



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
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May 10, 2018

VIA U.S. FIRST CLASS MAIL

Jimmy D. Shaw, Jr., Ed.D.
Superintendent
Florence City Schools
102 S. Court Street, Sixth Floor
Florence, AL 35630

RE: OCR Complaint #04-16-1293
Letter of Resolution

Dear Dr. Shaw:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced case with a Resolution Agreement (Agreement) signed by Florence City Schools (District). Specifically, the Complainant alleged that the District discriminated against her daughter (Student), at the time a student at the Florence Freshman Center (Center), by failing to provide materials accessible to her in light of her disability (XXXXXX XXXXXXXXXXXX). The Complainant alleged that the District failed to provide accessibility for the Global Scholars assessment, nine-week benchmark tests, Biology materials, extra credit opportunities in Geometry through Khan Academy, French class tests, Guidance Department handouts, and the District's website.

OCR investigated this 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 prohibits recipients of Federal financial assistance (FFA) from the Department from discriminating on the basis of disability, 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 prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the laws above. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following individual allegations:

- (1) Whether the District discriminated against the Student on the basis of disability by failing to make its Global Scholars assessments, the nine-week benchmark test, materials provided in the Biology class, extra credit opportunities provided in Geometry class, test in French class, and the course selection materials provided by the Guidance Office accessible to the Student in noncompliance with Section 504 and its implementing

regulation at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(iv) & (vii) and 104.33(a) & (b), as well as Title II and its implementing regulations at 28 C.F.R. §§ 35.130 and 35.160.

- (2) Whether the District discriminated against the Student on the basis of disability by maintaining a website that is inaccessible to individuals with XXXXXX impairments in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(iv) & (vii) and 104.33(a) & (b), as well as Title II and its implementing regulations at 28 C.F.R. §§ 35.130 and 35.160.

The Section 504 implementing regulations at 34 C.F.R. §§ 104.4(a) and (b)(1)(i)-(iv), (vii) provide that no qualified individual with a disability, on the basis of the disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity which received Federal financial assistance. The Title II implementing regulations at 28 C.F.R. §§ 35.130(a) and (b)(1)(i), (ii), and (vii) contain substantially the same general prohibitions against disability discrimination as the above Section 504 provisions. As stated in the Title II implementing regulation at 28 C.F.R. § 35.103, this regulation shall not be construed to apply a lesser standard than the standard applied under Section 504.

Additionally, the Section 504 implementing regulation at 34 C.F.R. § 104.33 states at subsection (a) that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. §104.33 (b) states that provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

Moreover, the Title II implementing regulation at 28 C.F.R. § 35.160(b) provides that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.

The Title II implementing regulation at 28 C.F.R. § 35.160(a) provides that “A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint through a voluntary agreement. Prior to the conclusion of this investigation, the District agreed to negotiate and resolve the complaint allegations through a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's CPM. On May 9, 2018, the District signed the enclosed Agreement, which when fully implemented, will address the alleged compliance issues in this complaint. OCR will monitor the implementation of the Agreement until the District is in compliance.

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 duly authorized OCR officials 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 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.

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. We will continue the monitoring of the Agreement. If you have any questions, please contact Miyong Loughlin, General Attorney, at (404) 974-9444, or the Compliance Team Leader, Arthur Manigault, at (404) 974-9376.

Sincerely,

Arthur Manigault
Compliance Team Leader

Enclosure

cc: Attorney for the District (*via electronic mail only*)