



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

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

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March 15, 2018

Mr. Russell Hughes
Superintendent
Walton County School District
145 Park Street
DeFuniak Springs, FL 32435

RE: OCR Complaint #04-16-1451

Dear Mr. Hughes:

On May 12, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against the Walton County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District denied her son (Student), a Free Appropriate Public Education (FAPE) by failing to evaluate the Student in a timely manner and by failing to provide the Complainant with due process rights.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The Section 504 regulation at 34 C.F.R. § 104.61 incorporates by reference the prohibition on retaliation and intimidation for engaging in a protected activity found in the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, at 34 C.F.R. § 100.7(e). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The regulation implementing Title II at 28 C.F.R. § 35.134 also prohibits retaliation. As a recipient of FFA from the Department, the District is subject to Section 504 and Title II.

OCR initiated investigation of:

- Whether the District denied the Student a FAPE by failing to perform an evaluation of the Student in a timely manner after receiving notice of the Student's disability, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33 and the Title II regulation at 28 C.F.R. § 35.130.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without

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disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

Summary of Investigation

Upon the receipt of this complaint, the District provided OCR with the Student's records, its policies and procedures for Students with disabilities, made their 504 Coordinator available for an interview, and requested to voluntarily resolve this complaint and signed the attached resolution agreement under Section 302 of OCR's *Case Processing Manual*.¹ Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on March 13, 2018 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law

¹ The Case Processing Manual can be accessed here: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Joshua Porter at 404-682-3356 or by email at joshua.porter@ed.gov, or me at 404-974-9354, or by email at scott.sausser@ed.gov.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader