



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

August 1, 2017

X  
Superintendent  
Duval County Public Schools  
1701 Prudential Drive  
Jacksonville, Florida 32207

Re: OCR Complaint #04-16-1474  
Letter of Resolution

Dear X:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has terminated its investigation of the above-referenced complaint filed on May 18, 2016 against the Duval County School District (District), alleging discrimination on the basis of disability (Attention-Deficit/Hyperactivity Disorder). Specifically, the Complainant alleged that Southside Estates Elementary School (School) excluded the Student from attending a class field trip to Legoland on May 18, 2016.

OCR investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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 from the Department. OCR also applied Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public educational institutions. Because the District is a recipient of Federal financial assistance from the Department and a public entity, it is subject to these regulations.

OCR investigated the following legal issue:

Whether the District discriminated against the Student on the basis of disability by excluding him from participation in the May 18, 2016 Legoland field trip, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4 and 104.37 and the Title II implementing regulation at 28 C.F.R. § 35.130.

During its investigation, OCR interviewed the Complainant, reviewed and analyzed relevant documents submitted by the Complainant and the District, and provided the Complainant with an opportunity to rebut the documentary evidence submitted by the District. Prior to the conclusion of OCR's investigation of this complaint, the District voluntarily offered to resolve the allegation

in this complaint. Pursuant to Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. The District entered into the enclosed Resolution Agreement (Agreement) on July 31, 2017, which, when fully implemented, will resolve the complaint. This letter summarizes the applicable legal standards, OCR's findings of fact thus far in the investigation, and the provisions of the Agreement.

### **A. Legal Standards**

The Section 504 implementing regulation 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.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i)-(iv) and (vii) state that in providing any aid, benefit, or service, a recipient may not, 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 service; (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; (iii) provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; (iv) provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others; or (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 regulation implementing Title II at 28 C.F.R. § 35.130(a) and (b) is interpreted consistently with the regulation implementing Section 504 as it relates to the different treatment of students with disabilities.

The Section 504 implementing regulation at 34 C.F.R. § 104.37(a) and (b) require a recipient to provide non-academic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

### **B. Findings of Fact**

During the 2015-2016 school year, the school year at issue in this complaint, the Student attended X grade at the School. The Complainant reported to OCR that the Student had been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) at the age of X.

OCR's review of the Student's educational file shows that the School developed Section 504 plans for the Student at the end of X and the beginning of X grade. Toward the end of the Student's X grade year, the School developed an Individual Education Plan (IEP) for him on X,

with an initiation date of X. His Primary Exceptionality was Specific Learning Disabled. Pursuant to the IEP, the Student received daily guided practice for reading in the general education classroom. The IEP also granted him such classroom modifications as a read-aloud accommodation on non-reading tests, extended time for assignments and tests, encouragement without cueing a response, and repetition/clarification of directions.

Toward the end of X grade, on X, the Student's IEP team reconvened to review his existing IEP. The team developed a new IEP for the Student with an initiation date of X. The IEP granted the Student small group instruction for Language Arts (30 minutes per day) and Math (60 minutes per day). Pursuant to the IEP, he also received classroom modifications, such as small group testing, double time for tests, verbal encouragement, and extra time to complete assignments. The IEP did not address the issue of field trips, such as the Student's participation or the requirement of a chaperone.

In a chronology of events that was submitted by the District to OCR, the Student's X grade teacher (Teacher) wrote that she taught the Student his entire X grade year. The Teacher stated that the Student "exhibited behavior issues including but not limited to poking other students, staying in restroom for twenty minutes or longer, and lagging behind the class in transitional lines." The Teacher expressed concern for the safety of the Student and three other students if they were to attend an unfamiliar field trip to Legoland on May 18, 2016. The Teacher also stated that on May 10, 2016, she sought advice from the Principal and the Principal "advised [her] to ask the parents to chaperone." Later that evening, the Teacher sent an e-mail to the Principal with an update that she had spoken to the Complainant earlier in the afternoon and that the Complainant had agreed to attend the field trip with the Student.

The Complainant confirmed to OCR that the Teacher called her approximately a week before the field trip to ask her to chaperone during the field trip because of the Student's behavior. During her rebuttal call, the Complainant informed OCR that the Teacher did not specifically mention the Student's ADHD during the call, but it was understood that the Student's behavior was related to his ADHD. The Complainant advised OCR that she had acknowledged to the Teacher during the call that the Student had behavioral issues.

