



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

61 Forsyth St., Suite 19T10  
ATLANTA, GA 30303

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

December 8, 2015

**Via U.S. Mail and Fax (305) 237-3109**

Attn: XXXXXXXXX, Superintendent  
5475 Airline Road  
Arlington, TN 38002

**Re: OCR Complaint #04-15-1522**

Dear Ms. XXXXX,

On September 8, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Arlington Community Schools District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District failed to properly evaluate XXXXXXXX (Student) under Section 504 in August and September, 2015, when it found that the Student's diagnosis of Attention Deficit Hyperactivity Disorder (AD/HD) did not qualify him for a Section 504 plan.

OCR enforces 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 recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 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 public entities. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the allegation, OCR investigated whether the District failed to properly evaluate the Student in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.35, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

## **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. §§ 104.33(a) and (b)(1) requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards.

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 to conduct an evaluation in accordance with the requirements of § 104.35(b) of a student who, because of disability, needs or is believed to need special education or related services.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(b) requires a recipient to establish standards and procedures for the evaluation and placement of a student with a disability which ensure that (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and that (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

The regulation implementing Section 504 at 34 C.F.R. § 104.35(c) provides that, in interpreting evaluation data and in making placement decisions, a recipient (1) shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all 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 Section 504's educational setting requirements.

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

## **Summary of Investigation**

The Student is currently an eleventh-grader in a District school. During the current 2015-16 school year, the District held two meetings to consider the Student's eligibility for regular or special education and related aids and services under Section 504.

The District conducted the **first** 504 meeting on August 20, 2015. The eligibility determination document for this meeting reflects that the Student has an impairment, AD/HD; the impairment affects the major life activity of concentration; the impairment does not substantially limit the Student in the major life activity of concentration; yet, the document reflects that the Student is eligible for a Section 504 Services Plan.

The District conducted the **second** 504 meeting less than three weeks later, on September 8, 2015. The eligibility determination document for this meeting reflects that the Student has an impairment, AD/HD; the impairment does not affect a major life activity; the impairment does not substantially limit a major life activity; and the Student is not eligible for a Section 504 Services Plan. The eligibility determination

document for this meeting also reflects that the Complainant noted on the document that the Student's impairment affects him in the major life activity of concentration.

OCR did not complete the investigation to determine whether the District properly evaluated the Student pursuant to Section 504 and Title II prior to receiving the request from the District to resolve this matter. However, OCR's investigation identified areas of concern, particularly in light of the discrepancy between the two eligibility determinations conducted less than three weeks apart, which the District has agreed to remedy.

### **Resolution Agreement**

To remedy the concerns raised by OCR's investigation, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will (1) conduct an evaluation of the Student, in accordance with Section 504 and its implementing regulation at 34 C.F.R. § 104.35, and determine the Student's eligibility for regular or special education and related aids and services; (2) if the Student is found eligible for regular or special education and related aids and services, determine whether the Student requires compensatory and/or remedial services, dating back to August 20, 2015; and (3) conduct Section 504/Title II training for all District teachers and staff involved in the evaluation/eligibility determination process pursuant to Section 504 and Title II.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the 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.

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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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 possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, 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 OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Mr. Clayton Adams, investigating attorney, at (404) 974-9464, or, me, at (404) 974-9376.

Sincerely,

Arthur Manigault, Esq.  
Compliance Team Leader