



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

June 29, 2017

Mr. Jerry Levengood
Director of Schools
305 California Ave.
Dayton, TN 37321

Re: OCR Complaint #04-17-1249

Dear Mr. Levengood,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Rhea County School District (District) on January 26, 2017, alleging discrimination on the basis of disability. Specifically, the Complainant¹ alleged that the District discriminated against the Student on the basis of disability when Rhea County High School (School) failed to implement his Individualized Education Program (IEP) accommodations in his math class and failed to provide IEP progress reports for the Student.

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 investigated the following legal issue:

- Whether the District, in failing to implement the Student's IEP, denied the Student a free and appropriate public education in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33 and the Title II implementing regulation at 28 C.F.R § 35.130.

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.

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. OCR also conducted four interviews with the Complainant and members of the District's staff. 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.

Legal Standards

The Section 504 regulation at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Summary of Investigation

Issue: Whether the District, in failing to implement the Student's IEP, denied the Student a free and appropriate public education.

Based on the data provided by the District, the Student was in the eighth grade at the School during the 2016-2017 school year. The Student has a diagnosis of ADHD and had an IEP in place for the 2016-17 school year. The IEP stated that the Student would receive the following general classroom accommodations in his math class, specifically: read/audio tape on all text for assignments, abbreviated assignments, extra grade opportunities, repetition of directions for testing, checks for understanding, extra cues and prompts on assignments, modification of the grading scale, oral testing for directions and/or test items, use of calculator on assignments and testing except on STAR Math and TNReady Math tests, copies of daily and/or weekly notes and PowerPoint presentations, simplified test directions to assure understanding, and use of assistive technology with the KNFB reader app. Additionally, the IEP states the Student was to receive specialized direct education from the special education classroom teacher, five times a week, 50 minutes at a time for the entire 2016-17 school year. The Student's Fall 2016 semester grades were 2 As, 2 Cs, and 1 D. The Student, an upcoming sophomore in high school, is reading on a third-fourth grade level.

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

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

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). Based on the evidence provided by the Complainant and District, the Student has many listed related aids and services in his IEP; but it is unclear based on the data provided, how the District implemented the provisions of the Student's IEP on a day to day basis. In order to make findings, OCR would still need to conduct interviews with District personnel, including the special education teacher, math teacher, principal, and other staff members who came in contact with the Student on a regular basis.

The District agreed to enter into an Agreement which obligates the District to provide proper written notification to the Complainant that the District will conduct a comprehensive reevaluation of the Student to determine the Student's needs for related aids and services and compensatory education. Additionally, the Agreement requires the District to provide training the District personnel involved with the provision of ESE and Section 504 related aids and services to students.

Conclusion

On June 23, 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 because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

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This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. OCR would like to thank the District for its cooperation, especially Ms. Katrina Casteel. 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

Enclosure