal Standards

Public elementary and secondary schools must employ procedural safeguards for actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services. The Section 504 regulation, at 34 C.F.R. § 104.36, requires a recipient to establish and implement a system of procedural safeguards that includes notice, an opportunity to examine records, an impartial hearing, representation by counsel and a review procedure. OCR interprets Title II, at 28 C.F.R. § 35.130, consistently with the standards set forth in the Section 504 regulation.

Findings of Fact

OCR's review of documentation obtained in this investigation evidenced that on XXXXXX XX, 2013, the Student's mother received and signed a document titled "PARENT/GUARDIAN AND/OR STUDENT PROCEDURAL SAFEGUARDS AND RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT." During telephone calls with the Complainant on March 7 and 17, 2014, the Complainant advised OCR that he did not attend the Student's Section 504 meeting held on XXXXXX XX, 2013, so he was unaware that the Student's mother received procedural safeguards from the District.

Conclusion

Based on the above information, OCR found that the District provided notice of procedural safeguards to one of the Student's parents. Section 504 does not require Districts to affirmatively provide multiple copies to multiple parents/guardians.

Accordingly, based on the preponderance of the evidence, OCR concludes that there is insufficient evidence that the District is in noncompliance with Section 504 and Title II, as alleged.

This concludes OCR's investigation of the complaint and 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, 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

We wish to thank you and your staff for the cooperation shown us during the investigation of this matter. If you have any questions concerning this letter, please contact Ms. Jones, Investigator, at (404) 974-9351, or by email, at Carol.A.Jones@ed.gov, or me, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure