



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

August 21, 2019

XX. XXXXXXXX XXXXXXXX
XXXXXXXXXXXXXXXXXX
Manatee County Schools
215 Manatee Avenue West
Bradenton, FL 34205

RE: OCR Complaint No. 04-19-1407
Resolution Letter

Dear XX. XXXXXXXX

On May 1, 2019, the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) received the above-referenced complaint filed against the Manatee County School District (District), alleging disability discrimination and retaliation. Specifically, the Complainant, parent of a student (Student) at X.X. XXXXX XXXXXXXXXXXX School (School), alleged that the District discriminated against her on the basis of her disabilities when it failed to allow her to effectively communicate and participate in the Student’s Individualized Educational Plan (IEP) meetings during the spring semester of the 2018-2019 school year. It was also her allegation that the District retaliated for filing a complaint with a state agency by creating a new policy restricting recording of IEP meetings.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities including public elementary and secondary education systems. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction pursuant to Section 504 and Title II.

Accordingly, OCR commenced investigation of the following legal issues:

- 1) Whether the District discriminated against the Complainant, on the basis of disability, by failing to ensure effective parental communications when it denied the Complainant the ability to participate in her daughter’s educational placement and IEP meetings during the 2018-2019 school year in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.36 and Title II and its implementing regulations at 28 C.F.R. § 35.160(a)(1) and (b)(1).

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- 2) Whether the District retaliated against the Complainant, on the basis of disability, for filing a complaint with a state agency by creating a new policy restricting recording of IEP meetings, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.61 and Title II and its implementing regulation at 28 C.F.R. § 35.134.

To date, OCR has interviewed the Complainant, along with her Advocate, who assisted the Complainant during the relevant time period with regard to the Student's IEP, attending the IEP meetings, and talking with the District about the recording issue. OCR reviewed documentation provided by the Complainant and the District, including background information about the IEP meeting policy and a state complaint filed by the Complainant during the 2019 spring semester.

Prior to the conclusion of the investigation, the District expressed interest in resolving the complaint with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), and OCR determined it was appropriate as the issues can be resolved through a resolution agreement. Set forth below are a summary of the facts investigated thus far and the CPM Section 302 resolution of the complaint.

LEGAL STANDARDS

Individual with a Disability

Section 504 defines an individual with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Educational Placement

The Section 504 implementing regulation at 34 C.F.R. § 104.36 provides that a recipient that operates 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 a 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.

Effective Communications

The Title II implementing regulations at 28 C.F.R. § 35.160(a) and (b) state that a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions (*i.e.*, a family member, friend, or associate of the individual seeking access) with disabilities are as effective as communications with others. The public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public

entity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability

Retaliation

The regulation implementing Section 504 at 34 C.F.R. § 104.61, which incorporates by reference the regulation implementing Title VI at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights or privilege secured by the laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceed or hearing in connection with a complaint.

The Title II implementing regulation at 28 C.F.R. §§ 35.134(a) and (b) contains substantially the same prohibitions against retaliation based on disability discrimination as the above Section 504 provisions. As stated in the Title II implementing regulation at 28 C.F.R. § 35.103, this regulation shall not be construed to apply a lesser standard than the standard applied under Section 504.

FINDINGS OF FACT TO DATE

On January 9, 2019, there was an IEP meeting attended by the IEP team members, including the Complainant, the Advocate, the XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX (XXX) Director, an XXX Specialist, the XXXXXXXXXXXX XXXXXXXXXXXX Teacher (XX Teacher), and the XXXXXXXXXXXX XXXXXXXXXXXX Teacher (XXXX Teacher). As she had done in the past, the Complainant recorded the meeting. During the meeting, one of the members objected to being recorded and left the meeting. The rest of the Team agreed to reconvene at a later date.

On January 10, 2019, a different XXX Specialist (Specialist 2) in the District sent an email to the XXX Director, as well as other XXX Specialists and employees in the District, making a “formal request” for a policy regarding the recording of IEP meetings. Specialist 2 provided links to two other Florida counties with such a policy and indicated that the issue of recording IEP meetings was coming up more frequently.

By the end of January, the XXE Director specified that the District did not agree to allow recording of the IEP meetings, but that it would provide a notetaker. On January 30, 2019, the Complainant submitted a complaint to the Florida State Bureau of Exceptional Education and Student Services (Bureau) related to the same issues.

The Complainant questioned the basis for not being permitted to record the IEP meetings. On February 20, 2019, by email, the XXX Director reiterated that the District would not permit recording of the IEP meetings and attached a copy of a policy. The policy prohibits the recording

of IEP meetings unless there is an exception. If a parent believes that recording an IEP meeting is necessary due to a claimed physical or mental impairment that *detrimentally impacts* the parent's ability to participate in the meeting, they are to notify the District XXX Department in writing of the desire to record the meeting and the reasons why the recording is necessary. The District may require the parent to provide a written record from a physician. The policy also states that should the District deny the request, it would provide written notification of the reasons for the denial to the parent.

