



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

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REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

April 12, 2018

Jeff Eakins  
Superintendent  
Hillsborough County Schools  
901 E Kennedy Blvd  
P.O. Box 3408  
Tampa, FL 33601

**Re: Complaint # 04-18-1048**

Dear Mr. Eakins:

On October 25, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant against the Hillsborough County School District (District), alleging discrimination on the basis of disability.

Specifically, the Complainant alleged that the District failed to properly implement the transportation provision in the Student's Individualized Education Program (IEP), causing the Student to miss class time.

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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the allegation, OCR investigated whether the District denied the Student a free appropriate public education (FAPE) by failing to implement the transportation provision in the Student's IEP, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.33, and Title II and its implementing regulation at 28 C.F.R § 35.130.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation 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. § 104.33(a) and (b) requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE 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 a disability as adequately as the needs of individuals without a disability 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, regarding educational setting, evaluation and placement, and procedural safeguards. Implementation of an IEP is one means of meeting the standard established in 28 C.F.R. § 104.33(b)(1)(i).

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

## **Summary of Investigation**

The Complainant alleged that during the fall semester of the 2017-18 school year, particularly during the first month of the semester, the District failed to properly implement the transportation provision in the Student's IEP, causing the Student to miss class time.

Before OCR completed its investigation, the District expressed an interest in voluntarily resolving the complaint. OCR did not complete the investigation to determine whether the District failed to implement the transportation provision in the Student's IEP in accordance with Section 504 and Title II prior to receiving the request from the District to resolve this matter.

## **Resolution Agreement**

To remedy the allegation 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 convene an IEP meeting to determine whether the Student requires compensatory and/or remedial services for the fall semester of the 2017-18 school year resulting from implementation of the transportation provision in the Student's IEP.

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,

/s/

Arthur Manigault  
Compliance Team Leader

Enclosure