



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

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December 16, 2015

Dr. William E. Bibb
Director of Schools
Tipton County School District
1580 Highway 51 South
Covington, TN 38019

Re: Complaint #04-15-1478

Dear Dr. Bibb:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution process regarding the above-referenced complaint filed against the Tipton County School District (District) alleging disability discrimination. Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by failing to implement his Section 504 Plan at XXXXXXXX XXXX School (School) during the 2014-2015 school year, which resulted in the Student not being eligible to participate in the dual enrollment at the School during the 2015-2016 school year.

OCR investigated the complaint pursuant to 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 in any program or activity receiving Federal financial assistance from the Department; 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 a public entity. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to the provisions of Section 504 and Title II.

During OCR's investigation, OCR conducted interviews with the District's Section 504 Coordinator, the Student's parent (Parent), and the Student, and also reviewed documents submitted by the District and Complainant. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Prior to the conclusion of OCR's investigation, the District requested to resolve this complaint in accordance with Section 302 of OCR's *Case Processing Manual*.

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Background

During the 2014-2015 school year, the Student was a XXXXXX at the School. He had a Section 504 Plan (Plan) that required the Student's teachers and a designated staff person to XXXXX XXX XXXXXX regarding XXX XXXXXXXX XXXXXXXXXXXXXXX for the Student by the XXXXXXX of each week. The Plan also required the Student to XXXX with XXXXXXXXXXXX XXXX at the School for XXXXXX XXXXXXXX XXXXX to help the Student XXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXXXXX. This provision was to XXXX to every two weeks, then once monthly. The Student was also to continue to XXXX XXXX XXX XXXXXXXXXXXX XX XXX XXXXXXX. The Plan also stated that a XXXXXXX XXXX XX XXXXXXX XXXXXXXXXXXXXXX would be developed to work on with Student.

Evidence supporting a OCR Case Processing Manual (CPM) Section 302 Resolution

The Parent alleged that four of the Student's teachers failed to provide her XXXXXXX XXXXXXX regarding the Student's XXXXXXX XXXXXXXXXXXXXXX. She also alleged that in April 2015 staff at the School stopped meeting with the Student for his XXXXXXX XXXXXXXXXXX XXXXXXX. The Parent further alleged that she was provided a XXXXXXX XXXX XX XXXXXXXXXXXX regarding the Student's XXXXXXX XXXXXXXXXXXXXXX from the beginning of the school year until the January 29, 2015 Section 504 meeting. However, she believes the XXXXXXX XXXX was incomplete and it was in a format that was confusing to understand.

The Parent contends that although she received XXXXXXX regarding the Student's XXXXXXX XXXXXXXXXXXXXXX and the Student has completed most of his XXXXXXX XXXXXXXXXXXXXXX, he was not eligible to enroll in a dual enrollment course, because the District did not provide her XXXXXXX XXXXXXX regarding the Student's XXXXXXX XXXXXXXXXXXXXXX, or continue to assist the him with his organizational skills through weekly XXXXXXXXXXX XXXXXXX, or provide her a complete XXXXXXX XXXX of his XXXXXXX XXXXXXXXXXXXXXX.

The documentation and information obtained during the interviews conducted thus far indicate likely compliance concerns regarding the District's failure to provide the Parent weekly XXXXXXX regarding the Student's XXXXXXX XXXXXXXXXXXXXXX; failure to provide him XXXXXXXXXXX XXXXXXX from April 2015 until the end of the school year; and the School's failure to provide a complete XXXXXXX XXXX of XXXXXXX XXXXXXXXXXXXXXX from the beginning of the 2014-2015 school year until the January 29, 2015, Section 504 meeting. However, before OCR began interviews with other members of the District staff regarding these allegations, the District expressed an interest in a 302 resolution, and offered to voluntarily resolve the matter. Pursuant to Section 302 of OCR's *Case Processing Manual*, 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 the District to 1) provide Section 504 training for current administrative and teaching staff at the School and 2) to convene a Section 504

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meeting to determine (a) whether the Student needs compensatory and/or remedial services as a result of the School's failure to provide the Parent weekly XXXXXX of the Student's XXXXXXXX XXXXXXXXXXXXX, (b) whether the Student needs compensatory services as a result of the District's failure to provide weekly XXXXXXXX XXXXXXXX for the Student from April 2015 until the end of the 2014-2015 school year, (c) whether the District's failure to provide the Parent weekly XXXXXXXX of the Student's XXXXXXXX XXXXXXXXXXXXX affected his eligibility for the dual enrollment program, and (d) whether the Student needs compensatory services as a result of the District's failure to provide a complete XXXXXXXX XXXX of XXXXXXXX XXXXXXXXXXXXX from the beginning of the 2014-2015 school year until the January 29, 2015 Section 504 meeting.

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. Further, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach. Furthermore, the District is advised that the Complainant may file a private lawsuit regardless of whether OCR finds a violation of Section 504 and Title II.

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.

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.

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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. In the event 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, please contact Ms. Ledondria H. Saintvil, at (404) 974-9373, or me, at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure