



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

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

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

January 16, 2015

Mr. J. Alvin Wilbanks
CEO/Superintendent
Gwinnett County Public Schools
437 Old Peachtree Road, N.W.
Suwannee, Georgia 30024-2978

Re: OCR Complaint #04-14-1582

Dear Mr. Wilbanks:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint received by this office on May 15, 2014, in which the Complainant alleged that the Gwinnett County Public Schools (District) discriminated against students on the basis of disability. Specifically, the Complainant alleged that the District's graduating seniors exam policy discriminates against students with more than five documented medically-excused absences in a class, who are not eligible to be exempted from taking the final exam in that class, if they meet the other criteria.

OCR is responsible for enforcing:

- 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- 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. Title II prohibits 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 is subject to the provisions of Section 504 and Title II. Accordingly, OCR has jurisdiction over this complaint.

Based on the Complainant's allegation, OCR investigated the different treatment legal issue of whether the District discriminated against students with disabilities by prohibiting students with five or more medically-excused absences from exempting final examinations pursuant to its *Exam Exemption Policy for Graduating Seniors Only*, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. § 104.4, and the Title II implementing regulation, at 28 C.F.R. § 35.130.

OCR's investigation of the different treatment issue of the complaint included an analysis of the documents and information provided by both parties and interviews with the Complainant and District staff. OCR reviews evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness
by fostering educational excellence and ensuring equal access.*

www.ed.gov

conclusion that the recipient failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Based on a thorough review of the evidence gathered, OCR found insufficient evidence of noncompliance with Section 504 and Title II, regarding the different treatment issue in this complaint. However, during the course of the investigation, OCR found an unalleged compliance concern regarding free appropriate public education (FAPE)/failure to implement a Section 504 Individual Accommodation Plan (IAP). The District offered to voluntarily resolve the FAPE issue, pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, which states that a complaint may be resolved when, before the conclusion of an investigation, the recipient or public entity expresses an interest in resolving the complaint.

Legal Standards

The regulation implementing Section 504, at 34 C.F. R. § 104.4(a), 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. Section 504, at 34 C.F. R. § 104.4(b), states that a recipient, in providing any aid, benefit, or service, may not, (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) 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; (iii) provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; (iv) provide different or separate aid, benefits, or services to persons with a disability or to any class of persons with a disability unless such action is necessary to provide qualified persons with a disability with aid, benefits, or services that are as effective as those provided to others; (v) aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity; (vi) deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide a free appropriate and public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual'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 individuals with disabilities as adequately as the needs of individuals without disabilities are met. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standard established in the Section 504 regulation.

The regulation implementing Title II at 28 C.F.R. Section 35.130(a) states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to

discrimination by any public entity. OCR interprets Title II consistent with the above Section 504 regulatory standards.

Issue #1: Different Treatment

Factual Analysis

The Complainant alleged that students with more than five documented medically-excused absences cannot benefit from the “Exam Exemption Policy for Graduating Seniors Only” policy (Policy). The Complainant complained to the District and was told that the policy states that senior students with five or more medically-excused absences are not exempted from final exams.¹

The School/District adopted the Policy around 2001. The purpose of the Policy is to afford qualifying seniors the privilege of being exempted from taking final exams for good performance. The Policy states that in order to exempt a final exam, graduating seniors must meet academic, attendance, behavior, and other District criteria: (1) Academics – a senior must have a cumulative “A” average, 90 or greater at the end of the first semester of his/her senior year, or have an “A” average, 90 or greater in a specific course, may be eligible to exempt an exam in that course; (2) Attendance – a senior must not have more than five absences in that class. All absences except school sponsored activities count against the total of five; (3) Attendance – a senior must not have been suspended in or out of school during the final semester, and students will be counted absent from class if s/he misses more than half a period; and (4) Other – a senior must turn in textbooks prior to the exam day and have clearance from the Media Center that s/he has no books outstanding. Additionally, seniors who are eligible to exempt an exam may choose to take an exam without the risk of lowering the final average. The exam can improve the average, but cannot lower it. Seniors are not exempted from the state end of course tests.

During an interview with OCR, the School Principal said the Policy has been in existence for 13 years and no exceptions have been made for any students during this time. The District and the School Principal contend that the Policy is applied in the same manner to all seniors, with or without a disability, and, except for school sponsored activities, no mitigating circumstances, i.e., death in the family or temporary disabilities, like broken bones or other illnesses, requiring a senior to miss more than five days, would meet the examination exemption criteria. OCR determined that the Policy is facially neutral.

OCR also reviewed the Policy and the seniors at the School who were deemed ineligible based on excused absences, including medical excuses, and found no different treatment because the policy applies the same to all seniors, with or without a disability.

Conclusion

¹ According to the Brookwood High School (School) Principal, the policy is a “local procedure” which means that each school in the District has the option whether or not to adopt it.

Based on the above, OCR concludes that there is insufficient evidence to support a finding that the District is in noncompliance with Section 504 and Title II, as it relates to the different treatment issue of this complaint.

Issue #2: FAPE/ Failure to Implement

As stated above, during the course of the investigation, OCR found an unalleged compliance concern regarding FAPE. Prior to the conclusion of the investigation, the District requested to resolve the unalleged compliance concern. Pursuant to Section 302 of OCR's CPM, the attached Resolution Agreement (Agreement) will require the District to take actions to remedy the compliance concern of this complaint, regarding the District's provision of FAPE to students in the District. 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.

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.

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 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.

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.

We wish to thank you and your staff for the cooperation shown us during the investigation of this matter. If you have any questions concerning this letter, please contact Carol A. Jones, Investigator, at (404) 974-9351, or by email, at Carol.A.Jones@ed.gov, or me, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure