



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

October 20, 2015

**Via U.S. Mail & Electronic Mail**

XXXXXXXXXXXXXXXXXXXX

Office of the Superintendent  
Haywood County Schools  
900 East Main Street  
Brownsville, TN 38012

Re: OCR Complaint # 04-15-1351

Dear XXXXXXXX:

On May 4, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against Haywood County Schools (District), alleging discrimination on the basis of disability and retaliation. Specifically, the Complainant alleged that the District discriminated and retaliated against the Student, who XXXXXX (School), as follows:

1. The District failed to respond appropriately to reports of other students bullying and harassing the Student based on his disability from January 2014 through the 2014-2015 school year.
2. The District failed to implement the Student's IEP during the 2014-2015 school year by not putting in place and/or following the Student's Behavioral Intervention Plan (BIP), completing a Functional Behavioral Assessment (FBA), sending home a list of Student's assignments, writing notes to the Student parents regarding what he needs, and providing the Student with a copy of anything written on the board or class lecture notes.
3. Based on the parents' advocacy on behalf of the Student and their filing of complaints with OCR and the Tennessee Department of Education (TN DOE), the District retaliated against the Student by removing him from his IEP on May 11, 2015.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing

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regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR investigated the following legal issues:

1. Whether the District discriminated against the Student by failing to respond appropriately to incidents of disability harassment from January through the 2014-2015 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(ii), (vii) and 104.7 and 104.8, and the Title II implementing regulation at 28 C.F.R. §§ 35.130(a), and (b)(1)(i), (ii), (vii) and 35.107.
2. Whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement the Student's IEP for the 2014-2015 school year by not putting in place and/or following the Student's Behavioral Intervention Plan (BIP), completing a Functional Behavioral Assessment (FBA), sending home a list of Student's assignments, writing notes to the Student parents regarding what he needs, and providing the Student with a copy of anything written on the board or class lecture notes, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b)(1), and the Title II implementing regulation at 28 C.F.R. § 35.130(a).
3. Whether the District retaliated against the Student for his parents' advocacy and filing complaints with OCR and the TN DOE by terminating his IEP on May 11, 2015, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.

Prior to OCR's completion of its investigation of this complaint, the District offered to voluntarily resolve the allegations of this complaint. Set forth below is a summary of the evidence obtained thus far that supports resolution of this complaint through the proposed resolution agreement.

### **Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1) states that a recipient, in providing any aid, benefit, or service, may not,

directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

Pursuant to the Section 504 implementing regulation at 34 C.F.R. § 104.7(a) and (b), a recipient that employs 15 or more people shall designate at least one person to coordinate its efforts to comply with Section 504 and adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II implementing regulations at 28 C.F.R. § 35.107(a) and (b) contain similar provisions for public entities with 50 or more employees.

The Section 504 implementing regulation at 34 C.F.R. § 104.8(a), provides that a recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also identify the designated 504 Coordinator and their contact information. Title II has a similar notification provision. The Section 504 regulation at 34 C.F.R. § 104.8(b), provides that a notice of nondiscrimination should be included in a recipient's recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees.

Retaliation is prohibited under the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI). The regulation implementing Title VI at 34 C.F.R. § 100.7(e) provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws enforced by OCR, or because he or she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing.

To establish whether retaliation has occurred, OCR uses a five-step analysis which examines: (1) whether the Complainant engaged in a protected activity; (2) whether the recipient was aware of the protected activity; (3) whether the recipient took adverse action against the Complainant subsequent to or contemporaneous with participation in a protected activity; (4) whether there is

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a causal connection between the adverse action and the protected activity; and, if these four steps are established, (5) whether the recipient can show legitimate, non-retaliatory reasons for its actions that are not a pretext for discrimination.

## **Background**

During the 2014-2015 school year, the Student was a XXXXXXXXXXXXXXXX grader. The Complainant alleged that the Student's primary diagnosis is XXXXXXXXXXXX. The District first implemented an IEP for the Student at the beginning of the 2012-2013 school year. On May 12, 2015, the Student's IEP Committee met and recommended the development of a 504 Plan for the Student instead of an IEP. The IEP Committee determined that the Student no longer qualified for special education services. The Minutes from the IEP Committee Meeting listed all of the data reviewed by the IEP Committee prior to making this decision. The Complainant stated that the District's evaluation revealed that the Student did not have Asperger's.

The Complainant alleged that the District failed to implement the Student's IEP for the 2014-2015 school year, failed to appropriately respond to bullying and harassment by other students, and retaliated against the Student because of her advocacy. The Complainant did not raise any concerns about the District's Section 504 policies and procedures. Thus, OCR did not review or make a determination about the adequacy of these policies and procedures.

OCR reviewed data submitted by the District that showed multiple Parent-Teacher Conferences, IEP meetings, and other meetings and written communication between the Student's parents and School personnel during the 2014-2015 school year, regarding the provisions in the Student's IEP and his BIP. The meetings and discussions included whether the Student's teachers failed to send home his homework sheets and teacher's notes. The data also contained a signed Behavioral Support Plan dated August 20, 2014. Prior to OCR completing this aspect of the investigation, the District offered to resolve the complaint.

Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a Resolution Agreement that addresses the complaint allegations. In such circumstances, the provisions of the Resolution Agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Based on the foregoing, OCR accepted the District's request to resolve this complaint. On September 16, 2015, OCR received the enclosed signed Resolution Agreement (Agreement) which, when fully implemented, will resolve the complaint. OCR will monitor the 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.

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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 duly authorized OCR officials and made available to the public.

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, 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.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact XXXXXXXXXXXXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXXXXXXX  
Compliance Team Leader

Enclosure

cc: XXXXXXXXXXXXXXXXXXXX