



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

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REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

March 9, 2017

Dr. Kamela Patton
Superintendent
Collier County Schools
5775 Osceola Trail
Naples, Florida 34109

Re: Complaint #04-16-1144

Dear Dr. Patton:

On December 2, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against the Collier County Schools (District) alleging discrimination. Specifically, the Complainant¹ alleged that the District discriminated against her son (Student) on the basis of disability (facial deformity and other disabilities) by failing to take appropriate responsive action to redress the disability-based harassing conduct and actions directed towards the Student.

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.

During investigation, OCR investigated the following issue:

Whether the District discriminated against the Student on the basis of disability by failing to take appropriate responsive action to redress the disability-based harassing conduct and actions directed towards the Student, in noncompliance with Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

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

¹ OCR identified the names of the Complainant and Student in previous correspondence and is withholding their names in this letter to protect their privacy.

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. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the District. OCR also conducted interviews with the Complainant and members of the District's staff. Prior to the completion of OCR's investigation, the District agreed to a voluntary resolution agreement that when fully implemented will resolve the compliance issues raised by this allegation.

Legal Standards

Section 504, at 34 C.F.R. § 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Title II, at 34 C.F.R. § 35.130, states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by an public entity.

Section 504 and Title II prohibit disability-based harassment that creates a hostile environment, and the existence of such an environment also constitutes different treatment on the basis of disability. Harassing conduct based on disability creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive, so as to limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. A single incident may be sufficient to establish a hostile environment. If a school district knows or should have known about the harassment, it has an obligation to take prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects on the victim.

The Section 504 implementing regulation at 34 C.F.R. § 104.8(a), states that a recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 34 C.F.R. § 104.7(a). The Title II regulation has a similar notice requirement at 28 C.F.R. § 35.106.

The Section 504 implementing regulation at 34 C.F.R. § 104.7(a) states that a recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with Section 504. In addition, the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) states that a recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. In evaluating whether a recipient's grievance procedures satisfy this requirement, OCR reviews the following elements:

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1. Notice to students, parents, and employees of the grievance procedures, including where complaints may be filed;
2. Application of the grievance procedures to complaints alleging disability discrimination, including harassment, carried out by employees, other students, or third parties;
3. Provision for adequate, reliable, and impartial investigation of complaints, including an opportunity for the parties to present witnesses and supporting evidence;
4. Designated and reasonably prompt timeframes for the major stages of the grievance process;
5. Written notice to the parties of the outcome of the complaint and any appeal; and
6. Assurance that the institution will take appropriate steps to prevent the recurrence of any discrimination or harassment found to have occurred and remedy the discriminatory effects on the complainant and others, if appropriate.

To establish a violation of Section 504/Title II under the hostile environment theory, OCR must find that: (1) a disability-based hostile environment existed, meaning that the harassing conduct was sufficiently severe, persistent, or pervasive, so as to limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school; (2) the recipient had actual or constructive notice of the disability-based hostile environment; and (3) the recipient failed to respond adequately to redress the disability-based hostile environment.

In responding to alleged incidents of harassment, a district has an obligation to take prompt steps that are reasonably calculated to both end the harassment and prevent its recurrence and where appropriate, remedy the effects on the student who was harassed. A district may take several measures to prevent and eliminate harassment, including publicizing anti-harassment statements and procedures for handling complaints, providing training to staff and students, and counseling both persons who have been harmed by, and who have been responsible for, harassment.

Summary of Investigation

Whether the District discriminated against the Student on the basis of disability by failing to take appropriate responsive action to redress the disability-based harassing conduct and actions directed towards the Student, in noncompliance with Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

According to the Complainant, the Student had been bullied by other students due to Student's disability since 2012 and the District had not responded appropriately although one student was disciplined for punching the Student in 2014 because a bus camera captured that student hitting Student. The Complainant believes that various School officials, including but not limited to teachers and principals were aware of the alleged bullying because the Complainant had verbally complained to school officials since 2012.

OCR learned that from August 31, 2012 to November 16, 2015 there had been at least seven complaints made by the Complainant or School students regarding the manner in which the Student was being treated at School. For Example, on August 31, 2012, a student reported that Student was being made fun of by two students; on September 6, 2013, the Complainant emailed

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the School and expressed concern that the Student was being bullied; and on September 29, 2014, the Complainant came to the School to speak with the Principal about the Student being bullied.

On November 16, 2015, the Student brought a knife to School and reported to School officials that he did so for protection. As a result of the Student bringing the knife to School, the Student was suspended and sent to the District's alternative school for the remainder of the school-year. The Complainant believes the Student brought the knife to School as a result of being bullied due to his disabilities and the School's failure to appropriately respond to the bullying

In accordance with Section 302 of OCR's *Complaint Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. Prior to completion of OCR's investigation, the District requested to voluntarily resolve this issue and OCR has determined that it is appropriate to resolve this issue with a Resolution Agreement (Agreement).

The District agreed to enter into an Agreement which obligates the District to convene an IEP meeting with a group of knowledgeable persons, including the Student's parents to discuss in detail (1) what type of services and/or accommodations the Student presently needs, (2) how such accommodations will be implemented to amend the Student's current IEP if needed and 3) to determine whether the Student requires compensatory and/or remedial services for the period when the Student was in attendance at the District's alternative school program. If the group of knowledgeable persons determines that compensatory services are beneficial and needed for the referenced time period, the group will develop a plan for providing timely compensatory and/or remedial services. The District will provide the Student's parents notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

The District also agreed to identify a specific counselor at the Student's current school, or another appropriate person by title that the Student can go to who will assist the Student when he feels bullied; issue a letter to the Complainant offering to provide counseling services to the Student, through a qualified School counselor to help remedy any effects of any bullying incident he might identify with the counselor; review the Student's education file, including disciplinary records, from the 2012-2013 school year to current school-year and determine if any disciplinary infractions can be reasonably attributed to the Student being harassed due to the Student's disability(s) and the District shall remove all references to such infractions to the extent allowed by law; provide training to the District's Section 504 Coordinator(s), administrators and other relevant staff regarding their responsibility to prevent and address discrimination/harassment pursuant to Section 504. The training will consist of an overview of the District's responsibilities under Section 504 and Title II, including the District's responsibility for addressing discrimination on the basis of disability.

The District also agreed to provide administrators, counselors, and faculty at the School a questionnaire/climate survey to assess whether disability harassment and its effects are present at the School and prepare a written analysis of the information gathered from the questionnaire/climate check and develop a written plan setting forth proactive steps to address

any areas of concern identified by the questionnaire/climate check

Conclusion

On March 8, 2017, OCR received the attached Agreement. When fully implemented, the Agreement will resolve the complaint allegation. The provisions of the Settlement Agreement are aligned with this complaint and the information obtained during OCR's investigation to date, and are consistent with applicable regulations. OCR will monitor the District's implementation of the Settlement Agreement. 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 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. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. OCR would like to thank the District for their cooperation, especially XXXXX, XXXXXX. If you have any questions about this complaint, please contact G. Anthony Brown, Attorney, at (404) 974-9374 or me, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure

cc: XXXXXX, XXXXXX