



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

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ATLANTA, GA 30303-8927

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October 26, 2021

Sean Kelly
Superintendent
Wayne County Public Schools
710 W. Pine Street
Jesup, Georgia 31545

VIA EMAIL ONLY TO: rsauls@hhhlawyers.com, Counsel for the School System

Re: OCR Complaint # 04-21-1271

Dear Mr. Kelly:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR), investigation of the complaint filed on April 30, 2021, against Wayne County Public Schools. The Complainant¹ filed the complaint on behalf of her daughter a student at Arthur Williams Middle School. We will refer to the Complainant's daughter as the Student. The Complainant alleged that between April 28, 2021 and April 30, 2021, the school system did not implement the Student's Section 504 plan during state standardized tests. Specifically, the Complainant alleged the school system did not provide the Student with extra time, frequent breaks, and the small group testing was not small enough. The Complainant further alleged the school system retaliated against the Student on April 29, 2021, by writing her up for academic dishonesty after the Complainant complained about the accommodation issues on April 28, 2021.

OCR initiated an investigation of the complaint pursuant to:

- 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 by recipients of Federal financial assistance; and
- Title II of the Americans with Disability Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by recipients.

¹ OCR previously identified the Complainant to the school system. We are withholding the Complainant's name from this letter to protect her privacy.

As a recipient of Federal financial assistance from the Department of Education and a public entity, the school system is subject to these laws and OCR's jurisdiction.

Based on the above, OCR investigated the following issues:

1. Whether the school system discriminated against the Student on the basis of disability by not accommodating her Section 504 Plan during state standardized tests in April 2021, as alleged, in non-compliance with the Section 504 implementing regulation at § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the school system retaliated against the Student on or around, April 29, 2021, by writing her up for academic dishonesty after the Complainant complained about the accommodation issues to administrators, in non-compliance with the Section 504 implementing regulation § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.134.

During the investigation, OCR reviewed documents provided by the Complainant and the school system, interviewed the Complainant, the Assistant Principal, Lead Special Education Teacher, and school's Section 504 Coordinator.

Prior to the completion of the investigation, the school system entered into an agreement pursuant to Section 302 of OCR's Case Processing Manual to resolve this complaint. Set forth below is a summary of OCR's investigation to date.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.33 states 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. For the purposes of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with a disability as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program is one means of meeting the standard established in this section.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

Factual Findings

The Student has Attention Deficit Hyperactivity Disorder and had a Section 504 plan at the School during the spring 2021 semester. During the 2020-2021 school year, the Complainant worked at the Student's school as a teacher.

On January 7, 2021, the school system conducted a Section 504 meeting for the Student and developed a Section 504 plan that provided her with: accommodations for small group testing, extended time, time-and-a-half for standardized tests, extended time on classwork as needed, extended time on classroom testing as needed, notify parent of missing work, and frequent breaks. The Student usually gets a break every 30 minutes in regular classroom tests. In the 2020-2021 school year, the Student often used a journal to process her thoughts when taking tests in class and thought it was allowed for all tests. Although not part of her written Section 504 Plan, the journal was part of the Student's way of processing information she struggled to understand. Prior to April 26, 2021, two of the Student's teachers at the school were aware she used the notebook to process information during tests and quizzes. The two teachers who were aware the Student used the notebook were in the Section 504 meeting.

Between April 26-29, 2021, the Student participated in the Georgia Milestone Assessment System. On April 27, 2021, the second day of testing, the Student came to the Complainant crying and told her that she did not receive any breaks during the test except after section two and that she was stressed about keeping her small testing group after the allotted time. On that same day, the Student also told the Assistant Principal of the school that she was frustrated because of the length of the test and that everyone finished before her and she did not want to hold everyone up. After speaking with the Student, the Complainant complained to the test administrators that the Student did not receive a break during the test.

On April 28, 2021, the Assistant Principal learned frequent breaks for the Student meant a break every 30 minutes. Between April 26-29, 2021, test administrators did not give the Student frequent breaks during any portion of the Georgia Milestone Assessment testing. Between April 26-29, 2021, the Lead Special Education Teacher, who administered the small group testing that the Student was a part of, did not give the Student breaks.

On April 29, 2021, during the third day of testing, the Student used a blank notebook journal in her desk as scratch paper for the test. The rules for the Georgia Milestone Assessment System Manual state:

Blank scratch paper for students, which can include lined notebook paper. Students are allowed to have one clean, blank sheet for each content area tested with the exception of Mathematics and Section 1 of English Language Arts for which students can have two sheets. The student test ticket can be used as one sheet of scratch paper. If needed, students can have additional blank scratch paper if they request it.

On April 29, 2021, the Assistant Principal charged the Student with a level 3 violation based on the Student's use of the journal during the testing. That same day, the Assistant Principal used a discipline matrix and gave the Student 3 days of in school suspension. On April 29, 2021, the administration for the school marked the incident down as an irregularity in testing and the student's scores were allowed to count. On May 3, 2021, the Complainant discussed the testing issue and punishment with the Superintendent. On May 3, 2021, after the meeting, the Superintendent wrote an email stating that after his conversation with the Complainant, he would not intervene in this situation and the disciplinary decision would remain in place.

Prior to the conclusion of the investigation, the school system expressed an interest in resolving OCR's compliance concerns related to Issues 1 and 2. Once the recipient signs the resolution agreement, OCR will monitor its implementation until the recipient has fulfilled the terms and obligations of the resolution agreement. Upon completion of the terms and obligations under the agreement, OCR will close the case.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the school system'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.

OCR would like to make you aware that individuals who file complaints with OCR may have the right file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the school system 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, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Joshua Brownlee, General Attorney, at 404.682.3293 or by email at joshua.brownlee@ed.gov or me at 404.974.9354.

Sincerely,

Scott R. Sausser
Supervisory General Attorney