



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

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January 5, 2017

Mr. Alberto D. Carvalho  
Superintendent  
Miami-Dade County Public Schools  
1450 N.E. Second Avenue, Suite 912  
Miami, Florida 33132

Re: Complaint # 04-17-1034

Dear Superintendent Carvalho:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Miami-Dade County Public Schools (District). Therein, the Complainant alleged that the District failed to provide the Student with a free and appropriate public education (FAPE) when it failed to implement provisions of his Individualized Education Program (IEP), including failing to provide him with the specialized instruction and consultation in reading required in his IEP. Additionally, the Complainant alleged that the District failed to timely evaluate the Student to determine if he requires speech-to-text equipment.

As a recipient of Federal financial assistance 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 opened the following legal issues for investigation:

1. Whether the District denied the Student a FAPE by failing to provide him with the specialized instruction and consultation in reading required in his IEP from August 2016 to the present, in noncompliance with the Section 504 regulation at 34 C.F.R. § 104.33 and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District failed to timely evaluate the Student to determine if he required speech-to-text equipment, in noncompliance with the Section 504 implementing

regulation at 34 C.F.R. § 104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130.

## **Legal Standards**

### Issue 1:

The Section 504 regulation at 34 C.F.R. §104.33 (a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

The Section 504 regulation at 34 C.F.R. §104.33 (b) states that provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

The implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting the standard established in 34 C.F.R. §104.33(b)(1)(i).

As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 FAPE standards.

### Issue 2:

The Section 504 regulation at 34 C.F.R. § 104.35 (a) states that 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.

The Section 504 regulation at 34 C.F.R. § 104.35 (b) states that a recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that: (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the

student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

The Section 504 regulation at 34 C.F.R. § 104.35 (c) explains that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

## **Factual Findings and Conclusions**

### **Issue #1: Whether the District denied the Student FAPE by failing to provide him with the specialized instruction and consultation in reading required in his IEP from August 2016 to the present.**

The Complainant alleges that the District denied the Student a FAPE by failing to implement provisions of the Student's IEP plan during the 2016-17 school year; specifically, specialized instruction and consultation in reading.

In examining allegations of failure to implement a student's special education plan, OCR analyzes whether a student has been identified as a student with a disability; whether the student's IEP team determined that the student needs special education or related services of concern to meet his individual disability-related needs; whether the district failed to provide the special education or related services of concern which had been previously approved by the educational team; and, if yes, whether the district provided make-up services.

OCR found that the Student is identified as a student with a disability, with a specific learning disability and other health impairment, and that the Student was entitled to services under two IEPs during the 2016-17 school year. Under IEP 1, regarding the specific provisions alleged, the Student was to receive, "collaboration in reading (300 min/wk; 5x a week." IEP 1 also indicates Specialized Instruction (Priority Educational Needs) of Reading Skills in the general education setting for 450 minutes, 5 times a week. Under IEP 2, the Student was to receive "support/facilitation in reading (60 min/5x a wk)."

The District defined "collaboration" as Exceptional Student Education (ESE) teachers working alongside the General Education Teacher throughout the class (from "bell to bell") to assist with the Student's learning needs. The District further explained that the "support/facilitation" in IEP 2 is essentially the same service in practice.

OCR found that the District maintained logs of services that indicated daily collaboration for reading from August 29, 2016, through March 27, 2017.<sup>1</sup> The logs included notes regarding the

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<sup>1</sup> The logs were complete up through the date the District submitted the data to OCR.

Student's progress each day (e.g., "making an effort") or tasks the Student was working on (e.g., "site words" or "computer, iReady").

In interviews with OCR, the ESE Teacher for reading provided specific examples regarding the collaboration and support/facilitation the Student received in reading. She stated the services would vary daily; she sometimes worked with the Student in a group setting or sometimes one-on-one, along with the General Education teacher. The ESE Teacher for reading stated she would provide collaboration and support/facilitation in reading for 60 minutes a day.

The General Education Teacher also provided examples of how the services the Student was entitled to under his IEPs were implemented, including the use of manipulatives (e.g., the Student was provided vocabulary pages, with a sentence and a picture), and present information through multisensory approach (e.g., the Student used iReady and Myon, and the interactive smart boards in the classroom).

According to the District, there is not "specialized instruction" in reading (or any subject) in the Student's IEP 1. The section of IEP 1 that includes "specialized instruction" language refers to the specific goals (or the "Priority Educational Needs") the Student has, but the Student is served in an inclusion model (general education). The District noted that IEP 2 is an updated format that clarifies this "specialized instruction" component. The Complainant, in a follow up interview, stated that he did not share the same understanding of "specialized instruction" with the District. "Direct specialized instruction for some learning activities" or "Direct specialized instruction and/or curriculum for the majority of learning activities" were not indicated in the Student's IEPs.

OCR notes that the educational plan terms were not clearly defined, and there was confusion between the parties regarding the terms of the Student's IEP. However, OCR did not find, by a preponderance of the evidence, that the District failed to implement the alleged provisions of the Student's IEP. As a result, there is insufficient evidence to conclude that the District failed to implement the Student's IEP as alleged by the Complainant.

**Issue #2: Whether the District failed to timely evaluate the Student to determine if he required speech-to-text equipment.**

The Complainant alleged that the District failed to timely evaluate the Student to determine if he required speech-to-text equipment. In examining allegations of failure to timely evaluate, OCR analyzes whether a district had reason to believe that a student, because of a disability, needs or may need special education or related services; and if yes, whether a district took measures to appropriately evaluate whether the student who needs or is believed to need special education or related services based on the student's individual needs; and, whether the evaluation was completed within a reasonable time after the district first had notice of a need to evaluate. The district's procedures for reevaluation are that "[r]evaluation is required whenever the educational or related services needs of the student warrant a reevaluation or if the student's parent or teacher requests it."

In support of his allegation, the Complainant provided an e-mail that he sent to the District on August 29, 2016, requesting an interim meeting to discuss the Student's IEP, because the Complainant believed there should have been provisions for speech-to-text equipment. The Complainant sent this email to [ese@dadeschools.net](mailto:ese@dadeschools.net), which is listed on the "Contact Us" section of the Office of Exceptional Student Education page; it is also provided as the contact for the District's Section 504 Coordinator in Policy 5517. The District stated that the email was forwarded to the Regional Special Education Center over the Student's school, but was not sent to the School or further addressed.

In October 2016, the Complainant attended an event at the School, where he inquired about the speech-to-text equipment with the ESE Teacher for reading. The ESE Teacher for reading discussed the "voice to text matter" with the Assistant Principal. After the October exchange, the Student was out of school for approximately a five day period; the School attempted to convene an IEP meeting in January and ultimately the IEP team met in February.

An Assistive Technology (AT) evaluation occurred approximately six months after the Complainant requested an interim IEP meeting, on February 27, 2017. During this IEP meeting, the IEP team, comprised of the Complainant, the Student's teachers, the School Principal, and a District representative, recommended a speech-to-text tool for the Student and the team determined that he would receive a "forte" (processing) device, with the formal "speech-to-text" tool left open as an option for the Student at a later time.<sup>2</sup> OCR therefore finds that the District failed to timely evaluate the Student to determine if he required speech-to-text equipment.

## **Conclusion**

Accordingly, OCR finds, using the preponderance of the evidence standard, that there is insufficient evidence to support a finding the District is in noncompliance with Section 504 and Title II for Issue #1 as alleged. However, OCR found a compliance concern regarding Issue #2, in which the District has agreed to enter into the enclosed Agreement.

OCR will monitor the District's implementation of the Agreement in this case 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.

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<sup>2</sup> The February 27, 2017 AT Assessment notes that a "speech to text" tool would be used for the Student. Both the District and the Complainant confirmed the "Forte" device, specifically, was the outcome of the meeting.

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 Katherine Dunn, General Attorney at 404-974-9363.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Marie de Vries". The signature is written in a cursive, flowing style.

Andrea de Vries  
Supervisory Attorney

Enclosure: As stated