



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

December 4, 2019

XXXXXXXXXX

Superintendent
Broward County Public Schools
600 S.E. Third Avenue
Fort Lauderdale, FL 33301

XXXXXXXXXXXXXX

Re: OCR Complaint # 04-19-1446

Dear XXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, alleging discrimination on the basis of disability by Broward County Public Schools (District). Specifically, the Complainant alleged that the District discriminated against her son (Student), who was formerly a student at XXXXXXXXXXXX (School), as follows:

1. The District failed to implement the Student's 504 Plan for the 2018-2019 school year when all of the Student's teachers, except for his Math Teacher, failed to a) allow the Student to get up and move around as needed to help with his behavior; b) give the Student a set of textbooks to keep at home to use for studying and homework completion; and c) check for classroom and homework completion and notify the parent if more than two assignments were missing, in accordance with his 504 Plan.
2. The District failed to provide the Complainant with proper notice that it had convened a 504 Committee for the Student. As a result, the Complainant was not present at the 504 Committee Meeting when the District developed the Student's 504 Plan.

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and, 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, which prohibit discrimination on the basis of disability by public entities.

Based on the above, OCR investigated the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement his 504 Plan for the 2018-2019 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a)-(b)(1), and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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2. Whether the District failed to provide the Complainant with notice and an opportunity to participate in the Student's 504 meeting in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.36, and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

OCR's investigation included a review and analysis of the documents submitted by the District and Complainant thus far. OCR also interviewed the Complainant. Prior to the conclusion of the investigation, the District requested to resolve the complaint allegations with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual (CPM). The evidence thus far and the proposed resolution are set forth below.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

The Section 504 implementing regulation, at 34 C.F.R. § 104.36, requires recipients to 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, the right to examine relevant records, and an impartial hearing.

Statement of the Evidence Obtained to Date

The Complainant received a copy of the Student's 504 Plan in November 2018. Upon receipt of the 504 Plan, the Complainant informed the School of three items¹ in the 504 Plan that had not been implemented. The Complainant also advised the School that she had not been made aware of the Student's accommodations during the three years his 504 Plan was in place. The School held a Teacher-Parent Conference in December 2018 instead of convening a 504 Committee meeting. Some of the concerns highlighted by his Teachers during the meeting were 1) the Student XXXX; 2) he was XXXX; and 3) he did not XXXX.

On June 3, 2019, the Complainant informed the School of her intent to file a "due process with the District" and requested her "paperwork." On June 4, 2019, a District XXXXX (Specialist) "strongly recommended" that the School convene a 504 Annual Review meeting the next day with at least one of the Student's teachers present. The Complainant responded the same day that this was extremely short notice, and she was unable to meet the next day. The Complainant also stated that the XXXX had ample time to meet with her prior to this and that if the proper notification was provided weeks ago, she could have accommodated a meeting.

OCR requested that the District provide a copy of the Student's most recent 504 Plan, and it provided a 504 Plan dated May 30, 2018. From the evidence thus far, it appears that the District never convened a 504 meeting or updated the Student's 504 Plan when he transitioned from elementary to middle school. At the

¹ The same three items alleged in the complaint.

beginning of the 2019-2020 school year, the middle school was still using the Student's 504 Plan from elementary school.

Resolution & Conclusion

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 the development and implementation of the Student's 504 Plan and notice to the Complainant.

On November 26, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegation in the complaint. 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.

OCR is committed to prompt and effective service. If you have any questions, please contact Senior Attorney XXXXXX at XXXXX, or by email at [XXXXXX](#), or the undersigned at XXXXX.

Sincerely,

XXXXXXXXXX
Supervisory General Attorney

Enclosure

cc: XXXXXXXX
XXXXXXX