



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

61 Forsyth St., Suite 19T10
ATLANTA, GA 30303

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

August 31, 2016

Dr. Chris Marczak
Director of Schools
Maury County School District
501 West 8th Street
Columbia, Tennessee 38401

Re: OCR Complaint #04-15-1130

Dear Dr. Marczak,

On December 30, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Maury County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District failed to provide the Student with access to a full-time nurse from September 8, 2014, through September 25, 2014, which prevented the Student from attending school and denied him a free appropriate public education (FAPE).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 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 by public entities. 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.

Based on the allegation, OCR investigated whether the District discriminated against the Student on the basis of disability, by denying him a FAPE from September 8, 2014 through September 25, 2014, in noncompliance with Section 504 and its implementing regulation at 34 CFR 104.33, and Title II and its implementing regulation at 28 CFR 35.130.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) requires a recipient 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 student's disability. A FAPE 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 a disability as adequately as the needs of individuals without a disability 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, regarding educational setting, evaluation and placement, and procedural safeguards. Implementation of an Individualized Education Program (IEP) is one means of meeting the standard established in 28 C.F.R. § 104.33(b)(1)(i).

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

Summary of Investigation

The Student was in the first grade at the School during the 2014-15 school year. On September 3, 2014, the Student was found eligible to receive services pursuant to a Section 504 plan. Prior to his Section 504 eligibility date, pursuant to certification by a licensed doctor of medicine, the District provided homebound services to the Student, which consisted of three hours of instruction per week. The Student was cleared medically to return to School on September 8, 2014.

The Student's Section 504 plan incorporated the Student's Health Plan and Doctor's order, which required the presence of a full time nurse at the School. While the District completed the hiring process for a full time nurse to comply with the Student's Section 504 plan requirements, the District offered continued provision of homebound services to the Student. The Complainant alleged that the decision to continue homebound services for the Student, after he was medically cleared to return to the School, was made unilaterally by a District official and not by the Student's Section 504 team. The Complainant did not accept the District's offer of homebound instruction of three hours per week, instead requesting four hours of instruction, five days a week. The Student resumed his attendance at the School on September 25, 2014, with the presence of a full time nurse.

The District's Homebound Instructions (Section 4.207 of the District's Handbook) provide that services typically consist of three hours of instruction per week provided by a licensed and properly endorsed teacher. For students with IEPs, the District's Homebound Instructions provide that homebound services, including the amount of service hours, and service providers will be determined by the appropriate IEP team. The Homebound Instructions do not contain a similar provision for homebound services provided to students who have Section 504 plans.

OCR did not complete the investigation to determine whether the District denied the Student a FAPE pursuant to Section 504 and Title II prior to receiving the request from the District to resolve this matter. However, OCR's investigation identified areas of concern, including the Student's absence from school for 13 days while the District completed the hiring process for a full time nurse and homebound instructions which are silent on how homebound decisions are made for students with Section 504 plans. The District has agreed to resolve these concerns.

Resolution Agreement

To remedy the allegation raised by OCR's complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will (1) convene a Section 504 meeting to determine whether the Student requires compensatory and/or remedial services for the period beginning September 8, 2014, and ending September 24, 2014; (2) revise the Homebound Instructions (Section 4.207 of the District's Handbook), to specify that placement in the homebound program for students eligible for Section 504 services, including, but not limited to, the services, service providers and duration of placement, must be an individualized decision determined by the appropriate Section 504 team; (3) provide training to faculty and staff responsible for implementing the requirements of Section 504 and the District's Homebound Program on the revised Homebound Instructions; (4) provide a list of students with Section 504 plans who requested homebound services during the 2016-17 school year and the District's response to these requests; and, (5) provide a copy of all complaints

received during the 2016-17 school year regarding the approval and/or administration of homebound services for students with Section 504 plans.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's 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 with Section 504 and Title II.

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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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 possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the District that 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.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Claudia Campo, Attorney, at (404) 974-9378, or, Arthur Manigault, Compliance Team Leader, at (404) 974-9376.

Sincerely,

/ s /

Melanie Velez
Regional Director

Enclosure

cc: Jake Wolaver, Esq. (*via electronic mail only to jwolaver@tgwlawfirm.com*)