

October 13, 2015

Mr. Robert W. Runcie
Superintendent of Schools
Broward County Public School District
600 SE Third Ave
Ft. Lauderdale, Florida 33301

Re: Complaint #04-15-1317

Dear Mr. Runcie:

On April 16, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint filed against the Broward County Public School District (District) alleging disability discrimination. The Complainant alleged that the District is treating 2nd and 3rd grade students with disabilities in Exceptional Student Education (ESE) only schools and ESE self-contained classrooms within elementary schools differently than students without disabilities by denying them the same opportunity to participate in the Districtwide “First Move” chess program (Program).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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 by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990, 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 by public entities. Because the District is a recipient of Federal financial assistance from the Department and is a public entity, it is subject to the above statutes. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR initiated an investigation of whether the District subjected 2nd and 3rd grade ESE students with disabilities to different treatment on the basis of disability by not allowing them to participate in the District’s Chess Program, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4(a)(b)(4)(i) and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4 provides that no qualified student 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.

The Title II implementing regulation is interpreted consistent with the foregoing standard with respect to the complaint allegation.

Summary of Investigation

Upon the receipt of this complaint, the District provided OCR with an overview of the Program and requested to voluntarily resolve this complaint under Section 302 of OCR's *Case Processing Manual*. Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Based upon information submitted to OCR, all schools in the District with 2nd and 3rd grade classes were given the choice to participate in the Program during the 2014-2015 school year. The information shows that all five ESE-only centers in the District chose to opt out of the program. The District identified 37 elementary schools with self-contained classrooms that opted to participate in the Program; however, at the time of resolution, the District still needed to gather additional information as to whether each of those self-contained units participated in the Program with the rest of the school; and provide the reason(s) the ESE-only centers opted out of the Program.

Resolution Agreement

On October 13, 2015, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to make classroom-level determinations with regard to all classrooms at the ESE-only centers and for any self-contained ESE-only classroom that did not participate with the remainder of its 2nd and 3rd grade general education classrooms.

OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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.

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.

Thank you for your cooperation and the cooperation of District staff during the resolution of this complaint. We look forward to receiving your first monitoring report by January 10, 2016. If you have any questions, please contact Mr. Brian Gnant, General Attorney, at (404) 974-9238.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure