



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

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REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

July 14, 2020

Dr. Joseph C. Barrow, Jr.  
Superintendent  
Fayette County School District  
205 LaFayette Avenue  
Fayetteville, Georgia 30214

Re: Complaint #04-20-1267

Dear Dr. Barrow:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed on February 5, 2020, against Fayette County School District (District) alleging that the District discriminated against the Complainant's niece (Student), a student at Fayetteville High School (School), on the basis of disability.

Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by failing to implement her Section 504 Plan during the 2019-2020 school year. The Complainant alleged that the School failed to provide the Student with class notes via Blackboard or hard copy. During a follow-up call with OCR, the Student clarified that she did receive notes via Blackboard for all classes, except Debate and English Language Arts (ELA). Those two teachers used Google Classroom instead of Blackboard, and the Student confirmed that she was able to access the notes for those classes through Google Classroom.

The Complainant also alleged that the school failed to provide the Student with extra time on assignments. The Student clarified that she did receive extra time when needed. The Complainant alleged that there was one instance where the Student received extra time on an assignment, but because the Student was not done with the assignment by the new due date, she stayed home that morning to complete the assignment and received a tardy. There was no penalty given on the assignment, but the Complainant alleged receiving the tardy meant the Student was not able to exempt the final exam.<sup>1</sup>

The Complainant also alleged that the Student was supposed to meet with the school counselor for 15-20 minutes every two weeks, but she did not begin meeting with the counselor until October 2019. The Student clarified that she started seeing the school counselor in October, but she was not sure how frequently they met.

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 in educational programs and activities receiving Federal financial assistance (FFA); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C.

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<sup>1</sup> The Student did not have an accommodation in her Section 504 Plan for tardiness and absences.

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

§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

OCR investigated the legal issue of whether the District denied the Student a FAPE by failing to implement the Student's Section 504 Plan during the 2019-2020 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b), and the Title II implementing regulation at 28 C.F.R. § 35.130.

During the investigation, OCR reviewed documents provided by the District, including the Student's Section 504 Plans, the Student's academic record for fall 2019, statements from the Student's teachers, and communications between the Complainant and the District. OCR also interviewed the Complainant, the Student, the Student's grandmother, the Student's Debate teacher, and the Student's ELA teacher.

Prior to the conclusion of the investigation, the District offered to voluntarily resolve the complaint. OCR's *Case Processing Manual* (CPM) at § 302 states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM § 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a 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 issue, OCR conducted its investigation in accordance with the applicable Section 504 standards.

The Section 504 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 person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

The Section 504 regulation at 34 C.F.R. §104.33 (b) states that 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 persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

### **Facts**

During the 2019-2020 school year, the Student was enrolled in the 9<sup>th</sup> grade at Fayette County High School. The Student had a Section 504 Plan, dated February 26, 2019, for the following disabilities: processing deficits (neurological), Attention Deficit Hyperactivity Disorder (ADHD), and blood disorder. The Section 504 Plan included the following accommodations relevant to the complaint allegations: (1) An additional day will be allowed for assignments to be finished at home when the family notes fatigue at home. Family will communicate those needs/observations with teachers via email in order for teachers to be aware that the additional day is needed; (2) Counselor

will meet with [Student] on a bi-weekly basis for ~15-20 minutes to teach self-calming/anxiety reducing techniques; and (3) Class notes will be available in hard copy or Blackboard to minimize need for copying. The Student's October 25, 2019 Section 504 Plan was updated to provide: (1) additional day to finish assignments at home when experiencing fatigue; (2) 15-20 minutes every two weeks to see the counselor (use health class); and (3) class notes – via Blackboard or hard copy.

All of the Student's teachers except the Debate and ELA teachers provided class notes on Blackboard. The Student's Debate teacher informed OCR that she did not use Blackboard. She preferred Google Classroom because the posted assignment, would go to the Student's calendar and email. She stated that class notes were also posted on Google Classroom, and the Student never complained about not being able to view the notes. The Student's ELA teacher informed OCR that she used Google Classroom because it is more user friendly. She stated that it is the same concept as Blackboard. The class notes were posted there, as they would be on Blackboard, and the Student had access to view the notes. The Student's ELA teacher stated that the Student never complained about not being able to view the notes. The Student's ELA teacher also informed OCR that whenever the Student requested extra time on assignments, she granted the extra time and the Student's grade was never penalized for turning in work late. In addition to the Student's acknowledgment that she was provided extra time when needed, four of the Student's eight teachers also confirmed that the Student was granted extra time on assignments, as needed.

