



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

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ATLANTA, GA 30303-8927

REGION IV

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October 2, 2019

Kurt Browning
Superintendent
Pasco County School District
7227 Land O'Lakes Blvd.
Land O'Lakes, FL 45638

Re: OCR Complaint No. 04-19-1386
Letter of Findings

Dear Mr. Browning:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR) has completed its investigation of the complaint received on May 7, 2019 against Pasco County School District (the District).

Specifically, the Complainant alleged that the District discriminated against the Student on the basis of disability when on or about May 1-2, 2019, the District did not implement the Student's Individual Education Program (IEP) when it failed to read test questions aloud during state-level testing as required by her IEP. The Complainant believes that this may have negatively impacted the Student's course placement for the following school year.

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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. Title II prohibits discrimination on the basis of disability by public entities.

Because OCR determined that it had jurisdiction and that the complaint was filed timely, it opened this allegation on June 7, 2019 for investigation. Specifically, OCR investigated whether the District, in failing to implement the Student's IEP, denied the Student a free appropriate public education (FAPE) 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.

In reaching a determination, OCR reviewed information and documentation provided by the Complainant and the District and interviewed the Complainant and District faculty and staff. After carefully considering all of the information obtained during the investigation, OCR found

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sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

Legal Standards

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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. Title II prohibits discrimination on the basis of disability by public entities.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

Findings of Fact

During the 2018-2019 school year, the Student was enrolled in the 5th grade at XXXXXX (School) and was receiving accommodations through an IEP for language impairment, specific learning disability, and speech impairment. The IEP states that the Student should receive both oral presentation of items and answer choices on any assessments which include districtwide and statewide assessments. On May 2, 2019, the Student participated in the Florida Standards Assessment (FSA) test. During the administration of the English Language Arts (ELA) session of the test, the Student was one of four students in a small testing group who did not have items presented orally.

After the error was discovered by a test reporter, the District reached out to the Florida Department of Education (FDOE) and was informed that the parents of these students had the right to have the test invalidated because the correct accommodation was not provided. On the same day, the School's Assistant Principal contacted all the affected students' parents including the Complainant to inquire as to whether or not they wanted to invalidate their test score or have them scored. The Complainant was the only one out of the four who stated she wanted the test invalidated instead of scored.¹

¹ However, the Student's spring 2019 FSA ELA test was scored because the initial invalidation scoring process was not followed. The District states that the Student's scores were not reported in the District's Student Reporting System and there are no records of the Student's participation in the spring 2019 FSA ELA test.

The District reported to OCR that there have been no other issues with the Student's ELA test administrator and that although she had received training on FSA administration procedures, she stepped in at the last minute for the District's original test proctor without advance notice and was unfamiliar with this particular group of students.

In interviews conducted with the District's Supervisor of State and National Testing (Testing Supervisor) and the Principal of the Student's current middle school (School 2), both confirmed that while the previous school year's FSA scores are one determining factor in course placement for the next grade, it is not the only factor examined. If a student does not receive a score for the 5th grade FSA ELA, the school will look at previous FSA ELA test history as well as course work, teacher recommendations and Independent Reading Level Assessment (IRLA) data from the 5th grade school year and previous school years to determine course placement.

In the Student's case, the aggregate of information (previous FSA ELA scores as well as classroom data) reflected that her reading was not at grade level. The Principal confirmed to OCR that the Student is currently enrolled in the general language arts course as well as intensive reading. In response to OCR's questions about whether or not students can choose to be in an advanced course, the Principal stated that a parent can always choose to place their student into an advanced level course but that in this case, the Complainant did not request for the Student to be placed in the advanced language arts course for the 6th grade.

When asked whether or not the Student could retake the 5th grade FSA assessment, the Testing Supervisor informed OCR that the FDOE does not allow retakes of their tests and there is no comparable local alternate test because the 5th grade FSA test does not impact retention or promotion to the next grade. The Principal informed OCR that for 6th graders, School 2 offers an intensive reading course, a regular language arts course, and an advanced course in Language arts.

Analysis and Conclusion

The District confirmed to OCR that the Student did not receive her item read aloud accommodation on the May 2019 FSA ELA as listed in her IEP for standardized testing. As a result of this testing administration error, her 5th grade FSA ELA score was not reported in the District's Student Reporting System. Based on this, OCR determined based on the preponderance of the evidence, there is sufficient evidence to support a finding of non-compliance with Section 504 and Title II.

On October 1, 2019, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively.

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.

If you have any questions regarding this letter, please contact Eulen Jang, at 404-974-9467 or me at 404-974-9354.

Sincerely,

Scott R. Sausser
Supervisory General Attorney

Enclosure

cc: XXXXXXXXX
 XXXXXXXXX