



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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November 20, 2018

Mr. Nathan T. Lee, Esquire
Glover & Davis, P.A.
Counsel for the District
10 Brown Street, P.O. Box 1038
Newnan, Georgia 30264
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Letter sent via email
OCR Docket # [04-18-1471]

Dear Mr. Lee:

On April 30, 2018, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant alleging discrimination by the Coweta County School System (District) against the Student, a former student at East Coweta High (School),¹ based on the Student's disability (XXX), as follows:

1. The District discriminated by providing precautionary measures which were not implemented instead of giving the Student a 504 Plan.
2. The District required the Student to go on homebound but failed to provide any tutoring or instruction as promised for three of XX classes.
3. The Student was also subjected to disability harassment by XX peers and the District failed to take any action to address such.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation, 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 these laws.

Based on the allegations above, OCR investigated the following legal issues:

1. Whether the District failed to appropriately evaluate the Student for and presumably provide a Section 504 Plan, despite uncontested medical evidence of XX XXX, and instead the District provided precautionary measures which were ineffective based on several incidents

¹ The Student graduated from the School in XX and is now attending college.

of XXX at School requiring medical treatment/hospitalization, in violation of the Section 504 implementing regulation at §§ 104.35-36, and the Title II implementing regulation at 28 C.F.R. § 35.130.

2. Whether the District discriminated against the Student based on XX disability by requiring XX go on homebound status, and then failing provide the Student with required homebound services for a few of XX classes, in noncompliance with the Section 504 implementing regulation at 34 C.F.R §104.4 (a) and (b), and the Title II implementing regulation at 28 C.F.R. §35.130(a) and (b)(1)(i)-(iv).
3. Whether the Student was subjected to disability harassment by XX peers causing a hostile environment to which the District was on notice and failed to adequately respond, in noncompliance with the Section 504 implementing regulation at 34 C.F.R §100.3 (a) and (b)(1)(i)-(iv), and the Title II implementing regulation at 28 C.F.R. §35.130(a) and (b)(1)(i)-(iv).

Pursuant to OCR's *Case Processing Manual* 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." Set forth below is a summary of the evidence obtained thus far, prior to the signing of the resolution agreement and the terms of the resolution agreement.

Investigation to date

The investigation completed thus far revealed that the Student, who has graduated from the District, has XXX, for which the Student's School enacted safety protocols, (preventing staff and students from XX and placing information regarding XXX in the School). The investigation to date also showed that at the time the complaint was filed, the Student did not have an Individual Education Plan (IEP), or a 504 Plan. The evidence also showed that the Student had not been evaluated for eligibility to receive an IEP or 504 Plan for XX XXX, even though the Complainant and Student complained on at least two occasions that the Student was allegedly exposed to XXX while at school. In addition, the evidence received thus far, showed that the Student was in homebound services towards the end of the school year; however, there was no evidence which showed what led to the decision to place the Student on homebound. The Complainant stated that the School coerced the Complainant/Student into requesting homebound, but the School simply stated that the Complainant requested the Student be placed in homebound services. Finally, while there is no documentation corroborating that any peer harassment occurred, OCR did receive information which showed that a video was taken of the Student's class during the Student's absence showing students XXX. However, at this phase of the investigation, OCR had not received documentation that such was reported as harassment. As such, OCR cannot determine at this phase of the investigation whether the District had notice of any harassment by peers.

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint and OCR agreed, pursuant to Section 302 of OCR's Case Processing Manual (CPM).

The enclosed Resolution Agreement (Agreement) requires the District to reimburse the Complainant for the dues paid for Senior activities for which the Student could not attend, and offer a list of counselors currently employed by the District from which the Student may choose for counseling (provided for a time period to be agreed upon between the parties) for any alleged peer harassment-XXX and isolation that occurred during the second semester of the 2017-2018 school year. The Agreement also requires that the District add references to its policies and procedures for evaluation and homebound placement which explains that before placing any student on homebound, who the District knows, or has reason to believe may need related aids or services pursuant to Section 504, the District must 1) evaluate the student to determine eligibility for special education/Section 504 services (if not already done), or 2) convene a meeting of the student's Section 504 Team or IEP team (if the student is already receiving related aids and services per a 504 Plan or IEP) to determine whether such placement will ensure continuation of the student's related aids and services.² Finally, the Agreement requires the District provide training to relevant staff regarding the provision added to their policies and procedures, as well as peer harassment training to the students at the School.

On November 19, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve all allegations in this complaint pursuant to CPM Section 302, as discussed above. 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 whether or not OCR finds a violation. Please be advised that the District may not harass, coerce, or discriminate against any individual because XX 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.

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

If you have any questions, please contact Senior Attorney Angela Collins at (404) 974-9346, or by email at angela.collins@ed.gov, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure

² The Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(1) and (2) defines a FAPE as "the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an individualized educational program (IEP) in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard."