



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV

ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

December 2, 2019

Dr. Brenda Longshore  
Superintendent  
Highlands County School District  
426 School Street  
Sebring, FL 33870

**Re: Complaint #04-15-1355**

Dear Superintendent Longshore:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case-resolution process for the above-referenced complaint filed against the Highlands County School District (District) alleging discrimination on the basis of disability against a District student (Student) and other students with disabilities who were enrolled in the XXXXXXXX XX XXXXX XXXX XXXX (the Academy), a District alternative school. Specifically, the Complainant alleged that the Academy forced the Student to stand in an open pit (the Pit), located outside in a sandy area enclosed by tire barriers, for two-and-a-half hours in XXXXX XXXX because he could not stay still and subjected the Student and other students to harassment on the basis of disability by placing them in the Pit in violation of the students' educational plans.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits 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, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits 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 initiated an investigation of the following legal issues:

1. Whether the District discriminated against the Student and other students on the basis of disability by denying them a free appropriate public education (FAPE) when Academy staff placed them in "the Pit," 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. § 35.130; and

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness  
by fostering educational excellence and ensuring equal access.*

[www.ed.gov](http://www.ed.gov)

2. Whether the District discriminated against the Student and other students with disabilities on the basis of disability by subjecting them to a hostile environment, which included placement in “the Pit”, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4 and 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.

During the course of the investigation, OCR reviewed evidence submitted by the Complainant and the District. OCR also interviewed the Complainant, the Student, the Student’s father, and nine District staff members, including the Academy Director, two Academy drill instructors, an Academy Counselor, an Academy Program Specialist, an Academy Exceptional Student Education Teacher, the District Section 504 Coordinator, a Deputy Superintendent, and the Assistant Superintendent for Student Support Services.

Based on its investigation, OCR found sufficient evidence to establish that the District did not comply with Section 504 and Title II with respect to Issue 1 as it relates to the Student. Prior to the conclusion of OCR’s investigation of Issue 1 as it pertains to whether the District denied other students a FAPE, and Issue 2 regarding whether the District subjected the Student and other students to a hostile environment, the District requested to enter into a resolution agreement pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM) which provides that an investigation may be resolved under this provision when the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement.

### **Legal Standards**

The implementing regulation for Section 504 at 34 C.F.R. § 104.4 provides that no qualified person 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 that receives Federal financial assistance. A recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or services; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iv) provide different or separate aids, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aids, benefits, or services that are as effective as those provided to others; and (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II at 28 C.F.R. § 35.130 contains similar provisions. Disability harassment that creates a hostile environment is a form of disability discrimination prohibited by Section 504 and Title II.

### **Background**

During the 2014-15 school year, the Student was XXXXXXXX years old and in XXXXX grade at XXXXXXXXXXXX XXXXXX XXXXXX (School), where he received services pursuant to a Section 504 plan (Plan) developed on XXX XX, XXXX. At the time OCR opened this complaint

for investigation, the Student's disability was Attention Deficit Hyperactive Disorder (ADHD), and his Plan included the following four accommodations related to his "low frustration tolerance:" verbal praise and encouragement, flexible scheduling in the classroom and for testing, extended time, and a space to calm down and think. Preferential seating was also listed as an accommodation related to "maintaining focus." Finally, accommodations related to difficulty in maintaining "on task behavior" included "summarized, repeated, or clarified directions" and small group testing "to include FCAT," a state standardized test at the time.

The Complainant informed OCR that the Student did not have a Behavioral Intervention Plan in place at the time he was assigned to the Academy. Throughout the 2014-15 school year, the School disciplined the Student frequently, including in response to physical altercations with other students (e.g., punching, tripping, and spitting). According to a summary of the Student's 2014-15 disciplinary history, dated XXXXX XX, XXXX, the District suspended the Student XXX X XXXXX XX XXXXX XXXX during that school year (XXXXXXXXXXXX XXXX of XXXXXX XXXXXX XXXXXXXXXXXX and XXXXX XXXX of XXXXXXXXXXXX XXXXXXXXXXXX). On XXXXX XX, XXXX, the District assigned the Student to the Academy for nine weeks in lieu of expulsion.<sup>1</sup>

### *The Academy*

At the time OCR opened this complaint for investigation, the Academy operated similar to a boot camp. Students, called cadets, were required to maintain a neat uniform and haircut; keep marching formation during transitions; and communicate using military jargon, including referring to other students as "Recruit" and responding to drill instructors with deference.