The documentary evidence shows that the Complainant submitted a Medical Release Form for Out-of-County Field Trip dated May 11, 2016, in preparation for the Student's attendance of the Legoland field trip. The Complainant informed OCR that she also completed and submitted the required paperwork for her background check to serve as a chaperone.

The School's telephone call logs show that, on May 17, 2016, the day before the field trip, the Assistant Principal left a voicemail message for the Complainant notifying her that she had not been approved as a chaperone through the District office for the field trip. The Complainant stated that, at approximately 5:30 p.m. on the day before the field trip, the Assistant Principal called to notify her that the Student could not attend the field trip because the School had not received the results of the Complainant's background check yet. According to the Complainant, the Assistant Principal subsequently clarified that it was not that the results of the Complainant's background check had not arrived, but that the School could not find them. The Complainant

informed OCR that she did not believe that her background check was the true reason for the denial of the Student's participation in the field trip. She explained that, during the previous school year, when the Student was in the X grade, she had already undergone a background check and attended every X grade field trip. She advised OCR that she also attended every X grade field trip, including a recent one to the zoo in the spring of 2016.

The Complainant explained to OCR that, during the same call, the Assistant Principal also informed her that there was no longer room on the field trip bus. According to the Complainant, she asked the Assistant Principal how it was possible that the bus was full when the Complainant was the first person to complete her paperwork. According to the Complainant, the Assistant Principal further informed her during the call that the Complainant could follow behind the bus in her own car but would not be able to receive the group rate, but instead, be required to pay the regular admission fee.

The Student did not attend the field trip. In its October 20, 2016 cover letter to OCR, the District stated that it had no knowledge of any students who were not permitted to attend the Legoland field trip, although several students missed the field trip due to their late arrival to the bus. In her written chronology of events, the Teacher wrote that she was not aware of anyone telling the Complainant that the Student could not attend the field trip. The Teacher also wrote that she assumed that the Student did not attend the field trip because he missed the bus as a result of his chronic tardiness.

During her rebuttal call with OCR, the Complainant disputed the Teacher's contention. The Complainant informed OCR that the Student's attendance at the field trip was contingent upon her attendance as a chaperone and that he was not permitted to attend the field trip without her. According to the Complainant, the purpose of the Assistant Principal's telephone call to her the day before the field trip was to give her advance notice of her inability to attend the field trip so that she would not make a futile trip to the field trip bus early the next morning.

The Complainant also advised OCR that, after she complained to the District regarding the Student's exclusion from the field trip, the School Principal called the Complainant to apologize and to offer the Student an opportunity to join the X graders on their Sea World field trip on May 20, 2016. The Complainant informed OCR that she did not accept the offer, since the Student had already visited Sea World many times, but had never visited Legoland, and did not wish to attend a field trip with X students.

The Student no longer attends the School. The Complainant removed him from the School at the end of the 2015-2016 school year. During the 2016-2017 school year, he attended X grade at [REMAINDER OF SENTENCE REDACTED].

The District has agreed to implement the provisions of the attached Agreement, which, when fully implemented, will resolve the compliance issue in this complaint. The Agreement requires the District to conduct training for all administrators, faculty, and staff at the School regarding: (a) the requirement in Section 504, at 34 C.F.R. § 104.37, that a recipient educational institution afford students with disabilities an equal opportunity to participate in its non-academic and

extracurricular services and activities; and (b) the requirement in Section 504, at 34 C.F.R. § 104.33, that a recipient educational institution provide a FAPE to each qualified student with a disability within its jurisdiction, regardless of the nature or severity of the student's disability.

### **C. Conclusion**

OCR will closely monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with Section 504 and Title II. If the District fails to fully implement this Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. 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.

Intimidation of 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. If this happens, the individual may file a complaint with OCR alleging such treatment.

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 provided by law, personally-identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, please contact Vahn Wagner, Senior Attorney, at (404) 974-9392 or Virgil Hollis, Compliance Team Leader, at (404) 974-9366.

Sincerely,

Virgil Hollis  
Compliance Team Leader

Enclosure (Signed Resolution Agreement)

cc: X, Esq. (w/ encl.)