



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
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March 13, 2018

Dr. Jute Wilson  
Superintendent  
Lamar County School District  
100 Victory Lane  
Barnesville, Georgia 30204

Re: Complaint #04-17-1629

Dear Dr. Wilson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, filed on September 14, 2017, against the Lamar County School District (the District), in which the Complainant alleged discrimination and failure to implement her child's (Student's) Section 504 Plan<sup>1</sup> (Plan) under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). Specifically, Complainant alleged:

1. The District engaged in discrimination on the basis of disability against the Student when a teacher at Lamar County Elementary School (School) disclosed to the Student's entire class that the Student had a Section 504 Plan;
2. The District failed to implement the Student's Section 504 Plan when the same teacher yelled at the Student in the cafeteria in front of other students regarding a medication bottle.

OCR investigated this case under the authority of:

- 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.
- 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.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

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<sup>1</sup> OCR erroneously stated in earlier correspondence that this matter addressed the Student's Individualized Education Plan (IEP).

OCR investigated the following legal issues:

- 1) Whether the District subjected the Student to different treatment on the basis of disability on or about September 6, 2017, when the teacher disclosed to the class that the Student had a Section 504 Plan, 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 failed to implement the Student's Section 504 Plan when the teacher yelled at the Student in front of peers in the lunchroom 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.

During the course of its investigation, OCR reviewed information provided by the Complainant and the District, including the Student's Section 504 plans, correspondence between the District and the Complainant, and statements from the staff involved in the events alleged by the Complainant. OCR examined all evidence in this matter under the preponderance of the evidence standard, which requires the weight of the evidence to show that a particular fact or event was more likely than not to have occurred.

Prior to the conclusion of the investigation, the District requested a settled resolution with OCR pursuant to OCR's *Case Processing Manual* Section 302. 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, OCR agrees, and the recipient 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. The Resolution Agreement to which the District agreed addresses each of the issues alleged by Complainant.

## **Background**

The Student is enrolled at the School and has a Section 504 plan to accommodate disabilities of anxiety, depression, and attention deficit disorder (ADD). On September 14, 2017, the Complainant filed a complaint with OCR alleging that the Student's Plan had been violated by the District when the Student's mathematics teacher (Teacher) disclosed to the Student's class that the Student had a Section 504 plan; and when a School staff member (Staff) verbally corrected the Student in the cafeteria for having an empty medication bottle. The Complainant stated that these incidents were violations of the Student's Plan because the Plan provides for non-verbal corrective cues from teachers and School staff to avoid embarrassing the Student and aggravating the Student's anxiety.

## **Legal Standards and Analysis**

### **A. Disability Discrimination: Different Treatment**

34 C.F.R. § 104.4 provides: “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.”

When investigating claims of disability discrimination, OCR will examine whether the Student is a qualified person with a disability, whether there was an adverse action against the Student by the District, and—if so—the District’s legitimate, non-discriminatory reason for the alleged adverse action. Once a legitimate, non-discriminatory reason is provided for the act alleged, OCR will examine that reason for signs of pretext.

In this matter, the data has shown that the Student is a qualified person with a disability, who had a Plan in place to accommodate disabilities during all parts of the school day. The next step of the inquiry is whether or not there was an adverse action against the Student by the District. Here, the Complainant alleges that the adverse action was the Teacher’s disclosure of the Plan to other students in the classroom. The District submitted contrary information in the form of a statement from the Teacher that she did not disclose the Student’s Plan to the class. OCR had scheduled an interview with the Teacher to attempt to resolve this conflict in evidence, however prior to that interview, the District requested a 302 settlement. Thus, OCR does not currently have sufficient information to make a finding; and a settlement of this issue via OCR’s 302 resolution mechanism is appropriate.

### **B. Failure to Implement**

34 C.F.R. §104.33 provides that, “the provision of an appropriate education is the provision of regular or special education and related aids and services that. . .are designed to meet individual educational needs of [persons with a disability] as adequately as the needs of [persons without a disability’s] needs are met. . .” OCR enforces a student with disabilities’ right to a free and appropriate public education (FAPE) by ensuring that Schools and Districts faithfully implement the provisions of a student’s Section 504 Plan or IEP.

The records submitted by the District demonstrate that the Student had a Plan that provided various related aids and services targeted to alleviate symptoms from disabilities throughout the school day. Among these aids and services, the District agreed to “quiet hand signal corrections” of the Student on July 27, 2017, and “use of [a] quiet hand signal” on September 6, 2017. According to a written statement from the Staff four months after the alleged incident in the cafeteria, the Staff “asked [the Student] what [the Student] was. . .playing with and [the Student] then stated that it was . . .medicine. I told [the Student] that [students] should not have it and then [the Student] told me well I don’t have anything in it. After [the Student] said that I asked if [the Student] would put it back in [redacted] pocket and that [redacted] couldn’t play with it around the other students.” OCR had scheduled an interview with the Staff to attempt to gain further details about what had happened and the circumstances of this encounter, but the District requested a Section 302 resolution prior to that interview taking place. Details that OCR would have sought to clarify in the interview would have included the Staff’s proximity to the Student at the time she made this correction, her tone of voice and demeanor, and whether or not other students were around who might have overheard the correction. Without these details, OCR cannot reach a

finding on whether or not the Staff's encounter with the Student in the cafeteria constituted a failure to implement the Plan. Accordingly, a 302 resolution is appropriate on this issue as well.

### **Conclusion**

In conclusion, the District agreed to resolve the Complainant's allegations before OCR fully investigated the complaint. Accordingly, OCR makes no determinative findings on the issues opened in this complaint. The attached Resolution Agreement addresses the allegations brought forth by the Complainant.

In summary, the attached Resolution Agreement provides for the Student's Section 504 team, including the Complainant, to convene and discuss the possible impact of the alleged incidents on the Student's ability to access an education. If the team finds that there has been an adverse educational impact, it will discuss whether compensatory education is appropriate and, if so, create a plan for providing compensatory educational services to the Student. The District will also undertake training for its faculty and staff regarding Section 504's requirements in an elementary school educational setting and Section 504's prohibition against discrimination against individuals with disabilities.

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 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 provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment. 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.

If you have any questions regarding this matter, please contact Robyn Painter, Esq., at (404) 974-9345, or me at (404) 974-9364.

Sincerely,

Pamela Simmons, Esq.  
Acting Compliance Team Leader

Enclosure: Resolution Agreement

cc: Reagan Sauls, Esq.