On December 9, 2019, the Complainant informed the School that the Student wanted to exempt her Spanish final but was told she could not. The Complainant stated that this was "concerning since she has only missed due to health issues and lack of implementation of the 504 Plan (causing additional problems)." The School Principal responded that the Student could not exempt the exam because she did not qualify for the Attendance Exam exemption. The policy, which applies to all students, provides that a student may choose to exempt one final exam if the student has not been absent from school, checked in late, or signed out early a combined total of more than five times during the semester. In addition, the student must not have been tardy (unexcused) to the class he /she wishes to exempt. During the fall 2019 semester, the Student had 3 absences and 10 tardies.

The School Counselor stated that she did not learn that the Student was supposed to be meeting with a school counselor every two weeks until the Student's reevaluation meeting on October 25, 2019. She stated that after learning that she was supposed to meet with the Student, she scheduled the first meeting for October 29, 2019. The School Counselor stated that she started meeting with the Student on schedule afterwards, although there were times when she had to reschedule due to conflicts or holidays.

### **Analysis**

The Student was identified as a student with a disability, and the Student had a Section 504 Plan that required class notes via Blackboard or hard copy; extra time on assignments; and ~15-20 minutes every two weeks with the School Counselor. After the complaint was opened for investigation, the Student clarified that she received class notes via Blackboard for all classes, except Debate and ELA. The Student received class notes via Google Classroom for Debate and ELA. The Student confirmed that she was not denied access to any content or notes on Google

Classroom. Based on the Student's acknowledgment that she was not denied access to notes in Debate and ELA and there is no evidence that she was denied access to notes, OCR has determined that the Student was not denied a FAPE with respect to the provision of notes. Therefore, there is insufficient evidence of noncompliance with Section 504 and Title II with respect to the provision of notes.

The Student also confirmed that she received extra time on assignments when needed. Based on the Student's acknowledgment that she received extra time on assignments when needed and there is no evidence that she was denied extra time, OCR has determined that the Student was not denied a FAPE with respect to the provision of extra time. In addition, although the Complainant alleged that by using extra time, there was one occasion where the Student was tardy to School which prevented her from being able to exempt an exam, the evidence shows that the Attendance Exam exemption policy was applied to the Student in the same manner as all other students. Due to the number of absences and tardies the Student had during the fall 2019 semester, she did not meet the requirements of the policy and she did not have an accommodation in her Section 504 Plan that would have allowed for additional absences and tardies. Therefore, there is insufficient evidence of noncompliance with Section 504 and Title II with respect to the provision of extra time and the exam exemption.

During OCR's investigation, the School Counselor acknowledged that she did not start seeing the Student until October 29, 2019. However, the Student's Section 504 Plan, which was in place at the beginning of the school year, required the School Counselor to meet with the Student on a bi-weekly basis for ~15-20 minutes to teach self-calming/anxiety reducing techniques.

Prior to the conclusion of the investigation, the District offered to voluntarily resolve the complaint issues regarding the counseling services through a Resolution Agreement. To resolve the compliance concern described above, the District will convene a Section 504 meeting, including the Student's guardian(s), to discuss whether the Student needs compensatory and/or remedial services for the period of August 2019 through October 2019.

On July 13, 2020, OCR received the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues identified above. OCR will monitor the implementation of the 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.

### **Conclusion**

This concludes OCR's investigation of the complaint and 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 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Please be advised that the District may not harass, coerce, intimidate, 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.

If you have any questions regarding this matter, please contact Kristen Williams, General Attorney, at (404) 974-9272 or me, at (404) 974-9356.

Sincerely,

/s/ Wendy Gatlin

Wendy Gatlin

Compliance Team Leader