During the 2014-15 year, the Academy provided five areas of instruction: (1) physical fitness, including daily exercises and military drill procedures; (2) drug and alcohol education, for which a cadet is assigned to a substance abuse course and group or individual therapy; (3) a course on the consequences of crime; (4) community service teaching; and (5) the After School Alternative Program, which provided recruits academic instruction Monday through Thursday on one subject per day (i.e., English, Math, Science, or Social Studies) from certified teachers between 4:00 p.m. and 7:00 p.m. However, according to the Deputy Superintendent, students who were deemed unsuitable to take part in physical activity at the Academy, including students with disabilities, were offered alternatives, such as attending only the academic classes in the afternoon or receiving one-on-one instruction.

With respect to discipline, Academy guidelines, during the 2014-15 school year, stated that a staff member may administer Intensive Physical Training (IPT) to correct a recruit's behavior. Documents provided by the District state that IPT consisted of a set of physical exercises conducted and monitored by a staff member. In addition, the policies stated that a recruit may be removed from either morning instruction (i.e., the paramilitary component of the program) or afternoon academic classes to perform IPT but would not be removed when "heat conditions exist that create limitations." Upon completion of an IPT session, a drill instructor was to document, for inclusion in Academy records, the disciplinary incident, including the recruit's name, date, and the incident for which IPT was assigned.

---

<sup>1</sup> The Student also received a three-week assignment to the Academy in XXXXXXX XXXX in lieu of expulsion.

According to the District, IPT took place in “the Pit”, later called “the Beach,” which the District described as “a 28’ x 31’ area of white beach sand with tire barriers (approximately 3 feet tall) to keep the sand from dispersing or blowing away.” The District identified three functions of the Pit:

1. “The location for Individual Physical Training. The sand provides protection during sit-ups, push-ups, mountain-climbers, etc.”
2. “An area for students while the whole group is on the PT field (there are two student desks in the pit area). This could occur when students need a physical or mental break.”
3. “Isolation for students who are disruptive to the learning environment inside the facility.”

The District provided OCR with photos that show that, as of the time the photos were taken, the Pit was partially shaded by nearby trees and contained two desks in opposite corners.

### **Summary of Investigation**

#### *Use of “the Pit”*

During the 2014-15 school year, the Academy sent students to the Pit to engage in IPT as a punishment for misbehaviors. The Pit was also used to isolate disruptive students. The evidence also shows that for parts of the school year the Pit area was sometimes hot. Drill Instructor 1 noted that the heat was a concern during certain times of the year, and a teacher told OCR that the uniform for boys included a hat to protect their heads from the sun. District witnesses also reported that although Academy policies stated that a recruit may be removed from either morning instruction or afternoon classes to perform IPT, this would not occur when “heat conditions exist that create limitations.”

According to Drill Instructor 1, the time a recruit spent in the Pit was “usually not long” and staff’s use of the Pit “isn’t too common.” Drill Instructor 2 asserted that he “can’t say” how long he would typically place a recruit in the Pit. He also stated that sending a disruptive recruit to the Pit was “the only option” during afternoon classes but that staff members “do not use it very often.” A counselor recalled placing a recruit in the Pit for two hours. During his OCR interview, the Student noted that students were often sent to the Pit.

