



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 5, 2016

Dr. Desmond Blackburn
Superintendent
Brevard County School District
2700 Judge Jamieson Way
Viera, FL 32940

Re: OCR Complaint #04-15-1445

Dear Dr. Blackburn:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has terminated its investigation of the above-referenced complaint filed on July 7, 2015, against the Brevard County School District (District), alleging discrimination based on disability. Specifically, the Complainant alleged that the District did not allow her son (Student) and his disabled classmates to participate in the kindergarten graduation at Turner Elementary School in May 2015.

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:

Whether the District subjected the Student and his disabled classmates to different treatment on the basis of disability by not allowing them to participate in the May 2015 kindergarten graduation, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. Sections 104.4 and 104.37 and the Title II implementing regulation at 28 C.F.R. Section 35.130.

Prior to the conclusion of OCR's investigation of this complaint, the District voluntarily offered to resolve the allegation in 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 the resolution of this complaint through the enclosed signed Resolution Agreement (Agreement).

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states 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.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i)-(iv) state that in providing any aid, benefit, or service, a recipient may not, 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 service; (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; (iii) provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or (iv) provide different or separate aid, 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 aid, benefits, or services that are as effective as those provided to others.

The regulation implementing Title II, at 28 C.F.R. § 35.130(a) and (b), is interpreted consistently with the regulation implementing Section 504 as it relates to the different treatment of students with disabilities.

Finally, the Section 504 implementing regulation at 34 C.F.R. § 104.37(a) and (b) require a recipient to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

Background, Analysis, and Conclusion

During the 2014-2015 school year, the Student attended Turner Elementary School (School). The Student was a kindergarten student in a multi-grade self-contained classroom because he needed additional academic, social and behavioral support. The kindergarten students at the School participated in an end-of-the-school-year program on June 1, 2015 to recognize their completion of kindergarten and promotion to first grade. According to the District, the School did not have a graduation ceremony; instead, it had an end-of-the-school-year program. Six kindergarten classes participated in the end-of-the-school-year program. The parents were invited to the program, and the students sang songs and received certificates. At the conclusion of the program, the students went back to their individual classes where refreshments were served. According to the District, the Student and one other kindergarten student in his classroom did not participate in the end-of-the-school-year program.

The Complainant stated that she received a message from the School's Automated Message Center on May 31, 2015, reminding her that the Student's kindergarten graduation would be taking place the following morning. On June 1, 2015, the Complainant called the Student's teacher and she stated that the graduation had already taken place. The Complainant stated that the teacher told her that her class did not participate in the graduation because it would be too much for them to participate. According to the District, the Student is no longer attending school in the District.

The District has agreed to implement the provisions of the attached Agreement, which, when fully implemented, will resolve the compliance issues in this complaint. The Agreement requires the District to (1) present a certificate to the Student and any other kindergarten students who did not participate in the Spring 2015 end-of-the-year program, and (2) provide training to School administrators, faculty and staff on Section 504's and Title II's prohibition against the exclusion of students with disabilities from non-academic and extracurricular services/activities solely based on disability. 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 that 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,

Virgil Hollis
Compliance Team Leader

Enclosure