



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

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ATLANTA, GA 30303-8927

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January 11, 2017

Dr. Bart Reeves
Superintendent
Jackson County School District
16003 Alabama Highway
Scottsboro, Alabama 35768

Re: Complaint #04-15-1483

Dear Dr. Reeves:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Jackson County School District (District), on August 12, 2015, alleging discrimination on the bases of disability. Specifically, the Complainant alleged that the District discriminated against the Student, who attends Brideport Middle School (School) by failing to evaluate the Student for special education during the 2014-2015 school year.

As a recipient of Federal financial assistance from the Department, the District is subject to the requirement of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination based on disability. As a public entity, the District is also subject to the requirements of 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 based on disability. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated whether the District discriminated against the Student on the basis of disability by failing to evaluate him for special education services, in noncompliance with Section 504 implementing regulation at 34 C.F.R. §104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During the complaint resolution process, OCR reviewed documents provided by the Complainant and the District. In addition, OCR interviewed the ADA Coordinator, the Special Education teacher, the Special Education Director, and the 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. Based on the evidence, OCR found sufficient evidence to support a finding of noncompliance with regard to the issue above. The enclosed Resolution Agreement, when fully complied with, resolves the noncompliance issue. Set forth below is a summary of OCR's findings

Applicable Regulatory Requirements

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 (a), requires a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

Background

The Complainant alleged that the Student has various medical conditions and has had several medical related absences during the 2014-2015 school year. As a result, the Student struggled academically. The Complainant stated that the parent has asked several times for the Student to be evaluated. The School stated that they were unable to conduct an evaluation of the Student because of absences; however, they could not provide the dates of the attempts to evaluate the Student. The Complainant stated that the District should have conducted the evaluation, even if the Parent had not requested it, because of the Student's medical conditions. The Complainant stated that the Parent provided medical documentation for the absences and no evaluation was initiated. The Complainant stated that the Student was retained for the 2014-2015 and 2015-2016 school years. The Complainant stated that despite the obvious issues, the School did not initiate an evaluation for the Student. The Complainant stated that the Student should have been offered homebound services and is entitled to compensatory services because of all the classes he failed before being evaluated.

Factual Findings and Analysis

Issue: Whether the District discriminated against the Student on the basis of disability by failing to evaluate him for special education services.

OCR interviewed the District's ADA Coordinator (Coordinator) and the Student's Special Education Teacher (SPED Teacher) with regard to the Parent's request for an evaluation for special education services and when an evaluation was actually completed.

The Coordinator stated that she had recently been hired in October 2015 to the position¹ however; she knew that the Student had been referred for evaluation in September 2015 based on the Complainant's request. The Coordinator stated that the Student's evaluation took some time to complete because he was frequently absent from School because of illness. The Coordinator stated that the Student's evaluation was completed in November 24, 2015 and his IEP was

¹ OCR staff interviewed the previous ADA Coordinator on October 15, 2015 and he stated that the Student's evaluation started on September 28, 2015.

completed on December 15, 2015. The Coordinator stated that neither the Parent nor the Complainant had contacted her before September to request an evaluation for the Student or homebound services, as she was not in her current position before October 2015.

The SPED Teacher stated that she had been working with the Student and his family since he was in the 5th grade and that he was frequently absent from School due to illness. The SPED Teacher stated that she met with the Complainant on three occasions during the 2015-2016 school year: In September 2015, November 2015 and December 2015. The SPED Teacher stated that the Parent signed a request for evaluation in September 2015, the Student's evaluation was completed on November 24, 2015 and an eligibility meeting was held at that time and the Parent was present and agreed with the Student's eligibility designation. The SPED Teacher stated she attended the Student's December 15, 2015 IEP meeting and the Parent was present and signed the completed IEP.

The SPED Teacher stated that she believed that the Student's evaluation took so long because he was absent frequently and he was held back twice because he did not turn in his work all the time. The SPED Teacher stated the Parent never discussed compensatory services for the Student nor did she request homebound services.

