



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV

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February 20, 2020

Via E-mail & U.S. Mail

Dr. Curtis Jones, Superintendent
Bibb County School District
c/o Randy Howard, Chief Legal Counsel
484 Mulberry Street
Macon, GA 31201

Re: OCR Complaint No. 04-19-1552

Dear Dr. Jones:

On October 2, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by the Complainant against the Bibb County School District (District), alleging disability discrimination. Specifically, the Complainant alleged that the District discriminated against students with disabilities at Sonny Carter Elementary School (the School) by performing small group testing accommodations for classroom assessments¹ at a separate table in the main classrooms, instead of providing testing in a separate location, per their Section 504 Plans, during the 2018-2019 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 prohibit discrimination on the basis of disability by recipients of Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the prohibition against retaliation provided for in the Title VI regulation at 34 C.F.R. § 100.7(e). OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 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 Federal financial assistance and public entity, the District is subject to these laws.

Based on the allegation above, OCR investigated the issue of whether during the 2018 – 2019 academic year, the District failed to provide disabled students who have a small group test setting accommodation for classroom assessments a free appropriate public education (FAPE) by failing to implement their 504 Accommodation Plans with respect to accommodations for Instructional Setting, Assignments, and Testing, in noncompliance with Section 504 and its implementing

¹ The Complainant stated that she is only alleging that the accommodation was not provided on classroom quizzes and tests; not on standardized tests such as the Georgia Milestone.

regulation at 34 C.F.R. § 104.33(a) and (b)(1), and Title II and its implementing regulation at 28 C.F.R. § 35.130.

During the investigation, OCR reviewed documents provided by the District and Complainant, including but not limited to copies of students' Section 504 Accommodation Plans, who had the small group testing accommodation, the District's Section 504 Policies and Procedures Manual, copies of the District's Section 504 training materials, and audio recordings of meetings, statements and meeting notes.

Prior to completing the investigation, the District requested to voluntarily resolve the complaint pursuant to OCR's Case Processing Manual, Section 302. Set forth below is a summary of OCR's investigation, thus far in relation to the issue.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. §104.33(a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. Section 504 at 34 C.F.R. §104.33 (b)(1) states that for the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

Summary of Evidence Gathered Thus Far and Resolution

On July 2, 2019, the Complainant filed a complaint (#04-19-1475) against the District alleging that the District: 1) failed to provide Student A with FAPE with respect to accommodations for Instructional Setting, Assignments, and Testing; 2) subjected the Student to different treatment by denying the Student the opportunity to participate in or benefit from physical education, art, music, and media services; 3) retaliated against Student A and Parent; 4) discriminated against the Student by failing to respond appropriately to incidents of disability harassment. In this particular complaint, the Complainant alleged that students with a small group test setting accommodation were being denied FAPE.

The District identified 19 students who had a small group test setting accommodation for classroom assessments in their Section 504 Plan, during the 2018-2019 school year at the School. In the documents describing the students' small group testing accommodation, only one student's 504 Plan specified that he was to "sit at a table at the back of the room for testing where there are less distractions." All other 504 Plans did not include a specific location for small group testing.

OCR examined an audio recording from an April 16, 2019 IEP meeting for the Student who was the focus of OCR Complaint #04-19-1475. In the recording, the District's Special Education Coordinator was heard explaining that small group testing should be provided out of the classroom, in order to properly provide this accommodation. The audio recording also indicated that the three

teachers who were part of the April 16th meeting stated that they had provided small group testing at a back table in their classrooms all year long, instead of outside the classroom. OCR found that the three teachers taught 7 of the 19 students identified in this complaint.

As indicated above, prior to OCR's completion of the investigation, the District expressed an interest in resolving the complaint pursuant to Section 302 of the CPM. In order for OCR to complete its investigation of the allegations raised in this complaint, interviews with School and District personnel would have needed to be conducted. However, OCR determined that it would be appropriate to resolve this complaint under Section 302 because OCR's investigation had identified issues that could be addressed through a Resolution Agreement.

The District signed the enclosed Resolution Agreement which, when fully implemented, will resolve the complaint allegation. To address the allegation regarding the failure to provide FAPE, the Agreement requires that the District convene a Section 504 Plan meeting for each student, with a group of knowledgeable persons, to determine whether each student needs compensatory and/or remedial services to remedy the lack of receiving small group testing outside of their classroom, if appropriate. If compensatory and/or remedial services are needed, the District is to develop a plan for providing such services in a timely manner. The Agreement requires the District to provide the students' parent/guardian notice of the procedural safeguards including the right to challenge the group's determinations through an impartial due process hearing.

The Agreement also requires that the District provide training to the School's teachers and Section 504 Counselors regarding the requirements of Section 504 and Title II in providing the small group testing accommodation.

With respect to the issue in this complaint, on February 11, 2020, OCR received the enclosed signed Resolution Agreement that, when fully implemented, will resolve the issue in this complaint pursuant to CPM Section 302, as discussed above. OCR will monitor the District's implementation of this Resolution 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.

This concludes OCR's investigation of the complaint. 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.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to

do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Sonia Lee, General Attorney, at (404) 974-9371, or me, at (404) 974-9367.

Sincerely,

Ebony Calloway, Esq.
Compliance Team Leader

Enclosure