



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

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ATLANTA, GA 30303-8927

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September 7, 2018

Dr. Donald E. Fennoy II
Superintendent
Palm Beach County School District
3300 Forest Hill Boulevard
West Palm Beach, FL 33406

Re: Complaint # 04-18-1478
Letter of Resolution

Dear Dr. Fennoy:

On May 1, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against Palm Beach County Schools (the District) by the Complainant on the basis of disability. Specifically, the Complainant alleged that the District failed to timely evaluate the Student for a 504 plan which resulted in the Student not having the appropriate accommodations in place when she auditioned for the BAK Middle School of the Arts Dance program.

OCR opened the complaint for investigation 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, which prohibits discrimination on the basis of disability. As a public entity, the District is also subject to the provisions of 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 prohibits discrimination on the basis of disability. The District is a recipient of Federal financial assistance from the Department and is therefore subject to these laws that prohibit discrimination on the basis of disability.

Based on the above, OCR investigated whether the District discriminated against the Student on the basis of disability when it failed to timely evaluate the Student for a 504 plan, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.35, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

During the course of the investigation, OCR reviewed and analyzed documents submitted by the Complainant and the District, including the Student's Academic and Special Education records, correspondence between the District and the Complainant, and all documents pertaining to auditions for the 2018-2019 BAK Dance program. OCR also interviewed the Complainant, the Head of the Dance Program at BAK Middle School, the District's 504 Coordinator, and the Choice Coordinator at BAK Middle School.

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

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Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any compliance concerns regarding the identification and placement of students with disabilities, and requires the District to offer the Student a re-audition for the BAK Middle School of the Arts Dance program.

On **September 4, 2018**, OCR received the enclosed signed Agreement that, when fully implemented, will resolve 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. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives 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.

OCR is committed to prompt and effective service. If you have any questions, please contact Lachauna Edwards, Attorney, at (404) 974-9390 or by email at Lachauna.Edwards@ed.gov.

Sincerely,

Michelle Vaughan
Acting Compliance Team Leader

Enclosure: Debra Neeson Okell, 504 Coordinator
Laura Pincus, District Attorne