



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

REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

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

November 8, 2017

Mr. Kenneth Dyer
Superintendent
Dougherty County School District
200 Pine Ave.
Albany, GA 31701

Re: OCR Complaint #04-17-1062

Dear Mr. Dyer,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Dougherty County School District (District) on November 1, 2016, alleging discrimination on the basis of disability. Specifically, the Complainant¹ alleged that the District discriminated against the Student by failing to address an incident in the 2016-17 school year where a teacher revealed in front of a classroom that the Student had an IEP, and an incident in October of 2016 when the School's principal told the Complainant to find a different school at the conclusion of a meeting.

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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II.

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 investigating in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the District. Prior to the completion of OCR's investigation, the District agreed to a voluntary resolution agreement that when fully implemented will resolve the compliance issues raised by this allegation.

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

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(a) states that no qualified [...] person [with a disability] shall, on the basis of [disability], 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. Additionally the Title II implementing regulation at 28 C.F.R. § 35.130 (a) 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.

To establish a violation for harassment under Section 504 and Title II, OCR must examine (1) whether a hostile environment existed because harassing conduct based on disability was sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a recipient; and (2) if a hostile environment exists, whether the recipient had actual or constructive notice of the hostile environment; and (3) if a recipient had notice, whether the recipient failed to take prompt and effective action to redress the hostile environment so as to prevent its recurrence.

Summary of Investigation

Issue: Whether the District responded in a prompt and equitable manner to an alleged hostile environment in the Fall of 2016 when a teacher revealed in front of a classroom that the Student had an IEP and when the principal allegedly told the Complainant to find a different school at the conclusion of a meeting in October of 2016, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

Background:

The Student was enrolled in the seventh grade at the School during the 2016-17 school year. The Student had an Individualized Education Plan (IEP) for a learning disability in place for the 2016-17 school year in which he received classroom supports and accommodations for math, reading, and writing.

In October of 2016, the District received a complaint from the Complainant about the Student's science teacher (Teacher) stating that the teacher revealed in front of the classroom that the Student had an IEP which embarrassed him. On October 6, 2017, the Complainant and her sister met with the principal, a representative from the District's Office of Special Education, and the Teacher. During the meeting the Complainant informed the participants that the Teacher made a comment in the presence of other students that complimented the Student's performance despite the fact that he had an IEP. The Teacher apologized to the Student and Complainant for the incident. The Student was then approved to be moved to a new school for "a fresh start". The Complainant agreed to this and the Student was moved to a new magnet school within the District. The Student was moved almost immediately following the incident to XXXXXX and the District has been providing transportation for the Student to and from the new school. The

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District counseled the Complainant and encouraged the Teacher to be more cautious in her communications in the future. The District also reminded the Teacher of the District's FERPA obligations. Additionally the District provided data showing that the teacher received a written disciplinary warning for careless errors and failure to carry out job responsibilities.

Although OCR found that the District responded to the incident in a prompt and equitable manner, OCR had compliance concerns regarding the student focused remedies resulting from its investigation. 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 completion of OCR's investigation, the District agreed to voluntarily resolve this issue and OCR has determined that it is appropriate to resolve this issue with a Resolution Agreement (Agreement).

The District agreed to enter into an Agreement which obligates the District within two weeks of the Agreement being signed, to convene the Student's IEP team, including the Complainant/Parent, to discuss whether or not the October 2016 incident impacted the Student's education causing him to need compensatory education. If determined necessary, the District will in writing offer this to the Complainant/Parent detailing how the District will provide this education to the Student. Additionally, the District agreed to provide training to the teachers and administrators involved in the October 2016 incident. The training will consist of an overview of the Section 504 and Title II legal standards including the prohibition and prevention of disability harassment.

Conclusion

On November 8, 2017, OCR received the attached Agreement. When fully implemented, the Agreement will resolve the complaint allegation. The provisions of the 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 Agreement. 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 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

Complaint #04-17-1062

Page 4 of 4

because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

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 R. Sausser, Esq.
Compliance Team Leader

cc: XXXXXX
Enclosure