



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

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December 28, 2015

Via U.S. Mail and Email

Mr. Heath Grimes
Superintendent
Lawrence County Schools
14131 Market Street
Moulton, AL 35650

Re: Complaint #04-15-1446

Dear Mr. Grimes:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on July 1, 2015, against Lawrence County Schools (District) alleging that the District discriminated against the Student on the basis of disability when the Student's English Teacher (Teacher) failed to implement the provision of the Student's Section 504 plan related to re-testing the Student, whenever he earned a grade below 60. Specifically, the complaint alleged that the Teacher improperly re-tested the Student by unfairly changing (the format, length and/or content of) make-up tests to make them more difficult.

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 and retaliation by recipients of Federal financial assistance (FFA). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability and retaliation by public entities. As a recipient of FFA from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR investigated the following legal issue:

Whether the District failed to provide the Student a free appropriate public education (FAPE) when the Student's Teacher failed to implement the provision of the Student's Section 504 plan

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related to re-testing, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33 and the Title II regulation at 28 C.F.R. § 35.130.

In reaching a determination, OCR reviewed and analyzed documents pertinent to the complaint issues and interviewed the Complainant, the Student, and three District officials.

Based upon a preponderance of evidence, OCR found sufficient evidence to support a finding that discrimination occurred. Set forth below is a summary of OCR’s legal standard, findings, and conclusion.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33(a) and (b), requires recipient school districts to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient’s jurisdiction, regardless of the nature or the 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 the individual needs of students with disabilities as adequately as the needs of nondisabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards.

Background

The Student was a senior at Hatton High School (School) in the 2014-2015 school year, at which time he took “12th Grade English,” a year-long class. The Student had a 504 plan and documents in his educational file indicating that he has Attention Deficit Hyperactivity Disorder (ADHD) and Dyslexia.

Findings and Conclusion

Issue - Whether the District failed to provide the Student a free appropriate public education (FAPE) when the Student’s Teacher failed to implement the provision of the Student’s Section 504 plan related to re-testing, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33 and the Title II regulation at 28 C.F.R. § 35.130.

- The Student’s 2014-2015 Section 504 plan specifies that he is to be retested whenever he scores less than a 60.
- The Teacher administered 45 tests to students taking 12th Grade English during the 2014-2015 school year.
- The Teacher acknowledged that the Student took all 45 tests and scored less than 60 on 22 tests.
- The Teacher also acknowledged that she only retested the Student on two of the 22 tests on which he scored less than 60 and never informed the Student’s parent that he was not being retested.

- The Teacher’s justifications for not retesting the Student, per his Section 504 plan, were that (1) she felt it was the Student’s responsibility to schedule retests before and after school and (2) on two or three occasions, she did not retest the Student (on unspecified tests) because he allegedly told her that his parent decided retesting was not necessary for those tests. The Teacher acknowledged that she never attempted to verify the latter justification with the Student’s parent.
- The Student’s Section 504 plan does not state that (1) the Student must be retested before or after school (as opposed to being tested, for example, during his class or his lunch period), (2) the Student must schedule retesting appointments with the Teacher in order to be retested, or (3) the Student’s parent could create a retesting exemption for the Student.
- The Student’s parent informed OCR that she never told the Student that he did not have to be retested on any test on which he scored less than a 60 and that she was never notified by the Teacher or any other District employee that (1) the Student had scored less than 60 on any of the 22 tests he failed, (2) the Student had not been retested on 20 of those tests, as required by his Section 504 plan, or (3) the Student reported that she said he did not have to re-take two or three of the tests on which he scored less than 60.
- Of the two tests the Student was retested on, the Teacher denied that there were any changes in the format, length and/or content to make the tests more difficult. Instead, she explained that the Student was either given the same test or a shortened test, which she modified to make the test easier.
- The Teacher alleged that she repeatedly informed the School’s 504 Coordinator, who no longer works for the District, and the Principal, that the Student was not being retested; the Principal, however, denied any recollection of this.
- When asked about his communication expectations in a situation like the current one, where a disabled student’s Section 504 plan requires him to be retested but retesting was not occurring, the Principal, who was a member of the Student’s 504 Team, indicated that he did not necessarily expect the Teacher to inform him or the Student’s parent of the lack of retesting at any point during the school year.

Based on the foregoing, OCR finds sufficient evidence that the District failed to provide the Student a FAPE when the Student’s Teacher failed to implement the provision of the Student’s Section 504 plan related to re-testing the Student whenever he scored below a 60 on a test. The District has agreed to resolve the issue of this complaint pursuant to Section 303 of OCR’s Case Processing Manual (CPM). Accordingly, the District has agreed to take voluntary actions to train all School staff involved in the provision of Section 504 services to students at the School, including the requirement that the District provide those services identified by a student’s Section 504 team as necessary to meet the student’s disability-related needs. Those voluntary actions are delineated in the attached, signed Resolution Agreement.

This concludes OCR's investigation of the complaint 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 sets forth OCR's determination in an individual OCR case. 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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.

If you have any questions or concerns regarding OCR's determination, please contact Ms. Demetria Mills-Obadic, the assigned investigator, at (404) 974-9353, or the undersigned, at (404) 974-9376.

Sincerely,

Arthur Manigault
Compliance Team Leader

Enclosure