



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

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

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April 10, 2019

**BY REGULAR & ELECTRONIC MAIL**

Dr. Robert Thomas, Superintendent  
Knox County Schools  
912 South Gay Street  
P.O. Box 2188  
Knoxville, TN 37901  
bob.thomas@knoxschools.org

**Re: OCR Complaint No. 04-18-1599**

Dear Dr. Thomas:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on June 13, 2018, against the Knox County Schools (District), in which the Complainant alleged that the District discriminates against students with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulations, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

OCR investigated the legal issue of whether the District is discriminating against students with disabilities in all District middle and high schools by providing segregated instruction in core academic "modified program" pull-out courses by teachers not certified to teach core subjects, thus treating these students differently from students without disabilities, failing to provide them with a free appropriate public education and failing to provide for their instruction with nondisabled students to the maximum extent appropriate, in noncompliance with Section 504 at 34 C.F.R. §§ 104.4(b)(1)(iv), 104.33 and 104.34, and Title II at 28 C.F.R. § 35.130.

During the course of this investigation, OCR reviewed evidence provided by the Complainant and the District, including policies and procedures, teachers' qualifications, and class rosters for middle and high schools. OCR also interviewed a District staff person.

OCR evaluates evidence under a preponderance of the evidence standard. To establish a violation, the evidence must be sufficient to prove that it is more likely than not that a violation occurred. Prior to the conclusion of OCR's investigation, the District requested to voluntarily resolve the issue. Provided below is an analysis of OCR's investigation thus far.

## **Legal Standards**

### *Discrimination*

Section 504 at 34 C.F.R. § 104.4(b)(1)(iv) states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability provide different or separate aid, benefits, or services to persons with disabilities or to any class of such persons unless such action is necessary to provide such qualified persons with aid, benefits, or services that are as effective as those provided to others.

### *Free Appropriate Public Education*

The Section 504 regulation at 34 C.F.R. § 104.33(a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The term "appropriate education" is defined under 34 C.F.R. § 104.33(b) to mean the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to the Section 504 regulation's procedural requirements.

### *Least Restrictive Environment*

Section 504 at 34 C.F.R. § 104.34 states that a recipient shall educate, or shall provide for the education of, each qualified person with a disability in its jurisdiction with persons who do not have disabilities to the maximum extent appropriate to the needs of the person with the disability. A recipient shall place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Although the Title II regulation does not contain provisions specifically pertaining to the provision of an appropriate public education or to such provision in the least restrictive environment, as in the case of the Section 504 regulations, OCR interprets the Title II regulation's general prohibition against discrimination (at 28 C.F.R. § 35.130) to mirror the relevant provisions of the Section 504 regulations.

## **Summary of Investigation**

The District is located in Knoxville, Tennessee and is comprised of 16 middle schools and 16 high schools, as well as one alternative school, one adaptive educational center, and one education development center.

The Complainant alleged that middle and high school students with disabilities are being taught core classes in self-contained settings by special education teachers who are not certified to teach core subjects, rather than being taught in an inclusive environment with special education supports or being provided supplementary services in a resource setting. The Complainant provided OCR with the names of students she believes are receiving such services. In one instance, however, the Complainant filed a complaint with the Tennessee Department of Education (TDOE) on behalf of a student and received a determination during the period of OCR's investigation. OCR did not find any other evidence of students being educated in a more restrictive environment in contravention of their placement.

The District stated that some District special education students receive their core instruction in self-contained settings; however, the District advised that the Individualized Education Program teams determine each student's placement, and students with disabilities may receive special education services across a variety of settings. For instance, students with disabilities may participate in core instruction, including English courses, in the general education classroom with accommodations; in the general education classroom with assistance from special education paraprofessional; in the general education classroom with co-teaching provided by a special education teacher; in a special education setting with a general education teacher consulting or co-teaching with special education staff (all students with disabilities); and in a special education setting with a special education teacher who has demonstrated proficiency through the Praxis assessment and any additional state required coursework.

In addition, the District stated that all of its teachers are required to be licensed by TDOE. Teachers can be licensed to teach specific courses, specific subject areas, or specific grade levels or even a range of grade levels. Teachers may also obtain certifications in additional subject areas by taking and passing course-specific Praxis exams, after which a teacher may be certified to teach a subject, but such certification will not yet appear on the TDOE database until the test information is updated. Teachers are also allowed to teach up to two sections of a course outside of an area of certification/licensure.

Thus far, the District has been cooperative in the investigation, but the District acknowledged that it does not currently have a centralized system to monitor and evaluate teacher qualifications. As a result, the District is unable to provide OCR with information as to whether the District's students with disabilities consistently receive core instruction from appropriately qualified teachers. The District acknowledged that, pursuant to this complaint, it has begun to develop a centralized repository to evaluate and track the qualifications for its middle and high school teachers.

## Conclusion

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 expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the investigation because OCR has identified issues that can be addressed through a resolution agreement. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any issues regarding recordkeeping so that it can track that core class assignments for students with disabilities are made pursuant to the placement outlined in their IEPs/Section 504 plans and to ensure that the District's students with disabilities receive their core instruction from appropriately qualified teachers.

On April 2, 2019, 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 and Title II. 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.

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

If you have any questions, please contact Stephanie Pessin, at (404) 974-9343, or Ebony Calloway, at (404) 974-9367.

Sincerely,

Melanie Velez  
Regional Director

Enclosure

cc: XXXXXX XXXXX, by electronic mail