



**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
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August 31, 2018

Meria Joel Carstarphen, Ed.D.
Superintendent
Atlanta Public Schools
130 Trinity Avenue SW
Atlanta, GA 30303

RE: OCR Complaint #04-18-1341

Dear Dr. Carstarphen:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 16, 2018 against Atlanta Public Schools (the District). Jameelah Kates (the Complainant) filed the complaint on behalf of her son, Arthur Ball (the Student), a student at Springdale Park Elementary School (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the School failed to implement the Student's Section 504 plan during the 2017-2018 school year.

Legal Issue:

Whether the District denied the Student a free appropriate public education (FAPE), by failing to implement the Student's Section 504 plan during the 2017-2018 school year, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.33.

Jurisdiction

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education (the Department). OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public educational entity, OCR has jurisdiction over this complaint.

Summary of Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant; and received a statement from the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint through a voluntary resolution agreement.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

In making a determination in regards to whether a student is denied a FAPE, OCR examines: 1) whether the service or modification at issue is required by the IEP or Section 504 plan; 2) whether staff failed to implement the service or modification consistent with the IEP or Section 504 plan; and 3) whether failure to implement the service or modification resulted in a denial of FAPE (i.e., had an educational impact).

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on August 30, 2018 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulation at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Joshua Porter, Esq., the OCR attorney assigned to this complaint, at 404-682-3356 or joshua.porter@ed.gov, or me, at 404-974-9354 or scott.sausser@ed.gov.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure

cc: Laurance Warco, Esq.