



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

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

REGION IV
ALABAMA
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July 24, 2019

XXXXXXXXX
Superintendent
Charlotte County School District
1445 Education Way
Port Charlotte, FL 33948

Re: OCR Complaint # 04-19-1198

Dear XXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, alleging discrimination on the basis of disability by Charlotte County Public Schools (District). Specifically, the Complainant alleged that the District discriminated against her son (Student) as follows:

1. The District failed to provide the Complainant with proper notice that it had convened a 504 Committee for the Student. As a result, the Complainant was not present at the 504 Committee Meeting when the District developed the Student's 504 Plan.
2. The District failed to implement the Student's 504 Plan for the 2018-2019 school year when his XXXXXX took away the coping mechanisms provided for in his 504 Plan.
3. A XXXXXX harassed the Student based on his disability, when she accused the Student of XXXXXXXX, which he used as a coping mechanism per his 504 Plan, told the Student she XXXXXXXX, and then sent him to the Principal's Office. XXXXXXXX also harassed the Student based on his disability when she told the Student XXXXXXXX. Further, XXXXXX for two hours and denied his request to speak to a XXXXXX resulting in two hours of missed educational time.

OCR is responsible for enforcing 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 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, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

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

1. Whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement the Student's 504 Plan for the 2018-2019 school year in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a)-(b), and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District failed to adequately respond to complaints of harassment based on disability, which may have created a hostile environment, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4, and the Title II implementing regulation at 28 C.F.R. § 35.130.

3. Whether the District failed to provide the Parent with notice and an opportunity to participate when it completed the Student's 504 Plan without the Complainant present, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36, and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

Section 504, at 34 C.F.R. § 104.4(a), states that no qualified person 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. Title II, at 34 C.F.R. § 35.130, states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity.

The Section 504 implementing regulation, at 34 C.F.R. § 104.36, requires recipients to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, the right to examine relevant records, and an impartial hearing.

Summary of Investigation

OCR's investigation included a review and analysis of the documents submitted by the District thus far. OCR also interviewed the Complainant. However, prior to the conclusion of the investigation, the District requested to complaint allegations with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual (CPM). The evidence thus far and the proposed resolution are set forth below.

Evidence Thus Far

Issue1: Failure to Implement

The Student's first 504 Plan provided the following accommodations: XXXXXXXXX. Thus, the written 504 Plan in place when the Complainant filed her OCR complaint did not include a provision for doodling as a coping mechanism or any other coping mechanisms. The evidence also included emails between the Complainant and some district staff, whereby the Complainant discussed the need XXXXXX.

Issue 2: Disability Harassment

The evidence thus far shows that on XXX, 2019, the Principal was made aware of a situation regarding the Student and a XXXXX. The Substitute Teacher reported that the Student XXXX. XXXX. The XXXXX later made a comment to the Student XXXXX. The Student became upset and went to the office to speak to the XXXXXX, who was in a District meeting and unavailable, but the XXXXXXXX and made the decision to allow him to stay in the office and complete his work until time for his next class. The XXXX eventually returned to the School, met with the Student, and sent him to his next class. He also spoke with the XXXX, who admitted she made the XXXXX comment, apologized and promised to use better judgment in the future. The XXXXXXXXXX, and he believed no further action needed to be taken. The XXXXX also informed the Complainant that the Student would not have the XXX again; however, unbeknownst to the XXXX, on XXXX, 2019, the XXX served as the substitute for the XXXX class attended by the Student.

On XXX, 2019, the evidence thus far shows that the Complainant complained that a member of the XXXXX told the Student “it’s never you” and “I’ll be embarrassed if my kid’s school called me.” On XXX, 2019, the XXXX met with the XXXX and discussed the Complainant’s concerns. In response, the XXXX felt she was offering the Student advice from a parent perspective as the Student was XXXXX. The XXX.

Issue 3: Notice and Opportunity

On XXX, 2018, the Complainant informed the School that the Student had been diagnosed with XXXX and requested a formal evaluation and a 504 Plan. The Complainant further stated that XXXXX is a coping mechanism for the Student, and he should not receive another misconduct form for doodling. On XXXX, 2018, the Complainant had a case conference with the XXXX and the Student XXXXX.

The evidence thus far shows that the District sent the Complainant a Section 504 Meeting Invitation (Notice) dated XXXX, 2018, which included the date, time and location of the 504 Meeting. The Notice stated that the Complainant needed to sign and return it by XXXX, 2018. The Complainant did not sign the actual Notice, but she completed, signed, dated and returned a Referral Form, and the Notice & Consent for Initial Section 504 Evaluation.

The District convened the 504 Committee Meeting on XXX, 2018 and developed a 504 Plan for the Student. The signature for the Student’s first 504 Plan was signed by the XXX, XXXX, and the Student’s XXXX, but there was no signature from the Complainant. On XXXX, 2018, the Complainant emailed the Principal, stating she heard a 504 Committee meeting occurred for the Student, but she was never made aware of a meeting. The Complainant requested a meeting to discuss the 504 Plan, and what it entails. The 504 Committee reconvened on XXXX, 2019 and with the Complainant in attendance, revised the Student’s 504 Plan.

Resolution & 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 or public entity expresses an interest in

resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to remove any disciplinary actions from the Student's educational file between October 29, 2018, and March 6, 2019; provide the Student with tutoring for missed instructional time; determine whether the Student needs compensatory and/or remedial services, and conduct training on the requirements of 504 and Title II for the School.

On July 23, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegation in 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.

Please be advised that the District may not harass, coerce, 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. 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.

OCR is committed to prompt and effective service. If you have any questions, please contact Senior Attorney Valerie L. Acoff at (404) 974-9489, or by email at valerie.acoff@ed.gov, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure
cc: Terry Harmon, Esq. (District's Attorney)