



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

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July 23, 2020

*Via email: [GregAD@leeschools.net](mailto:GregAD@leeschools.net)*

Dr. Gregory K. Adkins  
Superintendent  
Lee County School District  
2855 Colonial Boulevard  
Fort Myers, Florida 33966

Re: OCR Complaint No. 04-20-1224  
Resolution Letter

Dear Dr. Adkins:

The U. S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of a complaint received on January 17, 2020 filed against the Lee County School District (the District) by the Complainant on behalf of her son (Student) on the basis of disability. Specifically, the Complainant alleged that the District failed to timely evaluate the Student for an Individual Education Plan (IEP) and also failed to implement the Student's current Section 504 Plan (504 Plan).

OCR enforces 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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR proceeded with an investigation of the following legal issues:

1. Whether the District failed to provide the Student with a free and appropriate education (FAPE) by not implementing his Section 504 Plan in non-compliance with Section 504, implementing regulation at 34 C.F.R §104.33 and Title II, implementing regulation 28 C.F.R. §35.130 ; and,

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

2. Whether the District subjected the Student to discrimination on the basis of disability by failing to timely evaluate him for additional special education services in non-compliance with Section 504, implementing regulation at 34 C.F.R. §104.35 and Title II, implementing regulation at 28 C.F.R. §35.130.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

### **Legal Standards**

As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 standards.

The regulation implementing Section 504 at 34 C.F.R. §104.33(a)-(b)(2), requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. The provision of an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards).

The regulation implementing Section 504 at 34 C.F.R. §104.35(a) requires a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

### **Background**

The Complainant stated that the Student was 14 years old and in the 8<sup>th</sup> grade when she filed the complaint with our office. The Student has a diagnosis of ADHD and a Section 504 Plan at the School.

The Complainant stated that she had been requesting that the Student be evaluated for an IEP because his current Section 504 Plan was not working and she did not believe that the teachers were implementing the Student's Section 504 Plan. The Complainant stated that the Student was not doing well in his classes, which is why she requested the evaluation. The Complainant stated that she asked for the evaluation last April (2019) and she was told that someone would get back to her, but no one did. She stated that she asked again for an evaluation in October 2019 and the School did not provide her with the appropriate forms until December 2019, which she signed at

that point. The Complainant stated that at the time she filed the complaint, the evaluation still had not been done. The Complainant stated that she believes if the Student had an IEP in place from the time she requested one, the Student would not be failing his classes now.

### **Investigative Findings**

During the course of the investigation, OCR reviewed documentation provided by the District. Several emails provided to OCR between the District and the Complainant show that the Complainant requested the Student be evaluated for an IEP at the end of the 2018-2019 school year (April 2019). The Complainant was told that since it was close to the end of the school year, the process would resume for the evaluation when the 2019-2020 school year started. However, when the 2019-2020 school year started, the Complainant was told that the Student would be given assistance through the MTSS system before the IEP evaluation would be done. The Complainant disagreed with this and again requested the IEP evaluation. The Complainant was provided with the consent forms for the evaluation which she signed in December 2019. The Student's evaluation was completed in January 2020 and the IEP was completed in April 2020.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on July 22, 2020, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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.

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 Michelle Vaughan, the OCR attorney assigned to this complaint, at 404-974-9398 or [michelle.vaughan@ed.gov](mailto:michelle.vaughan@ed.gov).

Sincerely,

Arthur Manigault  
Compliance Team Leader

Enclosure

cc: Attorney for the District  
*By Email Only:* [ryanwh@leeschools.net](mailto:ryanwh@leeschools.net)