



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

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December 22, 2017

**VIA REGULAR AND ELECTRONIC MAIL**

Dr. Patricia Willis  
Superintendent  
Duval County Public Schools  
1701 Prudential Drive  
Jacksonville, Florida 32207

Re: Case # 04-17-1593

Dear Dr. Willis:

On August 25, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received the above-referenced complaint filed against Duval County Public Schools (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District:

1. Failed to conduct a manifestation determination meeting prior to expelling the Student and placing him in alternative school in May 2017.
2. Failed to implement the provision of the Student's 504 plan regarding the use of a blue card in April and May 2017.

OCR is responsible for enforcing 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 (FFA). OCR is also responsible for enforcing 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 FFA from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Based on the allegations, OCR opened an investigation of the following legal issue(s):

1. Whether the District failed to conduct a manifestation proceeding, which resulted in the Student being subjected to expulsion and alternative school, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130.

2. Whether the District failed to implement the provision of the Student's 504 plan related to the use of a blue card, 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.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegations by entering into a Resolution Agreement (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 Agreement entered into by the District.

### **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. §104.33(a)-(b)(2), requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. The provision of an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards).

The regulation implementing Section 504 at 34 C.F.R. §104.35(a) requires a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations.

### **Summary of Investigation**

OCR did not complete the investigation to determine (1) whether the District failed to conduct a manifestation proceeding, which resulted in the Student being subjected to expulsion and alternative school or (2) whether the District failed to implement the provision of the Student's 504 plan related to the use of a blue card, in noncompliance with Section 504 and the Title II because the District requested to resolve the complaint.

### **Resolution Agreement**

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

[www.ed.gov](http://www.ed.gov)

To remedy the allegations raised by OCR's complaint, the District agreed to implement the provisions of the attached Agreement, which when fully implemented, will resolve the issues in this complaint. Pursuant to the terms of the Agreement, the District will, in compliance with Section 504 and Title II:

1. Send the Complainant a letter explaining that, with her written consent, the District will expeditiously conduct a manifestation determination hearing (MDH) regarding the disciplinary incident (the incident) that resulted in the Student's placement in an alternative school setting. The letter will explain that:
2. If the Complainant submits timely consent, then the District will conduct the MDH.
3. If the MC determines that the Student's conduct was a manifestation of his disability, then the District will: 1) expunge the Student's disciplinary records related to placement in alternative school; thereby permitting him to enroll in a District school (other than the alternative school); 2) provide the Complainant with a copy of the Student's expunged disciplinary record.
4. If the Student enrolls in a District school within 30 calendar days of the expungement, then, the District will convene a 504 meeting.

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. Demetria Mills-Obadic at (404) 974-9353, or the undersigned at (404) 974-9376.

Sincerely,

April England-Albright, Esq.  
Supervisory General Attorney

Enclosure(s)