



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

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**REGION IV**  
ALABAMA  
FLORIDA  
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TENNESSEE

December 6, 2016

Mr. Alberto M. Carvalho

Superintendent

Miami-Dade County Public Schools

1450 N.E. Second Avenue, Suite 912

Miami, Florida 33132

Re: OCR Complainant # 04-16-1517

Dear Mr. Carvalho:

This is to advise you that the U. S. Department of Education (Department), Office for Civil Rights (OCR), is closing the above-referenced complaint filed against the Miami-Dade School District (District) alleging discrimination on the basis of disability. Specially, the Complainant alleges that the District discriminated against her son (Student) on the basis of disability when the District failed to timely evaluate the Student for special education services during the 2015-2016 and 2016-2017 school years.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 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), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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 these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR initiated an investigation of the following legal issue: whether the District failed to timely evaluate the Student during the 2015-2016 and 2016-2017 school years in noncompliance with the Section 504 implementing regulations at 34 C.F.R. §104.35 and the Title II implementing regulation at 28 C.F.R. §35.130.

## **Legal Standard**

The Section 504 implementing regulation at 34 C.F.R. § 104.35(a) states that a recipient shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. OCR interprets Section 504 to require, when a child's doctor or parent has provided information indicating that a child is "regarded" as having a disability, recipients are to determine whether there is a "reason to believe" that the child, because of an actual disability, may need special education or related services, and thus would need to be evaluated. The opinion of the doctor or parent triggers the recipient's duty to evaluate the student and is a piece of information to be considered in that decision making process.

Although the Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation, a recipient should conduct an evaluation within a reasonable period of time after it has reason to suspect that a student, because of disability, may need special education or related services. OCR may consider state law when determining whether a district has conducted a timely evaluation of a student.

The regulation implementing Title II is interpreted consistent with the regulation implementing Section 504. OCR interprets the regulation implementing Title II to require school districts to provide a FAPE to qualified individuals with a disability to the same extent required by the regulation implementing Section 504.

## **Summary of Investigation**

The Complainant alleges that the District failed to evaluate the Student for special education services during the 2015-2016 and 2016-2017 school years. Below is a summary of the evidence obtained thus far before the request to resolve pursuant to 302 was submitted by the District.

Under 34 CFR 104.35, OCR first determines whether the Recipient had reason to believe that the student, because of a disability, needs or may need special education or related services. The factors OCR considers are 1) whether a teacher or other staff member recommended an evaluation, 2) whether recipient personnel was aware of or should have been aware of a possible disability.

The evidence obtained to date shows that in October, 2015, the District received a request to evaluate the Student from the Student's Teacher at Miami Christian School (School) and the Complainant. The evidence to date also shows that in a meeting on November 5<sup>th</sup>, 2015, the Complainant gave the District consent to evaluate the Student and a District Psychologist (Psychologist #1) indicated that she would observe the Student prior to a second meeting, which was tentatively scheduled for January 12, 2016 to discuss the Student's evaluation.

Additional evidence obtained to date also shows that the District received two inquiries from the Complainant regarding the Student's evaluation in January, 2016 and March, 2016, as well as a February 28, 2016 diagnosis of ADHD and a language disability from a neurologist. The evidence also included a June 7, 2016 request from the Student's Pediatrician asking the District to evaluate the Student for special education services pursuant to IDEA, Part B, Statute 300.301 (c)(1)(i). Finally, the evidence to date shows that on June 9, 2016, the Complainant asked the District for a response to the Student's Pediatrician's request for an evaluation of the Student.

Based on the above, the evidence obtained to date shows that during the relevant time period the District had reason to believe that the Student because of a disability needs or may need special education services.

Next, OCR considers whether the District took measures to evaluate whether the student, who needs or is believed to need special education or related services within a reasonable time period.

The evidence thus far shows that in response to the Complainant's initial request to evaluate the Student in October, 2015, Psychologist #1 arranged a SST meeting with the Complainant and the Student's Teacher at the School, which occurred on November 5, 2015. During this meeting, the Complainant and the Student's Teacher were informed that the Student's School would have to implement RTI strategies before any testing could occur for the Student. The evidence obtained to date also shows that after the Complainant contacted the District in January, 2016 to inquire about the second meeting to discuss the Student's evaluation, the District advised the Complainant that a new psychologist would assist her with the evaluation of the Student.

The evidence thus far also shows that on June 13, 2016, the District acknowledged receipt of SST information from the Student's School and told the Complainant to reach out to the District at the beginning of the 2016-2017 school year to schedule a SST to complete the Student's evaluation. Finally, the evidence to date shows that on October, 18, 2016, District staff advised the Complainant that they would schedule an SST for the Student and the District begin the evaluation of the Student around this time. The Complainant confirmed that the evaluation begin around this time.

Prior to completing the investigation, the District requested to resolve the complaint, and because the evidence to date does not establish the reason the evaluation did not take place between November, 2015 and October, 2016, OCR would need to conduct interviews of School Staff and District Staff to determine if there was non-compliance of Section 504.

In accordance with Section 302 of OCR's *Complaint Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint. Subsequent discussions with the District resulted in the University signing the enclosed Settlement Agreement which, when fully implemented, will resolve the complaint. The provisions of the Settlement Agreement are aligned with this complaint and the information obtained during OCR's investigation to date, and are consistent with applicable regulations. OCR will monitor the District's implementation of the Settlement Agreement.

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, 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.

If you have any questions regarding this matter, please contact Cassandra Williams, at (404) 974-9393 or me at 404-974-9408.

Sincerely,

April England-Albright, Esq.  
Supervisory General Attorney

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