



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

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ATLANTA, GA 30303-8927

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Michael Thurmond, Esq.
Superintendent
DeKalb County School District
1701 Mountain Industrial Blvd.
Stone Mountain, GA 30083

Re: OCR Complaint # 04-14-1310

Dear Mr. Thurmond:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution process regarding the above-referenced complaint, which the Complainant and her grandson (Student) filed on November 14, 2013, against the DeKalb County School District (District), alleging discrimination on the basis of disability.

Specifically, the Complainant alleged that the District: 1) treated her grandson (Student) differently on the basis of disability when it disciplined him for a May 15, 2013 incident and failed to discipline a nondisabled student who was involved in the same incident; 2) failed to provide the Student with a free appropriate public education (FAPE) when it detained the Student for seven hours without allowing him to drink water; and 3) failed to stop using harsh cleaning chemicals at the DeKalb Alternative School to which the Student was assigned during the 2013-2014 school year, rendering him unable to attend the school.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department 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 a public entity. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to the provisions of Section 504 and Title II.

Based on the above allegations, OCR investigated the following issues:

1. Whether the District discriminated against the Student on the basis of disability when, in May 2013, it disciplined him differently from a nondisabled student involved in the same incident, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(a)(b)(1)(i) - (iii) and the Title II implementing regulation at 28 C.F.R. § 35.130(a)(b)(1)(i) - (iii).
2. Whether the District discriminated against the Student on the basis of disability by not allowing him to drink water as specified in his May 7, 2013 Individualized Education

Plan (IEP) when he was detained by School administrators on May 16, 2013, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).

3. Whether the District discriminated against the Complainant on the basis of disability by failing to provide him with a FAPE when it did not implement his IEP when he was assigned to the alternative school for the 2013-2014 school year in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).¹

Prior to the completion of OCR's investigation, the District requested to resolve Issues 1 and 2 pursuant to a voluntary resolution agreement. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the issues in a complaint and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. Regarding Issue 3, OCR completed its investigation and found sufficient evidence of noncompliance with Section 504 and Title II, as alleged. OCR reviews evidence under the preponderance of the evidence standard. Under the preponderance of the evidence standard, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. Below are the bases for OCR's findings.

Legal Standards

In analyzing Issue 3, OCR applied the following regulations: The Section 504 implementing regulation at 34 C.F.R. § 104.4(a)(b)(1)(i)-(iii) 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. 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 person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; 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 provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) requires a recipient that operates a public elementary or secondary education program or activity to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standards

¹ During an interview with OCR for the purpose of clarifying the complaint, the Complainant contended that the Student's IEP specified that he could not "be around strong chemicals." Accordingly OCR opened the allegation as a FAPE issue.

established by the regulation for provision of a FAPE. The Title II regulations are interpreted consistent with the Section 504 regulations with respect to the issues in this complaint.

Background

At the time of the incidents underlying Issues 1 and 2, the Student attended Southwest DeKalb High School (School). Based upon the disciplinary incident underlying Issue 1 the Student received a 45 day assignment to the alternative school on June 3, 2013. From August 14, 2013 to September 3, 2013, the Student attended the alternative school. Because the Complainant was concerned about the Student's exposure to what she believed were harsh chemicals, she did not allow the Student to continue attending the alternative school. The District then assigned the Student to the DeKalb Online Academy (DOLA) on September 3, 2013 in lieu of the alternative school. Complainant contends that the events alleged in Issue 3 occurred while the Student was enrolled at the alternative school. The Student currently attends another high school.

The Student has had an IEP since March 10, 2011. His primary disability is emotional and behavioral disorder. He also has diagnoses of Glucose 6-Phosphate Dehydrogenase Deficiency, bronchial asthma, glaucoma, Sickle Cell Trait, and ADHD. Because of his diagnoses, the Student has to constantly drink water, eat a special diet, and have frequent bathroom breaks.

Analysis

Issue 1

Whether the District discriminated against the Student on the basis of disability when, in May 2013, it disciplined him differently from a nondisabled student involved in the same incident in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(a)(b)(1)(i) - (iii) and the Title II implementing regulation at 28 C.F.R. § 35.130(a)(b)(1)(i) - (iii).

Prior to the completion of OCR's investigation, the District requested to enter into a 302 agreement to resolve this issue.

Issue 2

Whether the District discriminated against the Student on the basis of disability by not allowing him to drink water as specified in his May 7, 2013 IEP when he was detained by School administrators on May 16, 2013 in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).

Prior to the completion of OCR's investigation, the District requested to enter into a 302 agreement to resolve this issue.

Issue 3

Whether the District discriminated against the Student on the basis of disability by failing to provide him with a FAPE when it did not implement his May 23, 2013 IEP when he was assigned to the alternative school during the 2013-2014 school year in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).

As is discussed further below, OCR determined that the District is in noncompliance with Section 504 with respect to Issue 3.

The Complainant alleged that while the Student was assigned to the alternative school from August 2013 to November 4, 2013, the District did not provide him with the related aids and services required by his IEP, dated May 23, 2013.² She reported that his plan specified that he “could not be around strong chemicals.” The Complainant decided the Student could not safely attend the alternative school because she believed that school used harsh cleaning ingredients;³ therefore, the District allowed him to attend its DOLA beginning September 3, 2013 in lieu of the alternative assignment.

OCR’s investigation found that the Student’s IEP did not address exposure to harsh chemicals and there was no evidence that his educational team determined that he should not be exposed to such chemicals. Thus, the District’s use of harsh chemicals at the alternative school would not have constituted a denial of FAPE as alleged. However, based on an interview with the alternative school’s lead Exceptional Student Education (ESE) teacher, the evidence shows that the District did not fully implement the Student’s IEP while he attended DOLA. Additionally, the ESE Teacher informed OCR that from the time the Student attended DOLA (August 14, 2013) until October 11, 2013 (when he checked the Student’s work), no one at the District monitored the Student’s academic performance as required by his IEP. The District acknowledged that the Student’s IEP was not implemented in full.

Thus, OCR finds that there is sufficient evidence to find the District in noncompliance with Section 504 and Title II, as alleged.

In order to address Issues 1 and 2 and the noncompliance findings with respect to Issue 3, the District signed the attached Resolution Agreement (Agreement), dated May 13, 2015. When fully implemented, the resolution agreement will address Issues 1 and 2 of the complaint as well as OCR’s noncompliance findings with respect to Issue 3. OCR will monitor the implementation of the agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

² A manifestation determination meeting was held on May 23, 2013 to determine whether the Student’s disability caused his actions for which he was disciplined. The committee determined the Student’s actions were not a manifestation of his disability. The committee also amended the Student’s IEP at that time.

³ The District submitted documentation showing that each of its schools uses the same cleansers and the cleansers used at the alternative school were identical to those used at the School.

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.

Please be advised that the District may not harass, coerce, intimidate, 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.

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 a duly authorized OCR official 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 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.

If you have any questions, or if we can be of further assistance, please call Scott Sausser, Esq., Compliance Team Leader, at (404) 974-9354

Sincerely,

Melanie Velez, Esq.
Regional Director

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