



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
TENNESSEE

October 31, 2016

Alberto Carvalho
Superintendent
Miami-Dade County School District
1450 N.E. Second Avenue, Suite 912
Miami, Florida 33132

Re: OCR Complaint #04-16-1511

Dear Mr. Carvalho,

On June 6, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above referenced complaint filed against the Miami-Dade County School District (District), alleging disability discrimination. Specifically, the Complainant alleged that the District failed to implement the Student's Individualized Education Program (IEP), when it removed the Student's hearing aids and amplification system from her classroom on May 27, 2016, and failed to return the same before the end of the school year.

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.

Based on the allegation, OCR investigated whether the District denied the Student a free appropriate public education by failing to implement the Student's IEP, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.33, and Title II and its implementing regulation at 28 C.F.R § 35.130.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an

investigation.” Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student’s disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards. Implementation of an IEP is one means of meeting the standard established in 34 C.F.R. § 104.33(b).

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

Summary of Investigation

The Complainant alleged that the District failed to implement the Student’s IEP when it removed the Student’s hearing aids and amplification system from her classroom on May 27, 2016, and failed to return the same before the end of the school year.

OCR’s investigation to date reveals that the Student’s IEP in effect during the 2015-16 school year, in the conference notes, states that the Student continues to successfully use “personal FM (school property) bilaterally in the classroom” and the sound amplification tower “remains in the classroom and is being used by the teachers and speech language pathologist as appropriate.”

Email correspondence amongst District personnel reveal that the Student’s hearing aids and FM system (tower) were collected from the School on May 27, 2016. The 2015-16 school year ended on June 9, 2016.

OCR did not complete the investigation to determine whether the District denied the Student a FAPE by failing to implement her IEP, prior to receiving the request from the District to resolve this matter. However, OCR’s investigation identified areas of concern, including documentary evidence confirming that the hearing aids and amplification system were picked up from the School before the end of the school year. The District has agreed to resolve these concerns.

Resolution Agreement

To remedy the allegation raised by OCR’s complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will convene an IEP meeting to determine whether the Student requires compensatory and/or

remedial services for the period beginning May 27, 2016, and ending June 9, 2016; and, review its end of school year equipment collection procedures and practices to ensure that no student is deprived of equipment and services required by the student's IEP or Section 504 plan prematurely, prior to the end of the school year or established need.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented. 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 concludes OCR's investigation of the complaint and 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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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.

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

Finally, OCR reminds the District that 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.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Claudia Campo, Attorney, at (404) 974-9378, or, the undersigned, at (404) 974-9376.

Sincerely,

/S/
Arthur Manigault, Esq.
Compliance Team Leader

Enclosure