Drill Instructor 1, the Student, and Academy records confirmed that the Student was sent to the Pit in XXXXX XXXX. Neither Drill Instructor 1 nor the Student could state the precise amount of time the Student spent there. OCR also reviewed the documentation submitted by the District but found no record of the timeframe the Student stayed in the Pit and none of the individuals OCR interviewed could state how long the Student was placed in the Pit. However, the documentary evidence shows that he was sent there during snack time, which began at 3:00 p.m. and missed all of the instructional time, which ended at 7:00 p.m. Drill Instructor 1 stated that “[the Student] kept being noncompliant so I couldn’t take him out.” Thus, the evidence shows that the Student was in the Pit off and on for the three-hour instructional period as well as some undetermined portion of the snack period.

According to Drill Instructor 1, he extended the Student's time in the Pit because he observed the Student exiting the area to refill his canteen, running around outside the Pit, and pouring water on himself. Drill Instructor 1 added that the Student entered a building to use the restroom on four or five occasions. The Student acknowledged that he left the Pit on several occasions, stating that he needed to use the restroom and that, due to the heat, he refilled his canteen with water to drink and pour on himself. At another point in the Student's interview, when asked if he recalled how hot it was when he was sent to the Pit, he stated that it was "not that hot" outside. Drill Instructor 1 claimed that the Student did not pour water on himself due to the temperature because "it was not particularly hot that day," and he and the Academy Director asserted that the Pit was shady. However, the Academy Director conceded that the Student may have poured water on himself due to the heat.

### Instructional Time

During the 2014-2015 year, the Academy provided only four hours of instruction/four days per week for all students. The Student's records do not reflect that the Student's 504 team convened to make a determination regarding the implementation of a shortened school day for the Student based upon the Student's individual, disability-related needs.

### Analysis

During the 2014-15 school year, the Academy did not track any of its students' placements in the Pit. While at the Academy, the evidence shows that the Student was placed in the Pit for an extended period of time on XXXX XX, XXXX, during which he missed all of the instructional time for that day. Student and Academy staff statements during interviews indicate that staff ordered the Student to the Pit on at least two or three other occasions for short durations. Moreover, based on the Academy's schedule during the 2014-15 school year, which included no class instruction on Fridays, the Student did not receive a full instructional week during his nine-week assignment to the Academy, which began in XXXXX XXXX. There is no indication in the record that the Student's Section 504 team determined that the Student needed the shortened instructional time to meet his individual disability-related needs. Accordingly, OCR finds there is sufficient evidence to conclude the Student was denied a FAPE during the time he was at the Academy.

In addition, the evidence reflects that the Academy placed other students with disabilities in the Pit which impacted their instructional time at the Academy.

During OCR's negotiations of the resolution agreement with the District, the District confirmed that, as of the start of the 2016-17 school year, the Academy no longer utilizes the Pit in any capacity, and that the daily schedule at the Academy was changed to provide a full instructional day every weekday.

### Conclusion

Prior to the conclusion of the investigation, the District requested to voluntarily resolve the issue of denial of FAPE regarding the other students in Issue 1, as well as the entirety of Issue 2. Pursuant to Section 302 of OCR's CPM, a complaint may be resolved, before the conclusion of an

investigation, when the recipient or public entity expresses an interest in resolving the complaint and OCR agrees.

To resolve the complaint allegations, the District signed the enclosed Resolution Agreement (Agreement) that, when fully implemented, will resolve the complaint. OCR is monitoring the District's implementation of this Agreement to ensure that it is fully implemented.<sup>2</sup> Since entering the enclosed Agreement, the District provided OCR with reports reflecting the steps the District has taken to implement the terms of the Agreement. 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.

This concludes OCR's investigation of the complaint. This letter sets forth OCR's determination in an individual OCR case 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. 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.

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 Daniel Sorbera, Investigator, at (404) 974-9466, or me at (404) 974-9367.

Sincerely,

Ebony Calloway  
Compliance Team Leader

Enclosure

---

<sup>2</sup> OCR has reviewed the monitoring reports provided by the District to date which demonstrate that the District is implementing the Agreement. By separate letter, dated December 2, 2019, OCR provided the District with a summary of OCR's review of the information the District has submitted to OCR to date.