



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

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

REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

April 27, 2020

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
Volusia County Schools
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Email:XXXXXXXXXXXXXXXXXX

Re: OCR Complaint No. 04-20-1105

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 Volusia County Schools (District). The Complainant filed the complaint on behalf of a parent and her son (Student), who is a XXXXXX at XXXXXX Elementary School (School) and formerly attended the Extended Day Enrichment Program (Program). Specifically, the Complainant alleged that the District made no reasonable modifications to their Program for the Student to maintain access to the Program when it failed to provide him with any disability-related accommodations.

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 *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 from the Department and a public entity, the District is subject to these laws. Therefore, OCR has jurisdiction over this complaint.

Based on the allegations, OCR investigated whether the District failed to provide reasonable accommodations for the Student in a non-academic setting, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(a)-(b)(1)(i)-(v) and § 104.34(b), and the Title II implementing regulation at 28 C.F.R. § 35.130(a) and (b).

OCR’s investigation thus far included a review and analysis of the documents submitted by the parties. OCR also interviewed the Complainant and conducted a telephone conference with the District’s XXXXXXXXXXXXXXXX and other District employees. 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

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The Section 504 implementing regulation at 34 C.F.R. § 104.4 (a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i)-(v) states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others; or aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an aid, benefit, or service to beneficiaries of the recipient's program or activity. The Title II regulation at 28 C.F.R. § 35.130(a) and (b) includes similar requirements.

The Section 504 implementing regulation at 34 C.F.R. § 104.34(b) provides in providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), a recipient shall ensure that individuals with disabilities participate with individuals without disabilities in such activities and services to the maximum extent appropriate to the needs of the individual with a disability in question.

Statement of the Evidence Obtained to Date

The Student is a XXXXXXXXX who has an XXXX in place for XXXXXXXXXXXX and XXXXXXXXX. He attended XXXXXXXX Elementary School (School) where he was in a XXXXX classroom XXXXXXX. He was previously enrolled in the Volusia County Schools Extended Day Enrichment Program (Program or EDEP) located at the School. On February 10, 2020, a District Representative informed OCR, and the Complainant confirmed, that the Student's Parent withdrew him from the Program.

The Complainant alleged that the Student's Parent received multiple warnings from Program staff, threatening the Student with removal from the Program due to his behavior. The Complainant further alleged that the District did not provide the Student with accommodations or reasonable modifications of the program necessary for him to have access to the Program.

The Program's Handbook provides that when a "child breaks a rule established by the School Board or the EDEP [Program], a Citizenship Warning Slip will be issued. This warning slip will be dated and will contain specific information about the student's misbehavior." Further, "[u]pon receipt of the third Citizenship Warning within the school year, the student may receive a one-week suspension from the [P]rogram. Depending on the severity of the incident, the school may administer suspension prior to the third warning." Also, permanent removal from the Program may result after "four warnings within the school year." Last, the Program "reserves the right to permanently remove any student whose behavior is determined by the Site Facilitator and the school Principal as dangerous to himself and/or others."

On November 14, 2019, the Complainant notified the District and advised them that the Program was having difficulty accommodating the Student's behavioral disability. On November 17, 2019, the District's XXXXXXXX advised the Complainant that she would speak with staff at Program to share the Complainant's concern and to remind them of their obligation to make reasonable accommodations for persons with disabilities. The XXXX also stated that she would share a recommendation of increasing technology time for the Student as an accommodation for his disability as well as any other accommodation that would allow for program safety and integrity for all.

District Representatives contend that the District did not dismiss the Student from the Program; instead, the Parent voluntarily withdrew the Student from the Program. The Complainant confirmed that the Parent voluntarily withdrew the Student out of a concern for the accumulation of “citizenship warning slips.” The District indicated that the Student received these slips while attending the Program, because he exhibited behavioral issues during transitions and when transitioning from preferred activities that the staff discussed with the Parent. The District also stated that the Program’s staff were aware of the Student's XXXX and implemented accommodations from the XXXX, including, but not limited to, providing an XXXXXXXXXXXXXXXXXXXX. However, at the time the District requested to resolve, OCR had not received data to indicate that these services were provided.

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 determine which accommodations from the Student’s XXXX are transferrable to the Program and implement those accommodations and revise the Program’s Handbook regarding the issuance of Citizenship Warning Slips to students in the Program.

On April 23, 2020, 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 XXXXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXX

cc: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX