



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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ATLANTA, GA 30303

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November 21, 2016

Mr. Rodney M. Bowler
Superintendent
Henry County School District
33 N. Zack Hinton Parkway
McDonough, Georgia 30253

Re: Complaint #04-16-1455

Dear Mr. Bowler:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution process of the above-referenced complaint filed by the Complainant on XXX XX, 2016, against the Henry County School District (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the Student was subjected to disability discrimination at XXX XXXXXXXXXXXX School (School) when the District denied the Student access to bus transportation with his regular education peers for a school sponsored field trip with his Xth grade class based on the nature of the Student's disability. The Complainant also alleged that the District gave her the option to either ride "special transportation" with the Student or transport him in a separate vehicle.

OCR investigated this complaint under 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 discrimination on the basis of disability by recipients of Federal financial assistance; 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. The District receives Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over this complaint.

OCR investigated the following legal issue: Whether the District subjected the Student to different treatment on the basis of disability, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. 35.130.

During the course of this investigation, OCR reviewed evidence submitted by the Complainant and the District and interviewed the Complainant. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the District requested to address the complaint allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Provided below is an analysis of OCR's investigation thus far of the legal issue.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. § 104.4(a), (b)(1)(i), (ii) and (vii), provides 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 that receives Federal financial assistance.

A recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or services; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; and (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The Title II regulations, at 28 C.F.R. § 35.130(a) and (b)(1)(i), (ii) and (vii) includes similar prohibitions.

Evidence Obtained Thus Far

During the 2015-2016 school year, the Student was a XXXXX grade student at the School. The Student was diagnosed with XXXXXXXX XXXXXXXX syndrome, Attention Deficient Hyperactive Disorder (ADHD), and XXXXXXXX XXXXXXXX. He has a Section 504 plan.

The District submitted documentation showing that on May 4-6, 2016, the Student's class was scheduled to travel to the XXXXXXXX XXXXXXXX XXXXXXX (Center) at XX XXXXXXX XXXXXXX. The documentation shows that the Complainant gave permission for the Student to attend the field trip and ride the bus, and she volunteered to serve as a chaperone for the field trip.

The District provided a medical overview of the Student's class identifying students with issues related to their health. There were ten students, including the Student, with identified health issues, such as: exertion asthma, plantar foot, weak ankles on occasion, asthma, ADHD, and allergies. Three of the students did not require medication, one required Ibuprofen (as needed), two used an inhaler (as needed), one had allergy medicine administered by a parent, and two took medication for ADHD. Of the ten students identified, the Student was the only one classified as a student with a disability under Section 504.

The District also provided documentation identifying other students with disabilities that attended the field trip. The evidence does not indicate that any bus was designated to transport only students with disabilities or medical needs. The evidence indicates that both students with and without disabilities were assigned to each of the four buses that transported students for the field trip.

The District also submitted a series of emails between the Complainant and faculty at the School regarding transportation for the Student to the Center. In an XXXXX XX, 2016, email to the Complainant, a School faculty member appears to advise the Complainant that she would need to transport the Student on the field trip due to his medical needs. The evidence does not show any documentation in which the Complainant was advised of the option to ride "special transportation" for the field trip. The Complainant transported the Student to and from the Center in her personal vehicle. Documentation shows that once at the Center, the Student was assigned to a group with his classmates and participated in all activities during the field trip. The Complainant and other parents served as chaperones for the group. OCR reviewed the Student's Section 504 plan, and it did not contain any provisions related to transportation.

Reasons to Resolve Pursuant to CPM Section 302

As noted, the Student's Section 504 plan did not contain any provisions related to transportation. However, documentation provided by the District indicates that the Complainant was advised that the Student could not ride the school sponsored bus with his classmates for the field trip due to his medical needs. Prior to the District's request to resolve the complaint, OCR had not made a determination concerning whether any action taken by the District effectively excluded the Student from participating in school sponsored transportation to the Center.

Proposed Resolution and Conclusion

The attached Agreement requires the District to (1) reimburse the Complainant for mileage incurred to transport the Student to and from the Center for the field trip and (2) provide training to administrative and teaching staff at the School, the District Section 504 Coordinator (Coordinator) and the School based Coordinator regarding the

prohibition against discrimination under Section 504 and Title II. The training shall be provided by a source with expertise in Section 504 and Title II¹ and shall cover, at a minimum, the prohibition against discrimination and different treatment on the basis of disability.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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. If you have any questions regarding this letter, please contact Ledondria H. Saintvil, Attorney, at (404) 974-9373, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure

¹ If the District desires, it may coordinate with OCR to provide the training at a mutually-agreeable time and place.