



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

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REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

February 28, 2017

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

XXXXXXXXXXXXXX

Re: OCR Complaint #04-17-1023

Dear XXXXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against XXXXXXXX (School) on October 13, 2016. The School is a part of the Broward County Public School (District). The Complainant alleged that the School discriminated against him on the basis of disability by failing to provide him with an interpreter for two of his classes.

OCR investigated this complaint pursuant to 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 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 and School are subject to Section 504 and Title II.

OCR investigated the legal issue of whether the School discriminated against the Complainant on the basis of disability by failing to provide him with approved auxiliary aids in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44(a)-(d).

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 School, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the School, including documents OCR requested and received from the School. OCR also conducted limited interviews. Based on its investigation, OCR has determined that the evidence is sufficient to support a finding that the School failed to provide the Complainant with his approved auxiliary aids, in noncompliance with Section 504.

**Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.44(a) states that recipients shall make such modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of Section 504. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. The Section 504 regulation at 34 C.F.R. § 104.44(d) requires that a recipient shall take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

### **Background**

The Complainant is XXXXXX. He started attending the School in XXXXXX. In XXXXX, he requested two XXXXX interpreters so that he would have a backup if one interpreter was not available. The School provided only one interpreter, but the interpreter was available for all of his classes. However, sometime in XXXXX, the interpreter was only available for two of his classes on XXXXXXXX. The interpreter was not available for his XXXXX classes. The Complainant has not had an interpreter on XXXXXXXX for several months, and XXXXXXXX.

### **Factual Findings and Analysis**

#### **Whether the Complainant is a qualified individual with a disability**

A medical professional stated that the Complainant has a XXXXXXXXXXXXXXXX. Further, he requires XXXXXXXX interpreter for all areas where XXXXXXXX is involved. The School does not dispute that the Complainant is a qualified individual with a disability.

#### **Notification to School of Disability and Need for Accommodations**

The School acknowledged that the Complainant has written verification of his disability on file.

#### **Accommodations Available to Allow Complainant to Participate**

The School determined that the Complainant needed a XXXXX interpreter, XXXXXXXX to allow him access to the School's programs, services and activities. The School also determined that the Complainant needed the following additional accommodations: XXXXXXXXXXXXXXXX. The School admits that the Complainant should have been provided with an interpreter for all of his classes. There is no need to reach the forth element.

#### **Failure to Provide Accommodations**

The School determined that it would fund and provide the Complainant with XXXX interpreter, XXXXXXXXXXXX. However, the School only provided XXXX interpreter XXX days a week; the School did not provide a sign language interpreter for the other XXX days.

### **Conclusion**

Based upon a preponderance of the evidence, OCR finds that there is sufficient evidence to support a finding that the School is not in compliance with the Section 504 and Title II regulations.

The School has agreed to enter into a resolution agreement and take the following corrective actions: (1) provide the Complainant with XXXXX interpreter for the classes in which he is currently enrolled, (2) provide the Complainant with XXXX interpreter for any future classes in which he enrolls, (3) develop a plan to address the shortage of XXXX interpreters available to XXXX students at the School applicable, and (4) provide Section 504/Title II training for school staff.

These corrective actions are outlined in the enclosed resolution agreement which also contains monitoring provisions. When fully implemented, the agreement will resolve the identified compliance issues. If the School 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 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. 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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact XXXXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXXXXXXX  
Compliance Team Leader

Enclosure