

August 26, 2015

XXXXXX

**Re: Complaint #04-15-1354**

Dear XXXXX:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint which was filed against the Habersham County School District (District) on May 6, 2015, alleging discrimination against a student (Student) at Habersham Central High School (School). Specifically, the complaint alleged that the Student's 504 plan was not implemented when her XXXXX teacher refused to allow the Student to make up missed work while out of school due to a newly identified disability, a seizure disorder, and District staff failed to take steps that would not exacerbate the Student's seizures. The complaint also alleges that the Student was subjected to disability harassment by the Teacher and other staff members who refused to provide her with work missed while she was out of school, refused to grade her work when she returned, encouraged her to drop out of school or take medical leave due to her seizures and failed to appropriately respond to disability harassment by other students.

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, 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 (Title II), 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. As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Section 504. As a public entity, the District is also subject to the provisions of Title II. Accordingly, OCR has jurisdiction over this complaint.

OCR opened an investigation of the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement her 504 Plan in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §104.33.
2. Whether the District and School staff engaged in disability harassment of the Student and whether the District failed to take prompt and equitable steps to investigate and respond to the alleged harassment in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §104.4.

3. Whether the District failed to take prompt and equitable steps to investigate and respond to disability harassment of the Student by other students in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §104.4.

At the initiation of the investigation, the Complainant provided OCR with evidence which substantially supported several of the allegations of the complaint. The Complainant also informed OCR that the School staff took steps to resolve the failure to implement the Student's 504 Plan. The District initiated its own investigation of the allegations and concluded that the School failed to implement elements of the Student's 504 Plan and that disability based comments were made by the Teacher to the Student. The District confirmed to OCR that the School had taken steps to resolve the Student's concerns and had dismissed the Teacher from employment.

Prior to submission of the data requested by OCR, the District offered to voluntarily resolve this matter. Pursuant to Section 302 of 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. Based on the foregoing, OCR accepted the District's request and the District entered into the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues in this complaint.

The Agreement requires that the District make changes to its Section 504 Grievance and Complaint Procedures which were found not to fully meet OCR's requirements for prompt and equitable resolution of concerns, conduct extensive staff training for the School's Section 504 Coordinator, teachers and staff regarding the requirements of Section 504 as well as prohibitions against harassment and retaliation, and provide a remedy to the Student.

OCR will monitor the District's implementation of the 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 regulations OCR enforces protect individuals who file a complaint with OCR or participate in an OCR complaint investigation. Recipients may not retaliate or take any adverse actions against individuals based upon their having filed a complaint or provided assistance to OCR. Individuals who believe they have been subjected to retaliation or other adverse action because of their participation in any OCR compliance activity may file a complaint with OCR.

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 possible, 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. If you have any questions about this letter, please contact Colleen Grogan at (404) 974-9395 or me at (404) 974-9356.

Sincerely,

Wendy Gatlin  
Compliance Team Leader

Enclosure