



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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TENNESSEE

July 12, 2019

Jeff Eakins  
Superintendent  
901 E. Kennedy Blvd.  
P.O. Box 3408  
Tampa, Florida 33601  
Email: [Jeff.Eakins@sdhc.k12.fl.us](mailto:Jeff.Eakins@sdhc.k12.fl.us)

Re: OCR Complaint #04-19-1210

Dear Mr. Eakins:

OCR has completed its investigation of the above complaint which was filed with OCR on February 12, 2019 against Hillsborough County School District (District). The Complainant alleged that personnel at the District's HOST afterschool program did not have the Student's lifesaving emergency medication readily available in the event her daughter has a seizure while participating in the HOST program. Additionally, the Complainant alleged that after she complained about the medication being lost, the District retaliated by changing the protocol related to signing out her medication and excluding her from participation in the Program.

As a recipient of Federal financial assistance from the Department, the District is subject to 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. 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. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which also prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR opened the following legal issues for investigation:

1. Whether the District discriminated on the basis of disability by not having the Student's medication readily available as proscribed in her 504 plan, in noncompliance with Section 504 of the Rehabilitation Act and its implementing regulation at 34 C.F.R. §§ 104.33 and 104.38 and Title II of the Americans with Disabilities Act and its implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District retaliated against the Student in the manner alleged in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.

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 compensatory education services.

### **Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) provides a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. Section 104.33(b) provides that the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36. Section 104.33(c) states that the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services.

The Section 504 implementing regulation at 34 C.F.R. §104.38 provides “ [a] recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.”

Retaliation is prohibited under the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation at 34 C.F.R. § 100.7(e).

### **Analysis of the Evidence obtained to date**

The District submitted the Student's 504 and Health Plan detailing the protocols and procedures to follow as it relates to the Student when she has an epileptic episode. The Plan details how to recognize the different types of seizures, and the steps to take accordingly. The Plan also includes a medication distribution form explaining what and how the medication is to be administered during school and during extra curriculum activities. OCR also reviewed a prior resolution agreement from OCR complaint number, 04-16-1001, which required that HOST staff have a process to give the Student her medication if an emergency occurred. The District's Compliance Officer advised OCR that although the District worked hard to develop a comprehensive plan

pursuant to an earlier resolution agreement from a prior OCR complaint that was approved by the Complainant to ensure the Student's safety, she acknowledged that the HOST Program (afterschool) staff had modified some of the protocol agreed upon by the Complainant.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 25, 2019 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 statutes and regulations 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.

OCR appreciates the District's cooperation throughout the processing of this complaint. If you have any questions, please contact Ms. Cassandra Williams, Investigator, [Cassandra.Williams@ed.gov](mailto:Cassandra.Williams@ed.gov) at (404) 974-9393, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright, Esq.  
Supervisory General Attorney

Enclosure