



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

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

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ALABAMA
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October 30, 2017

Mr. Randy Fuller
Superintendent
Shelby County Schools
410 East College Street
P.O. Box 1910
Columbiana, AL 35051

Re: Complaint # 04-17-1416

Dear Mr. Fuller:

On April 10, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant on behalf of the Student, a student at Helena High School (School), against the Shelby County School District (District), alleging discrimination on the basis of disability.

Specifically, the Complainant alleged that the District excluded the Student, on the basis of her disability, from participating in the School's junior prom, when the elevators at the private facility where the prom was held were not in working order.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department; 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 at 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 as a public entity, the District is subject to Section 504 and Title II.

Based on the allegations, OCR investigated whether the District subjected the Student to discrimination on the basis of her disability, by excluding her from participation in the School's junior prom, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4 (a) and (b), and Title II and its implementing regulation at 28 C.F.R. 35.130 (a) and (b).

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegations by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an

investigation.” Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

Legal Standards

The regulation implementing Section 504 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, denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i)-(iv) states that in providing any aid, benefit, or service, a recipient may not 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 person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or, (iv) provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others. The regulation implementing Title II is interpreted consistently with the regulation implementing Section 504 with respect to the allegation under investigation in this complaint.

Summary of Investigation

During the 2016-17 school year, the Student was enrolled as a junior at the School. The Student has a Section 504 plan which includes use of the elevator. The School’s junior prom was held at a private facility in March of 2016. Because the elevators at the prom facility were not in working order during the prom, the Student was unable to use the elevator to reach the dance floor, housed on the downstairs level of the facility.

OCR did not complete the investigation to determine whether the District subjected the Student to discrimination on the basis of disability by excluding her from participation in the School’s junior prom, in noncompliance with Section 504 and Title II.

Resolution Agreement

To remedy the allegations raised by OCR’s complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will provide the Student a written statement from the Principal, which shall include 1) an apology that the Student was unable to participate fully in the 2017 junior prom; and 2) an assurance that students with disabilities, including the Student, will be provided an equal opportunity to participate in all school sponsored activities, including, but not limited to, the 2018 senior prom, in compliance with Section 504 and Title II.

The Agreement is aligned with the complaint allegations and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor

the District's implementation of the Agreement to ensure that it is fully implemented. 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 concludes OCR's investigation of the 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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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.

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, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the District that 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.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Claudia Campo, the assigned attorney, at (404) 974-9378, or, me, at (404) 974-9376.

Sincerely,

Arthur Manigault
Compliance Team Leader

Enclosure