



**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

October 8, 2019

Mr. Eddie Tyler  
Superintendent  
Baldwin County Schools  
2600-A North Hand Avenue,  
Bay Minette, Alabama 36507  
[etyler@bcbe.org](mailto:etyler@bcbe.org)

Letter sent via email  
OCR Docket 04-19-1374

Dear Mr. Tyler:

On May 3, 2019, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant against Baldwin County Public Schools (District) in Alabama, on behalf of xxx (Student) who attends Daphne East Elementary School (School), alleging discrimination based on the Student's disability (autism, attention deficit disorder-ADD and language delay) by failing to timely and appropriately evaluate the Student for an Individual Education Plan (IEP), including: 1) losing the Student's medical documentation during fall 2018 and failure to follow-up to evaluate; 2) holding another meeting in March 2019 to consider Section 504 eligibility, then coercing the Complainant to sign a 504 Plan despite her insistence on evaluating the Student for an IEP for which the District again refused with no explanation; and 3) holding the first IEP meeting in May 2019 but no IEP has been provided to-date.

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 timely and appropriately evaluate the Student for special education services during the 2018-2019 school year in violation of the Section 504 implementing regulation at §§ 104.35-36, 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 special education records and email correspondence pertaining to the referral/evaluation of the Student as well as behavioral incidents during the school year. Prior to 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 Section 504 regulation at 34 C.F.R. § 104.35(a) requires that a recipient evaluate any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program. The Section 504 regulation at 34 C.F.R. § 104.35(b) requires a recipient to establish standards and procedures for the evaluation and placement of students who need or are believed to need special education or related services. The applicable Title II regulations at 28 C.F.R. § 35.130 (a) and (b) are interpreted consistent with the Section 504 regulations cited above.

The Section 504 regulation at Section 104.36 requires that a recipient operating a public elementary or secondary education program or activity shall 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, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

### **Facts**

The investigation completed thus far revealed that at the time this complaint was filed during the 2018-2019 school year, the Student was in the 5th grade at the School; currently, the Student is in the 6th grade at the same school. According to the Complainant, the Student was first diagnosed by private evaluation in the summer of 2017 with Autism, ADD and expressive language delay and unspecified depressive disorder. Based on the request of the Complainant, the Student was evaluated at the end of the previous school year, in May 2018, and found not eligible for an IEP based on academic performance. Documents from the District show that at that time, the Student was also supposed to be considered for a Section 504 Plan which would be developed over the summer for the 2018-2019 school year, but no Section 504 plan was developed. While District records indicate that during the summer/fall of 2018, there was a changeover in hiring of the School Counselor/Section 504 Coordinator, it is unclear why the Student was not provided a Section 504 evaluation or plan during this time period.

It is undisputed that during the spring 2019 semester, the Student had several behavioral incidents, which School staff described as uncharacteristic of the Student, and generally involved aggression towards peers and some failures to complete work. A Section 504 Plan was developed for the Student, dated March 19, 2019, based on a primary disability of high-functioning autism with substantial limitations in communicating, concentrating, interacting with others, reading, sleeping and writing. The evidence from the District included the Parental Consent to Section 504 Services signed by the Complainant on March 19, 2019. Several services were included in the Student's Section 504 Plan, such as note-taking assistance, extended time, shortened assignments, not requiring eye contact, increased supervision during

unstructured times and cooling off period, among others. OCR notes that the behavioral incidents occurred in March-April, 2019, both before and after the Section 504 Plan was in effect; however, District records include a subsequent email between School staff and the Complainant asking the Complainant to sign the Section 504 Plan so that it could be implemented. Therefore, it unclear from the records if the Section 504 Plan was fully implemented during this time period.

Additionally, the evidence thus far includes a May 2019 referral for an evaluation for an IEP, which was requested by the Complainant. The Student was found eligible and given an IEP that is dated August 12, 2019. Some of the services in the IEP are similar to those provided in his Section 504 plan. Finally, the evidence thus far also includes documentation of in-depth Section 504 training that was recently provided in August 2019 to the School Counselors and Section 504 Coordinators. The training included topics such as the factors for determining the need for a Section 504 evaluation or plan (i.e. section 504 eligibility, Section 504 evaluation process and procedure). The training also included guidance on the implementation of Section 504 in the District and its forms, and Section 504 scenarios.

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 Student's IEP team meet, with proper notice and opportunity to participate provided to the parents, to review the related aids and services 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 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.

On October 8, 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's Counsel by email