



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T70  
ATLANTA, GA 30303-8927

**REGION IV**  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

July 27, 2012

Dr. Thomas R. Bice  
Superintendent  
Alabama State Department of Education  
50 North Ripley Street  
P.O. Box 302101  
Montgomery, AL 36104

Re: Compliance Review #04-10-5001

Dear Dr. Bice:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Alabama State Department of Education (ALDOE) under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (Title II), and its implementing regulation at 28 C.F.R. Part 35.

The compliance review focused on whether the ALDOE discriminated against students with disabilities who were transported by bus on special education routes by denying them a free and appropriate education (FAPE) when the ALDOE failed to exercise adequate oversight or to provide sufficient guidance and training with respect to school districts' transportation schedules within the state, resulting in a shortened school day, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. Section 104.33(a) and (b)(1) and, Title II and its implementing regulation at 28 C.F.R. Section 35.130(a) and (b)(1)(i).

OCR had authority to initiate this compliance review under Section 504 and its implementing regulation and Title II and its implementing regulation, which prohibit discrimination on the basis of disability by public entities and in educational programs or activities that receive Federal financial assistance. As a recipient of Federal financial assistance and a public entity, the ALDOE is subject to Section 504 and Title II and their respective implementing regulations.

During the course of this compliance review, OCR reviewed documents submitted by the ALDOE and documents submitted by a number of school districts chosen from within the state's seven congressional districts.<sup>1</sup> The districts that were chosen were of varying student populations (small, medium, and large), rural, suburban and urban, and covered the four corners of the state.

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<sup>1</sup> Congressional District 1 - Baldwin County School District (CSD); Congressional District 2 - Butler & Elmore CSDs; Congressional District 3 - Calhoun & Montgomery CSDs; Congressional District 4 - Marshall & Walker CSDs; Congressional District 5 - Madison CSD; Congressional District 6 - St. Clair CSD; and Congressional District 7 - Demopolis CSD

At the inception of the investigation, OCR met with the ALDOE General Counsel, Associate General Counsel, Transportation Consultant, Education Specialist, Education Administrator, and the Director of Special Education to discuss the compliance review and to outline OCR's investigative plan. Prior to the initiation of OCR's compliance review, ALDOE did not have a comprehensive state-wide policy addressing school arrival and departure times for busses transporting students with disabilities.

### Legal Standards

The regulation implementing Section 504 at 34 C.F.R. Sections 104.4(a) and (b)(1)(i)-(iv) 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. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others; or provide different or separate aid, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as that provided to others.

The regulation implementing Title II includes similar provisions at 28 C.F.R. Sections 35.130(a) and (b)(1)(i)-(iv). The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. The Title II regulation applicable to the issues raised in the compliance review does not provide greater protection than the applicable Section 504 regulations. Therefore, OCR applied the Section 504 standards when analyzing the issues raised herein.

The regulation implementing Section 504 at 34 C.F.R. Section 104.33(a) and (b)(1) requires a recipient to provide each qualified person with a disability in its jurisdiction a free appropriate education (FAPE), regardless of the nature or severity of the person's disability. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met.

The regulation implementing Section 504 at 34 C.F.R. Section 104.37(a) requires that a recipient shall provide nonacademic and extracurricular services and activities, i.e., transportation, in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. Transportation of a student with a disability should not be provided in a manner that results in the student having a shorter school day than his/her nondisabled peers unless there has been a determination, through a process that comports with Section 504, that a shortened school day is necessary to meet the student's individual needs. The Title II implementing regulation is interpreted consistently with the standards set forth in the regulation implementing Section 504.

### Summary of Investigation to Date

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*  
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OCR requested data from ALDOE pertaining to its training, oversight, and monitoring of special needs transportation throughout the state.

