



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

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REGION IV
ALABAMA
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June 28, 2018

Ms. Margaret Allen
Superintendent
Montgomery Public Schools
307 South Decatur Street
Montgomery, AL 36102-1991

Re: Docket # 04-17-1208

Dear Ms. Allen:

On January 12, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability and retaliation by the Montgomery County School District (District). The Complainant filed the complaint on behalf of her daughter (Student), a student at Loveless Academic Magnet Program High School (School). Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by: 1) failing to implement the Student's Section 504 plan; 2) failing to timely respond to the Complainant's disability discrimination grievance, and; 3) failing to ensure that the Student's placement decision was made by a group of persons knowledgeable about the student. In addition, the Complainant (an employee of the District) alleges that the District retaliated against her for filing a grievance when the School's counselor gave the Student's confidential health records to the Complainant's secretary without it being concealed.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability and retaliation by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The regulation implementing Title II at 28 C.F.R. § 35.134 also prohibits retaliation. As a recipient of FFA from the Department, the District is subject to Section 504 and Title II.

Based on the above, OCR investigated the following legal issues:

- 1) Whether the District denied the Student a free appropriate public education (FAPE), by failing to implement the Student's Section 504 plan, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- 2) Whether the District failed to respond to timely respond to the Complainant’s disability grievance¹, in non-compliance with the Section 504 implementing regulations at 34 C.F.R. § 104.7.
- 3) Whether the District failed to properly evaluate the Student by not using a group of persons knowledgeable about the student in his placement decision, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35(c).
- 4) Whether the District retaliated against the Complainant for filing a Section 504 grievance against the School when the School’s 504 Coordinator gave the Student’s confidential health records to the Complainant’s secretary without it being concealed, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61 and 28 C.F.R § 35.134.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires Districts that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public Districts that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district ensure that evaluation and placement decisions are made by a group of persons knowledgeable about the student. For the purposes of this case, given the narrow issue, OCR examined whether the District ensured that the placement decision was made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a

¹ This issue was revised from “due process” rights to “grievance procedure” rights, to more accurately reflect the allegation.

complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

Summary of Investigation

Upon the receipt of this complaint, the District provided OCR with the Student's records, its policies and procedures for Students with disabilities, and requested to voluntarily resolve this complaint and signed the attached resolution agreement under Section 302 of OCR's *Case Processing Manual*.² Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 22, 2018 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

² The Case Processing Manual can be accessed here: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Joshua Porter at 404-682-3356 or by email at joshua.porter@ed.gov, or me at 404-974-9354, or by email at scott.sausser@ed.gov.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader