



OFFICE FOR CIVIL RIGHTS, REGION IV

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

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May 19, 2017

Mr. Tony Boles
Director of Macon County Schools
Macon County Board of Education
501 College Street
Lafayette, TN 37083

Re: Docket # 04-17-1119

Dear Mr. Boles:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint filed with our office on November 21, 2016 against Macon County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District denied her sons, Student 1 and Student 2, a Free Appropriate Public Education (FAPE) by:

1. Failing to add medication to each student's Individualized Education Plan (IEP).
2. Failing to consider the Complainant's request for a Section 504 evaluation for both Student 1 and 2.

As a recipient of Federal financial assistance from the Department, the District is subject to the requirements 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also applied 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 educational institutions. Because the District is a recipient of Federal financial assistance from the Department and a public entity, it is subject to these regulations.

OCR investigated the following legal issues:

- Whether the District, discriminated against Student 1 and Student 2 by failing to add medication to each student's IEP, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.35(c) and Title II and its implementing regulation at 28 C.F.R. §35.134
- Whether the District discriminated against Student 1 and Student 2 on the basis of disability by denying the Complainant's request for a Section 504 evaluation in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33 and Title II and its implementing regulation at 28 C.F.R. §35.134.

During its investigation, OCR reviewed and analyzed relevant documents submitted by the District. OCR also contacted the Complainant for rebuttal.

Prior to the conclusion of OCR's investigation the District expressed an interest in resolving Allegation 2 of the complaint issues pursuant to Section 302 of OCR's Complaint Processing Manual (CPM). Pursuant to OCR's procedures, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Based on the foregoing, OCR accepted the District's request to resolve Allegation 2, and the District entered into the enclosed Resolution Agreement (Agreement) on May 17, 2017, which, when fully implemented, will resolve allegation 2.

Findings of Fact

The Complainant has two children, Student 1 and Student 2 (Students), who attend Lafayette Elementary School and Central Elementary School in the District. The Complainant stated that because medication is not listed in the Students IEP's they may not receive the provided medication during the school day.

The Complainant requested to add Students medications to their respective Individual Education Plans (IEPs) under related services. The IEP team convened on November 16, 2016 and determined that it was not necessary to add the medications to the Students IEPs. The Complainant contacted the Section 504 Coordinator to request a Section 504 evaluation to determine if the medication could be listed for the Students in a Section 504 Plan (Plan).

The Section 504 Coordinator stated that she informed the Complainant that the Students would likely not need a Section 504 plan since they were being properly served with an IEP. The Complainant did not contact the Section 504 Coordinator again.

On November 21, 2016, the Complainant filed the above mentioned complaint with OCR. On November 23, 2016, the Complainant filed for a due process hearing with the Tennessee Department of Education, on behalf of the Students. The requests were to add medication to the Students IEPs under related services.

On December 13, 2016, a resolution meeting with the District and the Complainant was held. The District agreed to add medications to the Student's respective IEPs under the notes/narrative section. Once the Complainant returned the signed medication consent form for the Students, medication would be given per doctor's orders. The due process complaint was dismissed on January 11, 2017 as there were no issues left to be resolved.

The Students are currently receiving medication at their respective schools. On April 4, 2017, OCR spoke with the Complainant regarding the data received from the District. During that call, the Complainant confirmed she considered the matter concerning the listing of medication in the Students respective IEPs resolved. The Complainant stated at although she considered the allegation resolved, she was upset that the District had not agreed to pay her attorney's fee, which is not an allegation raised in the written complaint.

On May 9, 2017, OCR spoke with the District regarding the Students respective IEPs. The District confirmed the IEPs of the Students added medications under their respective notes/narrative sections.

Analysis and Conclusion

Allegation 1

The Complainant alleged that the Students were discriminated against when the District failed to add medication to their respective IEPs as a related service. A resolution meeting was held and the District agreed to add medications to the Students respective IEPs under the notes/narrative section. The District amended the IEPs, in the LRE and General Education Section, for the Students on May 11, 2017 and May 12, 2017. Copies were provided to OCR on May 19, 2017.

The Complainant confirmed that the allegation 1 has been resolved. OCR's Case Processing Manual §110(e) which states: OCR will close complaint allegations if OCR obtains credible information indicating that the allegations raised by the complaint have been resolved, and there are no systemic allegations. Therefore; this complaint allegation is closed and OCR will take no further action with respect to this allegation. Additionally, the Complainant stated that she was upset that the District refused to pay her attorney's fees. This was not raised as an allegation in the written complaint and not an allegation that was evaluated, clarified, and determined for investigation. Therefore, OCR will take no further action with regard to this specific allegation.

Allegation 2

The Complainant alleged that the District refused to evaluate the Students for a Plan. The Complainant stated that she contacted the Section 504 Coordinator to obtain a Section 504 evaluation for the Students to determine whether it could list the Students required medications. The Section 504 Coordinator informed the Complainant that the Students were receiving the appropriate services under their respective IEPs and that it was unnecessary for them to also have a Section 504 Plan.

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving the complaint issues in Allegation 2 pursuant to Section 302 of OCR's Complaint Processing Manual (CPM). Pursuant to OCR's procedures, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. Based on the foregoing, OCR accepted the District's request to resolve the complaint issue, and the District entered into the enclosed Resolution Agreement (Agreement) on May 17, 2017, which, when fully implemented, will resolve the complaint issue.

This concludes OCR's consideration of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant or other individual may file a complaint with OCR alleging such treatment.

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 provided by law, personally-identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Malicia Hitch, Attorney, at (470) 231-1994 or the undersigned at (404) 974-9366.

Sincerely,

Virgil Hollis
Compliance Team Leader

Enclosure (Signed Resolution Agreement)

CC: Laura Alrutz, Esq. (with/encl.)