



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

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

REGION IV
ALABAMA
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December 24, 2013

Craig Witherspoon, Ed.D.
Superintendent
Birmingham City Schools
2015 Park Place North
Birmingham, Alabama 35203

Re: Case # 04-13-1368

Dear Dr. Witherspoon:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed on June 17, 2013, alleging retaliation by the Birmingham City School District (District). Specifically, the Complainant alleged that after she filed a complaint against the District with OCR in December 2012 regarding her oldest son's Section 504 Plan, the District subjected her and her younger son (Student) to retaliation during the spring 2013 semester by:

- a. Expelling the Student from April 2013 through January 2014, for an incident that occurred on April 23, 2013;
- b. Failing to allow the Student to make up class assignments from April 23, 2013 through May 13, 2013, in accordance with District policy;
- c. Issuing failing grades for all of the Student's spring 2013 classes;
- d. Encouraging another Student's family to file criminal charges against the Student for the April 23, 2013 incident;
- e. Failing to provide the Student the opportunity to appeal his expulsion, in accordance with District policy;
- f. Telling the Complainant that she could view a video of the April 23rd incident and then advising her that no such video exists; and
- g. Not allowing the Complainant to remove items from the Student's locker and then charging her for books that were located in the Student's locker.

OCR opened the complaint for investigation pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. § 104.61, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. § 35.134, which also prohibits retaliation. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the legal issue of whether the District retaliated against the Student and the Complainant, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference Title VI of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. Sections 2000d *et seq.*, at 34 C.F.R. § 100.7(e); and the Title II implementing regulation at 28 C.F.R. § 35.134.

During OCR's investigation of this complaint, the District offered to voluntarily resolve the matter. 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. Based on the foregoing, OCR accepted the District's request and the District entered into the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues in this complaint.

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.

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, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients or public entities is prohibited. No recipient or public entity 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 the complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Terri Whynter, Senior Investigator, at 404974-7375 or me, at (404) 974-9374.

Sincerely,

/s/

Rosemary Smith
Compliance Team Leader

Enclosure