



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

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ATLANTA, GA 30303-8927

REGION IV
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October 26, 2018

Dr. Curtis L. Jones
Superintendent
Bibb County Schools
484 Mulberry Street
Macon, GA 31201

Re: Docket #04-18-1504

Dear Dr. Jones:

On May 8, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination by the Bibb County School District (District). The Complainant filed the complaint on behalf of her son (the Student), a former student at Lane Elementary School (School #1) and Rosa Taylor Elementary School (School #2) during the 2017-2018 school year. The Student now attends ACE Academy, a charter school affiliated with the District. The Complainant alleged that neither School #1 nor School #2 implemented the Student's Section 504 plan during the 2017-2018 school year.

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 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 entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the above, OCR opened the legal issue of 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.

Legal Standards

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. 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.

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

Summary of Investigation

This case was resolved through the Rapid Resolution Process (RRP). During the investigation, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant. The data reviewed includes: the Student's, special education and Section 504 records, and discipline records, email correspondence, between the Complainant and the District with respect to the Complainant's request for special education services; and the District's policies and procedures for implementing Section 504. Additionally, OCR corresponded with the District's legal counsel. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint through a voluntary resolution agreement.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*¹, the District signed the enclosed Resolution Agreement on October 25, 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.

If you have any questions, please contact Joshua Porter at 404-682-3356 or by email at joshua.porter@ed.gov, or me at 404-974-9354, or by email at scott.sausser@ed.gov.

Sincerely,

¹ Section 302 of the *Case Processing Manual* reads: "Allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement. OCR will inform the recipient that this resolution process is voluntary."

Scott R. Sausser, Esq.
Compliance Team Leader