On February 28, 2019, prior to the next IEP meeting, the Complainant emailed the XXX Specialist, copying the XXX Director, and provided information as to why she needed to record the IEP meeting, along with a doctor's letter recommending the request. The Complainant also signed the meeting notice, adding in handwritten notes that the District had rejected her request to record the upcoming IEP meeting and requesting that the IEP team document the meeting and have the notetaker stop at regular intervals to recap the content for the Complainant. The doctor's letter, dated February 25, 2019, stated that the Complainant has XXXXXXXX XXXXXXXX issues that make it difficult to XXXXXX and that she needs meetings recorded so she can XXXXXXXX the XXXXXXXXXXXX. She provided a second doctor's recommendation later in March 2019.

By letter dated March 5, 2019, the Complainant renewed her state complaint with the Bureau, specifically addressing the recording policy, demanding to know when the policy was created, how it was being applied across the district, and whether the application of it in her situation was denying her participation in the Student's IEP and educational decisions. The Bureau directed the District to provide its reasons for the denial of the Complainant's request to record by May 7, 2019.

On May 2, 2019, the XXX Director sent an email to the Complainant that the District's reason for denying her request to record was due to the policy, which she had provided to the Complainant in February and which had not changed since that time. The XXX Director stated that the District did not believe that the Complainant presented a physical or mental impairment that detrimentally impacted her ability to participate in the meeting as is required by the policy. The Complainant questioned the basis for the purported reason and the decision made by a non-medical professional.

ANALYSIS & RESOLUTION

The investigation to date indicates some areas of concern that were challenging the Complainant's ability to effectively communicate with the relevant District personnel and thereby participate in the Student's educational placement. Based on the information obtained thus far, OCR would have to investigate further into a number of questions by obtaining more data and interviewing all relevant District personnel.

Issue 1: Disability discrimination by failing to ensure effective communication

The District's rationale for denying the Complainant's request merely restated the policy language itself – that the District believed her condition did not “detrimentally impact” her ability to participate in the IEP meetings – without providing a reason for the denial. Furthermore, the District's standard of “detrimentally impact” is not consistent with the “substantially limits”

definition of disability under Section 504 and Title II. OCR would have to investigate further into the rationale for denial through interviews with relevant District staff as well as the efficacy of the notetaker alternative.

Issue 2: Retaliation for Complainant's advocacy by creating a new District recording policy

The investigation to date indicates that the Complainant engaged in a protected activity – by requesting to record her daughter's IEP meetings due to her own disabilities, and that there was an adverse action – being denied the ability to record those meetings, even though she followed the policy by providing the request and medical documentation. With respect to the causation element, one question pertains to the timing of the District's IEP recording policy. While Specialist 2 does not appear to be connected to the Complainant's situation and is in a different school in the District, the timing is significant enough that OCR would require further questioning and investigation of the timing, any potential XXXXXXXXXX between the XXX Specialist and someone at the School, how the policy was created, and how it was applied across the District.

CONCLUSION

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. Prior to the completion of investigation, the District expressed its interest in voluntarily resolving the issues and had already commenced that process by approving a change to the policy that would allow the Complainant to record IEP meetings. Therefore, by the time of this letter, the District was in a position to sign the enclosed Resolution Agreement (Agreement) and immediately implement the terms.

Accordingly, on August 9, 2019, the District signed the enclosed Agreement, which when fully implemented, resolves the issues identified in this complaint. The Agreement contains the change in policy, which has already been approved, implemented, and disseminated by the District. The revised policy states that individuals with disabilities who have a physical or mental impairment that *substantially limits* a major life activity may record IEP meetings and the District can provide the recording device. The District also reported to OCR that it sent notification of the new policy, by email and certified mail, to the Complainant indicating that she is permitted to record IEP meetings.

This information provided by the District, fulfills the terms of the Agreement signed on August 9, 2019, and the monitoring of this Agreement is complete. This complaint is closed as of the date of this letter, and OCR will take no further action with respect to this complaint or the monitoring of the Agreement.

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.

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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 appreciates the parties' cooperation during the course of this investigation and resolution. If you have any questions about this letter, please contact XXXXXX XXXXXXXXX at (XXX) XXX-XXXX, or the undersigned at (XXX) XXX-XXXX.

Sincerely,

XXXXXXXXXXXXXXXXXXXX
Compliance Team Leader

cc: XX. XXXXXX XXX
XXX Director
Manatee County School District

Enclosure (RA)