OCR reviewed the Student's report cards for the 2013-2014 and 2014-2015 school years, the Student's referral for evaluation, eligibility determination and IEP, the Student's evaluations by the District, correspondence from the School to the Parent regarding the Student's academic performance, and notes from the School Nurse's office.

OCR determined that the Parent signed consent for evaluation on September 28, 2015 and the Student was referred for evaluation on the same day. The evaluation of the Student was completed on November 24, 2015 and the Student's IEP was developed on December 15, 2015. Based on the information provided by the District, the Student's evaluation and eligibility was completed within 60 days. The Student's grades from his report cards and the correspondence from the School's Problem Solving Team in their "timely assistance forms", indicate that the Student had been struggling academically for some time before he was evaluated. In addition, the Student had been retained in the 5th grade and again in the 7th grade, according to the Complainant. Because the Student had been doing poorly in School, had been retained twice and the Complainant explained to the School that the frequent absences were due to the Student's medical condition the School should have considered the Student for evaluation.

The Student was absent from School for a total of 49 days between August 24, 2015 to April 13, 2016. The Complainant stated that the Parent provided medical documentation with regard to the Student and his disabilities. The Student was retained for the 2014-2015 and the 2015-2016 school years and the School stated the Student's had frequent absences that hindered their ability to evaluate him. The School could not provide the dates of the attempts to evaluate the Student. Section 504 at §104.35(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The Student was retained for two years and the Student was frequently absences due to medical reasons. Based on the preponderance of

evidence, OCR has determined, based on that the School should have suspected that the Student may have a disability and should have considered evaluated him prior to September 2015.

OCR contacted the Complainant on January 26, 2016, to determine if they had any additional information to add. The Complainant stated that she would gather additional information and provide a time for OCR to speak with the Parent. As of the date of this letter, the Complainant has not contacted OCR with any additional information.

For the reasons stated above, OCR concludes that the District failed to timely evaluate the Student. Even though the Student has now been evaluated and has an IEP, the District had evidence that the Student was frequently absence due to medical issues and was having academic difficulties prior to receiving special education services to assist him. Accordingly, OCR finds that there is sufficient evidence to support a finding of noncompliance with Section 504 and Title II, with regard to this issue.

On August 25, 2016, OCR received the enclosed signed Resolution Agreement (Agreement) that when fully implemented, will resolve the complaint. OCR will monitor the 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 you are advised that the Complainant may file a private action pursuant to Section 203 of the Americans with Disabilities Act, regardless of whether OCR finds a violation of Title II.

Prior to OCR issuing this letter of finding, the District held an IEP meeting on September 22, 2016 with a group of knowledgeable persons, including the Parent and the Student, to discuss remedial, compensatory and/or homebound services for the Student. The District provided OCR with the decision of this group of knowledgeable persons. The Student had been performing on grade level after the implementation of the Student's IEP for the 2015-2016 school year and the Parent and Student declined compensatory or homebound services but asked for tutoring after school as needed for the 2016-2017 school year as the Student is now in high school. Additionally, the District held training for District staff for September 27, 2016 regarding Section 504 and the provision of services to students with disabilities. The information provided from the District included the date and time of the training, a copy of the agenda, a copy of the handouts from the training and the name and qualifications of the trainer. This information provided by the District, fulfills the terms of the resolution agreement signed on August 10, 2016. Based on the documentation submitted by the District with regard to the resolution agreement, the monitoring of this agreement is complete and the matter is resolved with OCR.

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.

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. A complainant may file a private suit in Federal court whether or not OCR finds a violation.

This concludes OCR's consideration of your complaint, which we are closing effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this letter, please contact Michelle Vaughan, Attorney at (404) 974-9398, or the undersigned, at (404) 974-9366.

Sincerely,

Virgil Hollis
Compliance Team Leader