



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

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REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

December 15, 2016

XXXXX  
Superintendent  
Marion County School District  
512 SE 3<sup>rd</sup> Street  
Ocala, FL 34471

**Re: OCR Complaint #04-16-1533**

Dear XXXXX,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Marion County School District (District) on June 23, 2016, alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her daughter (Student)<sup>1</sup> on the basis of disability when North Marion Middle School (School) failed to implement the Student's IEP during the 2015-16 school year and failed to respond to the Complainant's request for a full evaluation.<sup>2</sup>

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.

During the course of investigation, OCR determined the following issue was appropriate for investigation:

Whether the District, in failing to implement the Student's IEP during the 2015-2016 school year has denied her a free and appropriate public education in noncompliance with

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<sup>1</sup> OCR identified the names of the Complainant and the Student in previous correspondence and is withholding their names in this letter to protect their privacy.

<sup>2</sup> During the course of the investigation, the Complainant clarified that the requests for a full evaluation were made during the 2014-15 school-year.

the Section 504 implementing regulation at 34 C.F.R. Section 104.33 and the Title II implementing regulation at 28 C.F.R. Section 35.130;

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the District. OCR also interviewed the Complainant and members of the District's staff. Prior to the completion of OCR's investigation, the District agreed to a voluntary resolution agreement when fully implemented will resolve the compliance issues raised by this allegation.

### **Legal Standards**

#### **Free Appropriate Public Education**

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

### **Factual Findings and Analysis**

The Student was in the eighth grade at the School during the 2015-2016 school year. The Student has a diagnosis of generalized anxiety disorder, PTSD, depression, and ADHD-IT and had an IEP in place during the 2015-2016 school year. The IEP team met four times during the 2015-2016 school year. In the Student's most recent IEP the Student had the following accommodations: extended time for assignments and tests, encouragement, repeating/clarifying/summarizing directions, peer tutoring and cooperative learning, small group testing, signed/oral presentation for directions and items other than reading, assistance with note-taking, preferential seating, and using a computer/alternative keyboard to indicate answers. The Complainant alleges that the School failed to consistently provide the Student with her IEP accommodations including taking the Student out for small group testing or providing note-taking assistance.

OCR began to investigate the complaint allegation. However, prior to OCR making a finding, the District agreed to a voluntary resolution agreement to resolve the allegation. To complete its

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

investigation OCR would still need specific evidence regarding dates and times the accommodations were or were not provided and to conduct additional interviews with District staff.

The District agreed to enter into a resolution agreement (Agreement) which states that the District agrees to notify the Complainant that the District is willing to convene an IEP meeting for the Student if the Complainant elects to reenroll the Student in a District school. If held, the IEP meeting attendees will determine what type of services and/or accommodations the Student needs, how accommodations will be implemented and how the IEP team plans to deal with any barriers to implementation. The District also agreed that if the IEP meeting is held the IEP team will determine whether compensatory education is necessary and if found to be necessary the Complainant must notify the District of her acceptance or rejection of the District's offer of compensatory education in the manner detailed in the Agreement. If the Complainant refuses compensatory education or does not provide access to the Student so that she may receive the compensatory education, the District will provide OCR with documentation of its attempts to provide the proposed compensatory education and will communicate these concerns to OCR in order to determine how to proceed. The District also agrees to develop a record keeping system to track how the District is implementing special education services for all students currently receiving special education services from the District. The District has also agreed to provide Section 504 training to the District's relevant staff.

### **Conclusion**

On December 12, 2016, OCR received the attached Agreement, which contains monitoring provisions. When fully implemented, the Agreement will resolve the complaint allegation. 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 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.

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This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact Eulen Jang, Attorney, at (404) 974-9467, or me, at (404) 974-9354.

Sincerely,

Scott Sausser  
Compliance Team Leader

Enclosure

Cc: Steven Lake, Esq.