



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

August 31, 2017

**Via Electronic Mail Only**

XXXXXXXXXXXXXXXXXXXX

Office of the Superintendent  
Levy County School Board  
480 Marshburn Drive  
Bronson, FL 32621-6221

Re: OCR Complaint # 04-17-1325

Dear XXXXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Levy County School Board (District). The Complainant alleged that the District discriminated against her grandson (Student), who is a student at XXXXXXXXXX (School), as follows:

1. The District failed to respond appropriately to reports of other students bullying and harassing the Student based on his disability during the 2016-2017 school year.
2. The District failed to implement the Student's IEP during the 2016-2017 school year when the XXXXXXXXXX Teachers did not shorten the Student's assignments and provide him with breaks to calm down or administer his tests to him in a separate area, as required by his IEP. Also, all teachers failed to develop a written separate or different plan of education for the Student.

OCR investigated this complaint pursuant 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 by recipients of Federal financial assistance; and, 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, 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 and District are subject to Section 504 and Title II.

OCR investigated the following legal issues:

1. Whether the District discriminated against the Student by failing to respond appropriately to incidents of disability harassment during the 2016-2017 school year, 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.

2. Whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement the Student's IEP for the 2016-2017 school year by not providing the Student with shortened assignments, his breaks to calm him, and a separate area for testing in his XXXXXXXXXXXX classes; and, developing a separate, written education plan for him, 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.

OCR's investigation included a review and analysis of the documents submitted by the Complainant and the District and interviews of the Complainant and a District official. 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 the recipient (District) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Prior to the conclusion of the investigation, the District requested to complaint allegations with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual (CPM). The evidence thus far and the proposed resolution are set forth below.

### **Applicable Legal Standards**

#### ***Harassment***

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides 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. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1) states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) provide a qualified student with a disability an aid, benefit, or service that is not as effective as that provided to others; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The Title II implementing regulation at 28 C.F.R. §35.130(a) mandates 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.

#### ***FAPE/Failure to Implement***

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

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nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard

### **Background**

During the 2016-2017 school year, the Student was a XXX year old XXXX grader. The Complainant described the Student's primary diagnosis as the XXXXXXXXXXXX. The Student's IEP states that the Student is XXXXXXXXXXXX, and was diagnosed with XXXXXXXXXXXX.

The Student has always had an IEP in place. He was in XXXXXXXXXXXX until the 3rd grade. In the 4th grade, he had a XXXXXXXXXXXX. He had a XXXXXXXXXXXX prior to the 5th grade. In the 5<sup>th</sup> and 6<sup>th</sup> grade he was in all XXXXXXXXXXXX. According to the Complaint, the District started doing a XXXXXXXXXXXX in the 3<sup>rd</sup> grade but never completed it. Neither the Student's IEP nor the IEP Committee Minutes contain a discussion of the Student's xxx.

### **Summary of the Investigation to Date**

**Allegation/Issue 1: Whether the District discriminated against the Student by failing to respond appropriately to incidents of disability harassment by his peers during the 2016-2017 school year.**

For the 2016-2017 school year, the Student had a total of XXXX days of out-of-school suspensions (OSS) and XXX days of in-school suspensions (ISS). All of the Student's disciplinary referrals XXX. On XXXX, he received a XX-day XXX for XXXXX. On XXXXX, he received another XX-day XX for XXXXX; the other student also received a XX-day XXX for XXXX. On XXXX, the Student received a XX-day XXX for XXXXX; the Student alleged that the other student XXXX. On XXXX, the Student received a XX-day XXX after XXXXXXX. On XXXX, the Student received XXX for XXXX. On the same day, another student received a XXX for going into the XXXX. The Student stated this XXXX.

The Complainant alleged that all of the incidents of bullying and harassment occurred over a one-month span, between XXXXX. All but one of the Student's disciplinary referrals occurred during this same period.

The Complainant stated that an IEP meeting was in XXXX, and the IEP team addressed the bullying issue. The School changed the Student's schedule to remove him from XXXX. The School placed a paraprofessional in XXX. This stopped the bullying, and the Student stated he was much happier. Nothing else occurred between XXXX and the end of the school year.

An email to the Student's email requested that the teachers keep an eye out for interactions that he had with other students to determine who was instigating the problems. The email also expressed concern that the Student might be receiving XXXXX. On XXXX, a request was made

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to have the Student's XXXXX class schedule changed due to negative interactions between the Student and other students in the class. The evidence confirms that the School eventually changed the Student's schedule for XXXX.

Prior to OCR completing the investigation of this issue, the District offered to resolve the complaint pursuant to OCR CPM § 302.

**Allegation/Issue 2: Whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement the Student's IEP for the 2016-2017 school year by not providing the Student with shortened assignments, his breaks to calm him, and a separate area for testing in his XXXXXXXXXXXXXXXX classes; and, developing a separate, written education plan for him.**

The Complainant alleged that three of the Student's teachers failed to provide him with shortened assignments and breaks to calm down. She also alleged that these three teachers did not place the Student in a separate area to take his tests, as provided for in his IEP. The Complainant alleged that the Student's IEP required the District to have a separate or different plan of education for him, which must be written. The Complainant contends that the District could not produce it.

The Student's IEP includes, but is not limited to, shortened assignments, extended and double time, assignments or tests administered in a small group setting, reduced stimuli, and preferential seating. On XXXXXXX, an email noted that the Student's mother raised a concern that his teachers were not XXXXXXX day, as required by his IEP. The Principal offered to XXXXXXX. On XXXXXXX, the Complainant and Student's XXXX met with School officials and asserted that the Student's IEP was not being followed.

The evidence showed that the District provided the Student with a small group setting or quiet environment in which to complete his tests and assignments. The IEP does not include a requirement that the District create a different or separate, written plan of education.

Prior to OCR completing the investigation of this issue, the District offered to resolve the complaint pursuant to OCR CPM § 302.

### **Proposed Resolution**

The attached Agreement, which was signed on August 31, 2017 requires the District to: (1) convene a group of knowledgeable persons to determine whether the Student needs additional services under Section 504 or IDEA, regarding, but not limited to his behavioral issues; (2) provide related aids and services to the Student, if the School's convened committee deems them necessary; (3) convene a group of knowledgeable persons to determine whether the Student needs compensatory education and/or other remedial services to compensate him for the failure to implement his 504 Plan from the 2016-2017 school; (4) initiate annual training for XXXXXXXI administrators, faculty and staff involved in the implementation of IEPs, regarding the requirements of 504 and Title II and how to conduct an investigation for complaints involving

disability based harassment; and (5) initiate annual training for students at XXXXXX, regarding bullying and harassment on the basis of disability.

These corrective actions are outlined in the enclosed resolution agreement which also contains monitoring provisions. When fully implemented, the agreement will resolve the identified compliance issues. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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 duly authorized OCR officials 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. In the event that OCR receives 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.

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.

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 xxxxxxxx, Senior Attorney, at xxxxxxxxxx, or the undersigned at xxxxxxxxxxxxxx.

Sincerely,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Supervisory General Attorney

Enclosure