



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

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

REGION IV

ALABAMA
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May 18, 2020

Dr. Mike Looney
Superintendent
Fulton County Schools
6201 Powers Ferry Road NW
Atlanta, GA 30339

Re: OCR Complaint No. 04-20-1117
Letter of Resolution/Resolution Agreement

Dear Dr. Looney:

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 and retaliation by Fulton County Schools (District). Specifically, the Complainant alleged that the District discriminated against her son (Student) when staff at the Langston Hughes High School (School) failed to give the Student additional time to complete homework and class work as required by his Section 504 Plan. The Complainant also alleged that the District retaliated against her for advocating on behalf of the Student by creating a false report stating that she threatened staff members during a May 2019 Section 504 meeting, and as a result, banned her from the School.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws.

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

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement his Section 504 plan, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33.

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2. Whether the Complainant was subjected to retaliation for her disability advocacy on behalf of the Student when the School created a false report and banned the Complainant from the School, in noncompliance with 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134.

To date, OCR has reviewed special education records for the Student, correspondence between the Complainant and School staff, and the records for an incident where another parent was banned from the School. However, prior to the conclusion of the investigation, the District requested to resolve the allegations with a voluntary resolution agreement (Agreement) pursuant to a 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.

Retaliation is prohibited under the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI regulation provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law enforced by OCR, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. Title II also incorporates the same retaliation provision.

Summary of Evidence Thus Far

At the time the complaint was filed, the Student was a fifteen-year-old sophomore at the School and was identified as a student with a disability (Narcolepsy). The District provided a copy of two 504 Plans for the Student. The first 504 Plan was effective from May 15, 2019 – May 14, 2020 (May 504 Plan) and was drafted during a meeting on May 15, 2019. The May 504 Plan gave the Student the following related aids and services: opportunity for the Student to stand at times during seatwork; as needed restroom pass; fifty percent extra time for evaluation methods; small group testing; and frequent monitored breaks. The minutes from the meeting noted that the Student was to receive small group and fifty percent additional time on end of grade assessments, but for classwork/homework the Student could receive fifty percent additional time as needed and requested.

The minutes reflect that during the May 15, 2019 meeting the Complainant became upset after the Section 504 Chair described some of the Teacher's comments related to the Student sleeping

and not engaging in class. A heated discussion between the parties occurred, which resulted in the Complainant calling one of the 504 members a liar. The minutes also indicate that members of the Section 504 Team tried to calm the Complainant, and all the parties eventually met with the former Principal before concluding the meeting.

On May 23, 2019, the Complainant received a letter banning her from the School for an indefinite period due to her actions on May 15, 2019. On August 10, 2019, the Complainant met with the New School Principal and the two discussed the Complainant's concerns regarding the ban from the School. She also shared that she was concerned about the implementation of the Student's 504 Plan and the effectiveness of communication by staff members. In response, the Current School Principal approved the Complainant to come to campus for scheduled appointments beginning in January 2020 and added that if no incident occurred in the 2019-2020 school year the ban for the Complainant would be lifted.

OCR also reviewed email communications between the Complainant and School staff. In the emails, some of the Student's teachers complained that the Student was sleeping in class and missing the opportunity to complete assignments as result. Teachers also indicated that the Student, by sleeping, was not taking responsibility for his work and would not be given full credit for his assignments as a result. As a result of these communications, the Student's 504 Team met on December 16, 2019 to revise the Student's 504 Plan.

Resolution

As indicated above, 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 meet to determine whether the Student needs compensatory education and/or other remedial services for the 2019-2020 school year; the School will cease enforcement of the Complainant's restriction to the School campus and train the Student's teachers and 504 Coordinator regarding compliance with Section 504.

On May 18, 2020, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegations 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.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact Lachauna Edwards, Attorney, at (404) 974-9390 or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney