



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

December 3, 2015

**Via U.S. Mail and Email (bj.worthington@cmcss.net)**

Dr. B.J. Worthington  
Director of Schools  
Clarksville-Montgomery County Schools  
621 Gracey Avenue  
Clarksville, TN 37040

Re: OCR Complaint #04-16-1029

Dear Dr. Worthington,

On October 19, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Clarksville-Montgomery County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District failed to evaluate the Student and determine her eligibility for regular or special education and related aids and services.

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 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 free appropriate public education (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 a tenth-grader in a District school. The Complainant alleges that the Student has been diagnosed with Attention Deficit Hyperactivity Disorder and Anxiety and, as result, he requested an evaluation of the Student. The District's Section 504 Coordinator confirmed that the District has begun the process of evaluating the Student to determine her eligibility for regular or special education and related aids and services, and the Student has already been referred to the S-Team (student support team).

The District's Section 504 Coordinator also confirmed that she provided training on the Section 504 requirements concerning identification, evaluation, placement, and procedural safeguards, to all building Section 504 coordinators at the beginning of the school year, who, in turn, provided training to their building faculty and staff.

OCR did not complete the investigation to determine whether the District failed to evaluate the Student in accordance with Section 504 and Title II prior to receiving the request from the District to resolve this matter.

## **Resolution Agreement**

To remedy the allegation raised by OCR's complaint, 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) complete the 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; and, (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 13, 2015.

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 Ms. Claudia Campo, the assigned attorney, at (404) 974-9378, or, me, at (404) 974-9376.

Sincerely,

Arthur Manigault, Esq.  
Compliance Team Leader