



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

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Mr. Alberto M. Carvalho
Superintendent
Miami-Dade County Public Schools
1450 N.E. Second Avenue, Suite 912
Miami, Florida 33132

Re: Complaint #04-15-1323

Dear Mr. Carvalho:

The U.S. Department of Education, Office for Civil Rights (OCR), opened the above-referenced complaint filed by the Complainant on April 21, 2015, against Miami-Dade County School District (District), which alleged that the District discriminated against visually impaired students district wide when the District through budget cuts reduced the number of teachers providing direct vision itinerant services resulting in monthly or bi-monthly vision consults instead of weekly direct vision itinerant services.

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; and 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 public entities from discriminating on the basis of disability. As a recipient of Federal financial assistance from the Department and a public educational institution, the District is subject to Section 504 and Title II.

Based on the above allegation, OCR investigated the legal issue of whether the District denied a free appropriate public education (FAPE) to visually impaired students by reducing direct vision itinerant services to these students regardless of individual need because of budget issues in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. § 104.33, and the Title II implementing regulation, at 28 C.F.R. § 35.

During the investigation, OCR reviewed and analyzed documents, such as the District's special education manual which provides for identifying students with a disability and providing needed services. OCR also interviewed the Director of Exceptional Student Education Program (ESE), and OCR interviewed the Complainant. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Prior to the conclusion of OCR's investigation, the District requested to resolve this complaint in accordance with Section 302 of the Case

Resolution Manual. Set forth below is a summary of OCR's legal standards, findings, analysis, and conclusions.

Regulatory Standards

The Section 504 regulation at 34 C.F.R. § 104.33(a) requires a recipient operating a public elementary or secondary education program to provide a free appropriate public education to each qualified person with a disability in the recipient's jurisdiction. Section 104.33(b) requires that the education program be designed to meet the individual educational needs of persons with disabilities as adequately as those of persons without disabilities are met. The regulation implementing Title II, at 28 C.F.R. § 35.130 contains similar provisions and is interpreted consistent with the standards set forth in the Section 504 regulations cited above and below.

Background

The Complainant filed this complaint with OCR because the District allegedly reduced the number of vision itinerant teachers who were providing direct vision itinerant services to student with visual impairments because of budgetary cuts, not the student's individual needs. Additionally, the Complainant alleged that this reduction in vision itinerant teachers resulted in monthly or bimonthly vision consults instead of weekly direct vision itinerant services.

Factual Findings and Analysis

The District has a total of 249 visually impaired Students who have Individual Education Plans (IEP). The majority of the visually impaired students have multiple disabilities requiring occupational, physical therapy and speech language services.

The District provided OCR with a listing of its staff and providers who provided direct vision itinerant services in the District during the 2012-2013, 2013-2014 and 2014-2015 school years. During school year 2012-2013 there were 16 vision itinerants and 5 vision classroom teachers. During school year 2013-2014 there were 14 vision itinerants and 6 vision classroom teachers, and during school year 2014-2015 there were 11 vision itinerants, 6 vision classroom teachers and 2 "Occupational" and "Mobility" itinerants.

The Director of ESE (Director) informed OCR that the District has a total of 249 students who are visually impaired. Of the 249 students, 126 students have visual impairment as their primary exceptionality.

The Director further informed OCR that the visual impaired itinerant teachers are mobile and are assigned a specific caseload each year. The services the vision teachers provide fluctuates depending on each student's individual IEP, and the decisions made by a student's respective IEP Team.

The Director informed OCR that the District had a teacher shortage of visually impaired teachers at Amelia Earhart School which caused the District to shift around its resources to accommodate the roughly 5 vision impaired Kindergarten through First grade students so that these students could be served in the classroom. The Director further informed OCR that the loss of the 5 vision itinerant teachers over a period of three years did not occur because of budgetary reasons, but for extenuating circumstances out of the District's control, namely: one teacher took a sabbatical, one did not have her certification, one went on medical leave, one went on workman's comp and is not back this year, and one resigned early in the year. The Director also informed OCR that the District moved personnel around to accommodate its teacher shortage.

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation the recipient or public entity expressed an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any compliance concerns regarding disability with respect to the issue in this case.

On October 27, 2015, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact Annie Simmons, at (404) 974-9463, or Scott Sausser, Esq., Compliance Team Leader, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure