



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 21, 2015

Dr. Stan Curtis  
Director of Schools  
Cheatham County School District  
108 Elizabeth Street  
Ashland City, TN 37015

**Re: Complaint #04-15-1442**

Dear Dr. Curtis:

On July 2, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant against the Cheatham County School District (District) alleging disability discrimination against XXXX, who has a XXXX, and is enrolled in XXXX at XXXX. Specifically, the Complainant alleged that XXXX made a unilateral decision at the Individualized Education Program (IEP) meeting on XXXXX, with regard to whether pull-up diaper changing services for XXXX would be provided at XXXXXX.

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 prohibits 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.

OCR initiated an investigation of whether the District XXXXX to make a unilateral decision regarding the Student's related aids and services, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.35(c)(3), and Title II and its implementing regulation at 28 C.F.R. § 35.130.

During the complaint resolution process, OCR reviewed documents provided by the Complainant and the District including the District's complete investigative file from its internal investigation, and its evaluation policies and procedures.

LEGAL STANDARDS

As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 standards.

The regulation implementing Section 504 at 34 C.F.R. §104.35(c) requires that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable

about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with §104.34.

As noted in Appendix A, Subpart D of the Section 504 regulation, “It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the “process” requirements of this subpart (concerning identification and location, evaluation, and due process procedures).”

#### REQUEST FOR VOLUNTARY RESOLUTION

Prior to conducting witness interviews of staff, as would be required in order to complete the investigation and make a determination, the District offered 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.

#### BACKGROUND

- Prior to the 2015-2016 school year, XX had been enrolled in XXXX elementary school in the District. The Complainant stated that while in XXX program, District staff changed the Student’s diaper, which he wears if he has an occasional accident as his XXX are primarily managed through medication.
- On April 14, 2015, an IEP meeting was held at which the IEP Team acknowledged that the Student needed to wear a pull-up diaper in the event of an accident. However, XXXXXXXX claimed that, legally, diapering needed to be provided by a nurse which the XXXX did not have and, thus, the service was categorically unavailable.
- Thereafter, on XXXXX, the Complainant complained internally to the District and, in response, she received a letter on XXX informing her that XXX would indeed be provided. She also received a letter of apology from the XXXXX on XXXX.

#### SUMMARY OF INVESTIGATION

- Upon review of the District’s investigative determination and letter of apology issued by XXX, it did not address the issue of whether XXX dictated the decision of the IEP Team based upon purported staffing restrictions.
- OCR reviewed the District’s procedures and confirmed that they require that a team make determinations after review of available data from different sources.
- The meeting minutes and documentation provided by the District indicated that the April 14, 2015 IEP meeting was attended by the Complainant, XXXXX and four other District staff members.

- Upon review of the statements obtained by the District in its investigation, OCR noted concerns as to statements allegedly made before and during the meeting by XXXX with regard to the XXXX placement and his disability.

RESOLUTION AGREEMENT

The Resolution Agreement requires the District to publish its Section 504 policies on its website so that they are easily searchable, conduct training of School staff regarding the requirement of Section 504 at 104.35(c), and provide a written reminder to XXXX of their legal obligations under Section 504 and a caution regarding making any comments or conduct which may be perceived as offensive on the basis of disability as doing so could rise to the level of harassment which creates a hostile environment for students.

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 Gandt, General Attorney, at (404) 974-9238.

Sincerely,

Wendy Gatlin  
Compliance Team Leader