Data revealed that ALDOE's Department of Pupil Transportation is responsible for managing a statewide comprehensive student transportation program including, school bus inspection, fleet renewal, driver education programs, training and certification of school bus drivers, technical assistance, monitoring and evaluation of state and local operations, and oversight of the provision of special needs transportation. The state has approximately 951 special education bus routes.

In order to determine whether ALDOE provided the necessary oversight to ensure that the provision of special needs transportation throughout the state does not result in shortened school days for students with disabilities, OCR requested data on bus transportation schedules from a number of representative school districts. In addition, OCR conducted on-site investigations at Baldwin, Calhoun and Montgomery school districts during the 2010-2011 school year. During the on-sites, OCR met with the district Superintendents or their representatives, transportation directors, special education coordinators and 504 coordinators. In addition to interviewing district staff, OCR observed the bus drop-off and pick-up times for students who ride on the special education bus routes, reviewed transportation schedules, interviewed parents of students who ride on special education buses and talked with bus drivers.

After a review of the data provided by the districts and information obtained during the on-site investigations, OCR determined that of the districts reviewed, the transportation schedules of four districts (Baldwin, Butler, Calhoun, and Marshall) resulted in a shortened school day for students with disabilities. Specifically, the transportation bus schedules provided by the districts revealed that students with disabilities in Baldwin, Butler, Calhoun and Marshall school districts who rode special education buses were scheduled to arrive after the school day began and/or to depart before the school day ended resulting in significant losses of instructional time. With few exceptions, the IEPs or Section 504 plans of the students in those districts did not support the need for each of the students to receive a shortened school day. Montgomery County School District did not provide arrival and departure times for buses transporting special education students because it did not have records or a process for consistently tracking this information. During the on-site investigation at Montgomery, OCR observed special education buses consistently arriving after the school day began.

After the compliance review was initiated, ALDOE took several steps to provide additional oversight to districts with respect to transportation of students with disabilities. These initiatives included coverage of the requirements concerning shortened school days during various training sessions for: special education teachers, supervisors, facilitators and administrators; central office personnel; school-level IEP participants; local special needs bus drivers and aides; local superintendents, transportation supervisors, and chief school financial officers.

ALDOE also conducted on-site visits at a number of school districts not reviewed by OCR; revised on-site monitoring procedures to include a checklist item concerning shortened school days and required six

districts<sup>2</sup> found to have provided shortened school days for some students with disabilities to take corrective action. To ensure documentation of guidance provided, ALDOE sent memoranda to superintendents, special education coordinators, and transportation supervisors, to remind them that no student with a disability may receive a shortened school day due solely to transportation or administrative convenience. ALDOE included questions concerning shortened school days in the annual transportation plan that school systems submit to ALDOE and required superintendents to survey local principals regarding the length of their school day and transportation of students with disabilities.

As noted above, transportation of a student with a disability should not be provided in a manner that results in the student having a shorter school day than his or her nondisabled peers unless there has been a determination, through a process that comports with Section 504, that a shortened school day is necessary to meet the student's individual needs. The Title II implementing regulation is interpreted consistently with the standards set forth in the regulation implementing Section 504.

Prior to the completion of the investigation, ALDOE expressed an interest in resolving the matter. In accordance with OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Subsequent discussions with ALDOE resulted in ALDOE signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in this compliance review.

The ALDOE understands and acknowledges the OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the ALDOE written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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 provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank you and your staff for the cooperation extended to OCR during our investigation.

If you or your staff has any questions about this matter, please do not hesitate to contact Mr. Virgil Hollis, Team Leader, at (404) 974-9366 or by email at [Virgil.Hollis@ed.gov](mailto:Virgil.Hollis@ed.gov).

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<sup>2</sup> Dothan City, Hale City, Linden City, Morgan County, Randolph County, and Tarrant City  
*The Department of Education's mission is to promote student achievement and preparation for global competitiveness  
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Sincerely,

/s/

Cynthia G. Pierre  
Regional Director

Enclosure

cc: Larry E. Craven, General Counsel