



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

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

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April 24, 2015

Samantha M. Fuhrey, Ed.S
Superintendent
Newton County School District
P.O. Box 1469
2109 Newton Drive, NE
Covington, Georgia 30014

Complaint #04-15-1041

Dear Ms. Fuhrey:

On October 27, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received the above-referenced complaint filed against the Newton County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the special education students at Livingston Elementary School (School) are not receiving the services as stated in their Individual Education Plans (IEPs). The Complainant alleges that special education teachers and/or special education paraprofessional are used as substitutes in the absence of regular education teachers. In addition, the Complainant alleges that the special education paraprofessionals are pulled to perform other non-job related functions such as bus duty. As a result, students with disabilities, who have IEPs, are not receiving the services required.

As a recipient of Federal financial assistance from the Department, the District is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, the District is also subject to the provisions of 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. Accordingly, OCR has jurisdiction over this complaint.

Based on the above, OCR opened for investigation the issue of whether the District failed to provide students with disabilities a free appropriate education (FAPE) by failing to implement their IEPs in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33 and the Title II implementing regulation at 28 C.F.R. §35.130.

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by fostering educational excellence and ensuring equal access.*

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OCR's complaint processing procedures provide that a complaint may be resolved when, before the conclusion of an investigation, the recipient asks to resolve the complaint. Prior to the conclusion of the investigation, the District informed OCR of its desire to take voluntary action necessary to resolve the allegations in the complaint. OCR spoke with District staff on March 31, 2015 to discuss the complaint and to interview District staff and administrators.

On April 23, 2015, OCR received the enclosed signed Resolution Agreement (Agreement) that when fully implemented, will resolve the complaint. OCR will monitor the implementation of this Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this case. 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. Further you are advised that the Complainant may file a private action regardless of whether OCR finds a violation of Section 504 and Title II.

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. Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of the complaint, which we are closing effective the date of this letter. If you have any questions regarding this matter, please contact Mr. Virgil Hollis, Compliance Team Leader, at (404) 974-9366.

Sincerely,

Deborah Floyd
Acting Regional Director
Office for Civil Rights

Enclosure