



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

Mr. Richard E. Dennis  
Superintendent of Education  
100 H.H. Robison Drive  
Wetumpka, Alabama 36029

Re: Complaint #04-17-1015

Dear Mr. Dennis:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on October 3, 2016, against the Elmore County School District (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her son (Student), by refusing to allow him to attend the Wetumpka Child Development Center (Program) based upon his disability.

As a recipient of Federal financial assistance from the Department and as a public education entity, the District is subject to the provisions of 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; and 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 by public entities.

OCR investigated whether the District denied the Student enrollment in the Program based on his disability, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and (b)(1)(i)-(v), and the Title II implementing regulation at 28 C.F.R. § 35.130(a), (b)(1)(i)-(v), (b)(7) and (b)(8).

Before OCR concluded its investigation, the District offered to resolve this complaint 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." Set forth below is a summary of the evidence obtained thus far, prior to the signing of the resolution agreement.

### **Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4 (a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participating 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)-(v), states that a recipient, 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 person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; 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; provide a qualified person with a disability 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 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 aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an aid, benefit, or service to beneficiaries of the recipient's program or activity. The Title II regulation at 28 C.F.R. § 35.130(a) and (b) includes similar requirements.

Pursuant to Section 504, where a voluntary program is offered by a recipient on a free or fee basis, individuals with disabilities may not be categorically excluded. Students with disabilities must be offered meaningful and equal access to that program at the same cost to individuals without disabilities.

In order to establish that different treatment occurred, OCR determines whether the student was subjected to an adverse action (i.e., treated less favorably) as compared to a similarly-situated comparator (i.e., students without disabilities). If OCR establishes that different treatment has occurred, the District may proffer a legitimate nondiscriminatory justification for the different treatment; however, OCR will examine the District's proffered reason to determine whether it is pre-textual.

### **Summary of the investigation**

The evidence obtained thus far shows that the Student is recognized as a student with a disability in the school district and has an IEP for developmental delay. The evidence also shows that the Student was enrolled in and attended the District's aftercare program on August 8, 2016. Information obtained to date shows that after 30 minutes of attending the Program, the Complainant was contacted and advised to pick up the Student because he was reportedly running around and trying to escape. The Program's Director subsequently advised the Complainant that the Student was removed because Program staff, who were primarily teenagers, were not equipped to handle children with extreme behavior issues. Information obtained to date also shows that the Program's Director met with the Assistant Superintendent of Elementary Education and the Superintendent, and they determined that the Program was unable to meet the needs of the Student and returned the Complainant's money.

In order to determine whether the District treated the Student differently than his non-disabled peers, OCR still needs to receive information on all students, disabled or non-disabled, who were denied enrollment or admitted into the Program as well as the reasons for the denial of enrollment where applicable. Also, OCR needs to interview Program staff to determine whether they had knowledge that the Student had an IEP or knew about the Student's disability. At the

time the District requested to voluntarily resolve the complaint pursuant to 302, OCR had not received the information regarding students or interviewed relevant staff.

Based on the foregoing, OCR accepted the District's request to resolve this complaint and the District entered into the enclosed Resolution Agreement on April 7, 2017, which when fully implemented, will resolve all of the allegations in this complaint. This agreement requires the District to 1) immediately invite the Student to enroll in the Afterschool Program (Program) and the District's Summer Program, if applicable, 2) reimburse the Complainant for the difference between the costs for the Student to attend a private aftercare center instead of the Program; 3) if the Complainant re-enrolls the Student in the Program, the Program's staff will meet with the Complainant and review the Student's IEP to determine what accommodations are required for the Student to participate and provide the accommodations; 4) develop policies and procedures, which requires consultation with parents/guardians and review of pertinent data related to the student's disability, to determine on a case by case basis whether a student with a disability is qualified to participate in the Program; 4) provide training to all Program staff on the policies and procedures developed as well as Section 504's requirements regarding access to non-educational programs.

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 Cassandra Williams, EOS Investigator at 404-974-9393 or me at 404-974-9408.

Sincerely,

April England-Albright, Esq.  
Supervisory General Attorney

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Enclosure