



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

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ATLANTA, GA 30303-8927

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August 27, 2015

Rudolph Falana, Ed.S.  
Superintendent  
Burke County School District  
789 Burke Veterans Parkway  
Waynesboro, GA 30830

Re: Complaint #04-15-1201

Dear Dr. Falana:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint which the Complainant filed on February 10, 2015, against the Burke County School District (District), alleging discrimination on the basis of disability.

Specifically, the Complainant alleged that the District discriminated against her son (Student), a student with a disability, when during the 2014-2015 school year, the District failed to properly evaluate and place the Student and when the District failed to provide the Complainant with procedural safeguards when the District held Section 504 meetings for the Student.

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 American 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, OCR investigated the following legal issues:

1. Whether the District discriminated against the Student on the basis of disability when it failed to properly evaluate and place the Student during the 2014-2015 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35(c), and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District discriminated against the Student and the Complainant when it failed to provide the Complainant with procedural safeguards in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36, and the Title II implementing regulation at 28 C.F.R. § 35.130.

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. Prior to the completion of OCR's investigation of Issue 1, the District requested to enter into a 302 agreement to resolve any possible compliance concerns. After a thorough review of all of the evidence relating to Issue 2, OCR has determined that there is insufficient evidence to support a finding of noncompliance with respect to that issue. The reasons for OCR's conclusions are found below.

### **Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.35 (c) provides that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

The Section 504 implementing regulation at 34 C.F.R. § 104.36 states that a recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. The Title II implementing regulations are interpreted consistent with the Section 504 standards.

### **Background**

The Student was enrolled at Burke County High School. In May 2011, the Student was involved in a swimming pool incident that subsequently caused the Student to have seizures. Prior and subsequent to 2011, the Student was educated in regular classrooms and met or exceeded the standard scores on the Georgia End of School tests. The Student graduated from high school in June 2015.

### **Analysis and Conclusion**

**Issue 1**—Whether the District discriminated against the Student on the basis of disability when it failed to properly evaluate and place the Student during the 2014-2015 school year in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35(c) and the Title II implementing regulation at 28 C.F.R. § 35.130.

The evidence showed that the District evaluated and placed the Student in February 2014, and developed a Section 504 plan for aids and services related to the Student's non-epileptic convulsions. The plan provided that the Student would be given extended time to complete assignments when he missed school due his disability. The Complainant did not attend the 2014 Section 504 meeting, despite receiving written notice and informing the District that she would attend the meeting. The evidence also showed that the counselor, school nurse, two of the Student's teachers, and the School's Section 504 Committee Chair attended and signed the February 26, 2014 plan.

Subsequently, on May 1, 2015, the District developed and began the implementation of a new Section 504 plan for the Student. The Complainant and the Student attended the meeting. The May 2015 Section 504 plan notes indicate that the team wanted to meet to determine if the District could assist the Student with transitioning out of high school. As part of its stated efforts to help the Student transition, the team also provided the Complainant and the Student with documents so the Student could apply for vocational rehabilitation.

The evidence shows that the counselor, Section 504 Committee Chair, School nurse, School principal, the Student and the Complainant attended the meeting. Except for the Complainant, all of the above signed the May 2015 Section 504 plan.

The evidence shows that the District received input from the Student's teachers, his physician and the Complainant in evaluating the Student for Section 504 eligibility.

In a rebuttal telephone call, the Complainant stated she had requested the District evaluate the student for his memory problems on several occasions to several District personnel during the 2014-2015 school year. The Complainant provided written documentation that she requested the District evaluate the Student for memory lapses.

The documentation the District provided does not show that the District evaluated the Student, as the Complainant requested. The District informed OCR that in February 2014, the Complainant asked for an Individualized Education Plan (IEP) for the Student; but that she did not want him to be evaluated for special education eligibility.

Upon contacting the District for additional information about this issue, the District agreed to resolve this allegation prior to OCR completing its investigation and making findings. Pursuant to Section 302 of the 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. The attached Resolution Agreement, dated August 10, 2015, will require the District to take actions to remedy any compliance concerns regarding this issue.

**Issue 2**—Whether the District discriminated against the Student and the Complainant when, before, during, or after Section 504 meetings for the Student, it failed to provide the Complainant with procedural safeguards in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36 and the Title II implementing regulation at 28 C.F.R. § 35.130.

The Complainant alleged the District failed to provide her with procedural safeguards at the Student's Section 504 meetings. The District provided documentation showing that, although

the Complainant did not attend the February 2014 Section 504 meeting on February 26, 2014, it mailed the Complainant a copy of her procedural safeguards.

Regarding the May 2015 Section 504 meeting, the Complainant did not sign indicating she received procedural rights. However, the District provided documentation showing that the Student—who was 18 at the time—signed a document affirming he received his procedural safeguards.

The documentation the District provided OCR shows that it mailed the Complainant's procedural safeguards to her on February 26, 2014 – the same day as the Section 504 meeting. Regarding the May 1, 2015 Section 504 meeting, the documentation shows the 18 year old Student affirmed he received his procedural safeguards. Based on the above, OCR finds that there is insufficient evidence to conclude that the District is in noncompliance with Section 504 regarding this issue, as alleged. OCR is, therefore closing this complaint as of the date of this letter.

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, 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. If 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.

Thank you for your staff's cooperation during the complaint resolution process. If you have any questions regarding this letter, please contact Pamela Simmons, Senior Attorney, at (404) 974-9364, or me, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.  
Compliance Team Leader