



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

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

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

July 25, 2019

Via Electronic Mail Only

Dr. R. Stephen Green
Superintendent/CEO
DeKalb County School District
1701 Mountain Industrial Boulevard
Stone Mountain, GA 30083
supt@dekalbschoolsga.org

Re: OCR Complaint #04-18-1088

Dear Dr. Green:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of a complaint received by this office on November 8, 2017, alleging discrimination on the basis of disability by the DeKalb County School District (District). Specifically, the Complainant alleged that the District subjected the Student to disability harassment when it failed to respond appropriately to the Complainant's complaint that the Student's teacher hit him.

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.

Based on the above, OCR investigated the following legal issue: Whether the District discriminated against the Student by failing to respond appropriately to an incident of disability harassment by a teacher, 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.

Pursuant to OCR's Case Processing Manual (CPM) at Section 302, a complaint may be resolved when, before the conclusion of an 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." After OCR reviewed documentation submitted by the District and interviewed various District personnel, the District informed OCR of its

desire to take voluntary action necessary to resolve the allegation in the complaint. Accordingly, OCR has not issued findings concerning the legal issue opened for investigation.

Evidence obtained to date

Information gathered thus far from District documentation and interviews of District personnel confirms that the Student is a student with a disability that, among other things, limits his verbal communication skills. In October 2017, the Complainant complained to the District that the Student's teacher hit him and another student; at the time, the Student was in first grade. Shortly thereafter, the Principal took statements from the Student's teacher and the paraprofessional; both denied that the teacher hit the Student. In February 2018, a District social worker interviewed the Student; he alleged that the teacher had hit him. The social worker's interview summary was provided to the District's Office of Legal Affairs (OLA), which placed the teacher on administrative leave pending the outcome of the investigation. The OLA concluded that the teacher did not hit the Student.

Resolution & Conclusion

As indicated above, prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint, and OCR determined that resolution pursuant to OCR's CPM Section 302 was appropriate. The attached Resolution Agreement (Agreement) will require the District to take action to remedy any compliance concern(s) identified in the complaint such as (a) supplementing its previous investigatory steps by (i) providing the Complainant an opportunity to describe the complaint she made to the Principal, (ii) attempting to conduct a second interview of the other student as a potential witness /victim in connection with the matter, (iii) taking remedial action, as appropriate, and (iv) providing the Complainant and teacher with the outcome of the investigation; and (b) providing training to OLA investigative staff regarding how to conduct a disability harassment investigation.

On July 16, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegation in the complaint. OCR will monitor the District's implementation of this 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. The Complainant may file a private suit in Federal court regardless of whether OCR finds a violation.

In keeping with OCR practices, the District has been reminded that Section 504 and Title II prohibit recipients from intimidating, coercing, threatening, or discriminating 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 an investigation in connection with a complaint.

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,

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

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

OCR is committed to prompt and effective service. If you have any questions, please contact Ms. Demetria Mills-Obadic, by phone or email, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure(s)