



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

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ATLANTA, GA 30303-8927

**REGION IV**  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

September 10, 2019

Mr. Matt Eldridge  
Director of Schools  
Clay County Schools  
520 Brown Street, P.O. Box 469  
Celina, Tennessee 38551  
[meldridge@clayedu.com](mailto:meldridge@clayedu.com)

Letter sent via email  
OCR Docket 04-19-1327

Dear Mr. Eldridge:

On April 3, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), Atlanta Office, received the above-referenced complaint filed by the Complainant against the Clay County School District (District) in Tennessee, alleging discrimination based on disability (speech impairment) against her son (Student), who attends xxx School. Specifically, the complaint alleges that during the 2018-19 school year, the District unenrolled the Student in his speech program that is required by his Individual Education Plan (IEP) for an unknown period of time, and then reenrolled the Student back in the program, with no IEP meeting or notice to the Complainant, thereby denying the Student a Free appropriate public education (FAPE).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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 (FFA); and 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 prohibit discrimination on the basis of disability by public entities; As a recipient of FFA from the Department and a public entity, the District is subject to these laws.

Based on the allegations above, OCR investigated the legal issue of whether the District failed to provide a FAPE to the Student by failing to consistently implement his speech services listed in the Student's IEP during the 2018-19 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33, and the Title II implementing regulation at 28 C.F.R. §35.130.

To date, OCR has reviewed and analyzed documents submitted by the Complainant and the District, which included the Student's IEP, a Speech Therapy Calendar (Calendar), a Timeline, and a Roster documenting speech services (Roster), and IEP Minutes. Prior to the completion of OCR's investigation, the District entered into an agreement (Resolution Agreement) pursuant to

Section 302 of OCR's *Case Processing Manual* (CPM) to resolve this complaint. Set forth below is a summary of OCR's investigation to date and the Resolution Agreement.

### **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. §104.33(a) and (b) requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met, and that satisfy the requirements of the regulation at 34 C.F.R. Sections 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement and procedural safeguards. OCR construes Title II consistently with Section 504 as it relates to the provision of FAPE.

### **Facts**

The investigation completed thus far revealed that the Student was in the second grade during the 2018-2019 school year, and the primary disability listed in the Student's IEP was "speech impairments." The Student's IEPs in effect for the 2018-2019 school year required speech services to be provided by a speech pathologist in a special education setting for two 25 minutes sessions or a 50 minutes session each week. According to District records, speech services for the 2018-2019 school year began on August 13, 2018, but none of the documentation indicates speech services were provided to the Student that first week of school. For the remainder of August 2018 (two weeks) and most of September 2018, records indicate that the former speech teacher was out a significant number of days due to illness, resulting in the Student missing seven speech sessions. After that, speech services were provided by a substitute speech teacher until a new speech teacher was hired in mid-October 2018.

The Calendar and Roster used for logging speech sessions provided to students occasionally contradict one another. For example, the Calendar shows that the Student received all his speech sessions in October 2018, but the Roster shows that the Student may have missed two sessions during October (October 22 and 24). Not counting school holidays/closures, the District records reflect that the Student may have missed a total of 10-13 speech sessions in the first semester of the 2018-2019 school year.

In January 2019 the Student missed a speech session for being in ISS<sup>1</sup> but it is not clear why the Student was not given speech service on that day since he was in school. Throughout the second semester, there are notations in the Calendar and Roster indicating missed speech sessions for reasons that are unclear. For example, one session missed in February 2019 due to "messed up schedule," two sessions missed in March 2019 due to "Meeting, no services," and during April, 2019 one session was missed due to the speech teacher being out but two more sessions were missed for no reason given.<sup>2</sup> It appears the Student missed as many as nine speech sessions during the second semester, not counting classroom activities/testing or school closures. In total,

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<sup>1</sup> In School Suspension

<sup>2</sup> This does not include the five sessions missed due to a classroom activity and TCAP testing.

the Student may have missed 12-22 speech sessions during the 2018-2019 school year, notwithstanding sessions missed due to classroom activities/testing or school closures.

According to records provided by the District, at the end of the 2018-2019 school year, the IEP Team met and determined the Student needed 10-minute speech sessions, twice per week, or a total of 20 minutes per week. There is no mention in the IEPs or notes provided by the District which accounts for the missed speech sessions outlined above. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint and OCR agreed, pursuant to Section 302 of OCR's Case Processing Manual (CPM).

### Resolution

The enclosed Resolution Agreement (Agreement) requires that the IEP team meet, with proper notice and opportunity to participate provided to the parents, to review the total number of hours of speech sessions the Student missed last school year, and determine whether the Student is entitled to any compensatory education or other remedial services for the time period the Student did not receive speech services, ensuring that such determinations are supported by relevant data/testing and in compliance with the Section 504 regulations. The District will also provide OCR with a schedule of planned compensatory sessions, if that is determined to be appropriate. The District will also assess their record-keeping with regard to special education records to ensure that the IEP team (including the parent/guardian) is aware of any missed special education or related services. Relevant staff will be trained on any modifications to special education record-keeping made by the District as a result of the assessment.

On September 5, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve all allegations in this complaint pursuant to CPM Section 302, as discussed above. 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.

If you have any questions, please contact Senior Attorney Angela Collins at (404) 974-9346, or by email at [angela.collins@ed.gov](mailto:angela.collins@ed.gov), or the undersigned at (404) 974-9408.

Sincerely,

/s/

April England-Albright  
Supervisory General Attorney

Enclosure

cc: District SPED Supervisor