



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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ATLANTA, GA 30303

REGION IV
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October 23, 2015

Dr. Alberto Carvalho
Superintendent
Miami Dade School District
1450 NE 2nd Avenue
Miami, FL 33132

Re: OCR Complaint #04-15-1330

Dear Dr. Cavalho:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its investigation of the above-referenced complaint filed on April 27, 2015, against the Miami Dade School District (District), alleging discrimination based on disability. Specifically, the Complainant alleged that the District denied her hearing impaired daughter (Student), a free appropriate public education (FAPE) by failing to implement elements of her Section 504 Plan. The Complainant stated that the District failed to provide the following elements of the Student's Section 504 Plan: 1) use of a microphone; 2) provide a class outline; 3) provide pre-test questions; and 4) check to see if the Student understands the instruction.

OCR is responsible for enforcing 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 by recipients of 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 public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

OCR investigated the following issue:

1. Whether the District denied the Student a FAPE during the 2014-2015 school year, by failing to implement elements of the her Section 504 Plan in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. Section 104.33(a), (b)(1) and (2) and Title II at 28 C.F.R. 35.130 (a) and (b).

Prior to OCR's investigation of this complaint, the District voluntarily offered to resolve the allegations of this complaint. Pursuant to Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Set forth below is a summary of the evidence that supports resolution of this complaint through the proposed resolution agreement.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

Background

During the 2014-2015 school year, the Student was a ninth grade student at Miami Beach High School (School). In January 2015, the Student was referred to the University of Miami Ear Institute for an auditory processing dysfunction evaluation. The Student was diagnosed with a mild hearing loss in the left ear. The Student is in the gifted program and enrolled in dual enrollment courses at Florida International University (FIU). In March 2015, the Student received a full scholarship to FIU.

The Student was determined eligible for Section 504 services on January 30, 2015. According to the Complainant, since the Student's Section 504 Plan (Plan) was developed in January 2015, the Section 504 Committee, which included the parents, has met approximately 50 times concerning the Student.

OCR reviewed the Student's 2014-2015 Plan. The Plan contains the following provisions: 1) seat the Student out of main traffic areas; 2) provide the Student with advance organizers, lecture outline, and pre-test questions; 3) Student to repeat and explain directions to ensure understanding; 4) seat Student in an area free from distractions; 5) quietly repeat the directions to the Student after directing the class; 6) repeat directions; and 7) Teachers use a microphone during lectures. The Complainant stated that following provisions of the Plan were not implemented: 2) provide lecture outline and pre-test questions; 3) check to see if the student understands the instructions; and 7) use a microphone.

In a February 4, 2015 email to the Principal, the Complainant stated that the Student had not received the support materials stipulated in her Plan from the AP World History Teacher and the student has a test on February 6. In an email from the AP World History Teacher to the Assistant Principal, he stated that the Student did not have a test. He stated that she has a small reading check, which is a quiz based on the information she should have read at home. He further stated that he did not understand how a mild hearing loss impairs her ability to read silently at home.

In a February 5, 2015, email from the Complainant to the Principal, the Complainant indicated that the microphone was not being used in the Student's Chemistry class. In an email on February 5, 2015, from the Assistant Principal to the Principal, he stated that that he spoke to the Chemistry teacher and she did not use the microphone because the class was working in small groups and she visited each group to provide additional instruction. In a February 5, 2015 email from the Special Education Staffing Specialist to the AP World History Teacher, she stated that she was coming to the School to clarify the issue for all involved. She provided training to staff on February 6, 2015.

The Complainant sent a series of email to the recipient about her concern with the implementation of the Student's Plan. On April 20, 2015, Director, Division of Academic Support responded to the Complainant stating the following: 1) on February 6, 2015, training on the Students Section 504 Plan was provided in both an individual and group training to each teacher; 2) on March 30, 2015, individual support sessions was conducted to review the Student's Section 504 Plan and to addressed faculty questions; 3) on April 1, 2015, a second review of the Plan was provided and general and specific strategies were addressed; and 4) on April 13 individual support was provided to the Chemistry teacher and World History Teacher to address specific issues expressed on April 13, concerning the implementation of the Plan.

On June 8, 2015, the Complainant requested an evaluation of the Student for special education. The evaluation was conducted on June 15, 2015. The District held a meeting on July 21, 2015, and determined that the Student did not meet the criteria for exceptional student education.

The District has agreed to implement the provisions of the attached Resolution Agreement (Agreement) which, when fully implemented will resolve the compliance issues. Pursuant to the terms of the Agreement, The proposed agreement will require the District to (1) convene a Section 504 committee to determine the appropriate services and to determine whether compensatory education is appropriate for the Student, and if compensatory education services are needed to provide them to the Student, and (2) provide training to School administrators, faculty and staff regarding the implementation of Section 504 Plans. 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.

OCR reminds the District that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

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

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions, please contact Phyllis Kane, Investigator, at (404) 974-9388.

Sincerely,

/S/

Virgil Hollis
Compliance Team Leader

Enclosure