



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

February 28, 2017

**Via Electronic Mail**

(supt\_runcie@browardschools.com)  
Mr. Robert W. Runcie, Superintendent  
Broward County Public Schools  
600 SE Third Ave  
Ft. Lauderdale, Florida 33301

Re: Complaint # 04-16-7100

Dear Mr. Runcie:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Broward County School District (District). The Complainant alleged that the District discriminated against her daughter (Student) on the basis of disability by excluding the Student, and similarly situated students with disabilities, from a school wide assembly in September 2016. Further, the Complainant alleged that the District attempted to exclude fifth grade students with disabilities from a District-wide fieldtrip by notifying them of the trip later than students without disabilities. Lastly, the Complainant alleged that the District retaliated against the Student following her complaints of disability discrimination by recommending that the Student transfer from the fifth to the sixth grade.

As a recipient of Federal funds from the Department, the District is subject to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, the District is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 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. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at [www.ed.gov/ocr](http://www.ed.gov/ocr).

OCR investigated the following allegations:

1. Whether the District discriminated against students with disabilities by excluding them from a School-wide assembly in September 2016 and by failing to timely notify parents of 5th grade students with disabilities of a field trip to Disney's Magical Kingdom, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130.

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2. Whether the District retaliated against the Complainant when the School's Principal encouraged the Complainant to transfer the Student to another school following her complaints, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61 and the Title II implementing regulation at 28 C.F.R. § 35.134

Before OCR concluded its investigation of this complaint, the District offered to resolve the Complainant's allegations through a voluntary resolution agreement. Pursuant to OCR's *Case Processing Manual* at Section 302, a complaint may be resolved when, before the conclusion of an 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."

## **Legal Standards**

### Equal Educational Opportunity

Pursuant to the regulation implementing Section 504 at 34 C.F.R. Part 104.4, "no qualified handicapped person shall, on the basis of handicap, 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. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others. . . otherwise limit a qualified handicapped person 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 35 C.F.R. § 35.130 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Further, a public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service or afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.

### Designation of a Responsible Employee

The regulation implementing Section 504 at 34 C.F.R. § 104.7 states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. In addition, the Title II implementing regulation at 28 C.F.R. § 35.107(a)

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states that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

#### Free Appropriate Public Education (FAPE)

Pursuant to the regulation implementing Section 504 at 34 C.F.R. 104.33, a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

#### Evaluation and Placement

Pursuant to 34 C.F.R. § 104.35, a “recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, 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.”

#### Retaliation

The regulation implementing Section 504 at 34 C.F.R. 104.61 incorporates by reference the Title VI implementing regulation at 34 C.F.R. 100. 7(e), which states that “[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.”

Similarly, pursuant to the regulation implementing the Title II of the Americans with Disabilities Act at 28 C.F.R. § 35.134. “[n]o private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part. No private or public entity shall

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coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.”

### **Summary of the Investigation**

The uncontested facts showed that the Complainant filed a complaint with the District alleging that the School discriminated against students with disabilities by excluding them from a school-wide assembly. In addition, she alleged her belief that the School sought to exclude fifth grade students with disabilities from a field trip by notifying their parents of the trip later than the parents of students without disabilities. The District’s XXXX investigated these allegations, among others, and determined that some of the Complainant’s allegations demonstrated cause for concern and warranted being addressed promptly.

Pursuant to Section 110 of OCR’s Case Processing Manual, because the Complainant’s allegations were filed with the District through its internal grievance procedures and the Complainant filed her OCR complaint within sixty (60) days of her receipt of the District’s determination, OCR did not conduct its own investigation. With respect to the Complainant’s allegations that students with disabilities were excluded from the School’s programs and activities, OCR reviewed the District’s investigation and findings.

On the other hand, regarding the Complainant’s allegation of retaliation, the Complainant did not raise this issue with the District through its grievance procedure. Therefore, OCR opened its own investigation into this allegation. OCR reviewed evidence of the Complainant’s protected activity and documentation submitted by the District regarding its recommendation that the Student transfer from fifth to sixth grade. In addition, OCR reviewed the District’s Notice of Non-Discrimination and Section 504/ADA policy and procedure manuals.

Before OCR concluded its investigation of the allegations, the District offered to resolve the Complainant’s allegations through a voluntary resolution agreement. Based on the foregoing, OCR accepted the District’s request to resolve this complaint. The District entered into the enclosed Resolution Agreement (Agreement) and submitted it to OCR on February 16, 2017. The enclosed Agreement, when fully implemented, will resolve all of the allegations in this complaint and the following compliance concerns identified during the course of the investigation.

In reviewing the District’s documentation, OCR found that the District’s Section 504/ADA policy and procedure manuals do not identify its designated employee responsible for coordinating its efforts to comply with Section 504. Thus, OCR finds that the District is not in compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.7 and the Title II implementing regulation at 28 C.F.R. § 35.107, cited above.

Further, in reviewing the District’s documentation regarding its recommendation that the Student be transferred from fifth to sixth grade, the registration documents showed that the Complainant registered the Student for enrollment in the District in August 2016. On the registration form,

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the Complainant checked a box indicating that the Student was a student with a disability (i.e. in “Exceptional Student Education” (ESE)). The Complainant explained that when she registered the Student, she brought a copy of the Student’s IEP, but was told by the XXXX that she did not need it. OCR reviewed the Student’s IEP. It showed that the Student was in the fifth grade the previous school year. The Complainant stated that no one at the School discussed the Student’s placement or IEP with her contemporaneous with the Student’s registration. Further, she did not tell the District that the Student should be placed in the fifth grade.

By way of written statement provided to OCR by the District, the XXXX at the School (from September 19, 2016 to present) stated that because the Student’s registration documents indicated that the Student was in the fifth grade and was served through ESE, she was placed in an ESE class at the School. Further, on October 17, 2016, following the Complainant’s request to observe the Student’s class, the XXXX reviewed the Student’s IEP, at which time it was discovered that the Student was in the fifth grade the previous school year. On October 20, 2016, the School contacted the Complainant to inform her that the Student should have been placed in the sixth grade for the 2016-2017 school year.

The evidence further showed that the District’s handling of the Student’s enrollment was contrary to its own Section 504/ADA policies and procedures, which require that transferring students with Section 504 plans from their previous school districts be referred to the school’s Section 504 Liaison. The Section 504 Team thereafter reviews appropriate documentation to ensure that the existing plan is appropriate. The school is to honor the existing plan in the interim. At a pre-planning meeting, the Section 504 team determines how the intent of the existing accommodations applies to the new school placement. The Section 504 Liaison then schedules a Section 504 plan meeting with the student’s parent to discuss how the plan will work within the new placement.

Pursuant to Section 504’s implementing regulation at 34 C.F.R. § 100.35(a), “[a] recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, 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.” There is no evidence that the District evaluated the Student prior to placing her in the fifth grade for the second consecutive school year or in a manner consistent with ensuring her appropriate placement or receipt of an appropriate education. Therefore, OCR finds that the District is in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35.

OCR will monitor the District’s implementation of this 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. Further, the Complainant may file a private lawsuit in federal court regardless of whether 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. In the event that OCR receives 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.

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 appreciates the District's cooperation in this matter and looks forward to receiving the monitoring reports, as required by the enclosed Agreement. If you have any questions, please contact Cerrone G. Lockett, General Attorney at 404-974-9418.

Sincerely,

Andrea de Vries  
Compliance Team Leader