



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

December 12, 2013

Barbara M. Jenkins  
Superintendent  
Orange County School District  
Ronald Blocker Educational Center  
Orlando, Florida 32801

Complaint #04-13-1391

Dear Ms. Jenkins:

The U.S Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed on July 2, 2013, against the Orange County School District (District), on behalf of XXXXXX XXXXXX (Student), a student who attended Avalon Middle School, alleging discrimination on the basis of disability (Attention Deficit Hyperactivity Disorder) and retaliation. Specifically, the Complainant alleged the following:

1. From February 2, 2011 through June 2012, the District denied the Student FAPE when it failed to implement the Student's Section 504 Plan;
2. During the 2011-2012 school year, the District failed to evaluate the Student after she was suspended in excess of 10 days, resulting in a significant change in the Student's educational placement;
3. After the Complainant filed a grievance with the District regarding its failure to implement the Student's Section 504 Plan, the District subjected the parent and the Student to retaliation by:
  - a. Making the Student repeat the 7<sup>th</sup> grade;
  - b. Sending the family a letter regarding the Student, that was addressed to someone else;
  - c. Mailing information to the wrong address;
  - d. Failing to provide the Complainant with a copy of the Student's discipline record, upon request;
  - e. Failing to provide the parent with a copy of the District's decision to overturn the Student's 2012 expulsion;
  - f. Barring the Complainant from calling District staff and threatening not to overturn the Student's 2012 expulsion if the parent called the school board offices; and
  - g. Falsifying documents to suggest that the Complainant requested that the Student's Section 504 plan not be implemented during the 2010-2011 and 2011-2012 school years.

OCR opened the complaint for investigation 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. As a public entity, the District is also subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated legal issues of:

- 1) whether the District discriminated against the Student when it failed to conduct an evaluation of the Student prior to a significant change in placement, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35(a), and the Title II implementing regulation at 28 C.F.R. §35.130;
- 2) whether the District denied the Student FAPE by failing to implement her Section 504 Plan, in noncompliance with the Section 504 implementing regulation at 104.33(a) and (b); and the Title II implementing regulation at 28 C.F.R. §35.130; and
- 3) whether the District retaliated against the Student or the parent, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61 which adopts the anti-retaliation provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation 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 404-974-7375 or me, at (404) 974-9374.

Sincerely,

/s/

Rosemary Smith  
Compliance Team Leader

Enclosure