



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

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ATLANTA, GA 30303-8927

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September 21, 2015

Dr. Curtis L. Jones, Jr.
Superintendent
Bibb County School District
484 Mulberry Street
Macon, Georgia 31201

Re: OCR Complaint #04-15-1362

Dear Dr. Jones:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint which the Complainant filed on May 12, 2015, against the Bibb County School District (District), alleging discrimination on the basis of disability against her son (Student).

Specifically, the Complainant alleged that the District discriminated against the Student, on the basis of disability by failing to provide the Student with a free appropriate public education (FAPE) because Northeast High School (School) did not implement services in the Student's Section 504 Plan:

- a) From August 1, 2014 thru September 17, 2014, the Student was not provided classroom/instructional setting accommodations, accommodations related to make-up work, and testing accommodations.
- b) During the 2014-2015 school year, the Student was not provided teacher review and make-up work following absences related to illness and testing accommodations were not provided

OCR investigated the complaint pursuant to 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 discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department, and Title II of the American with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by a public entity. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to the provisions of Section 504 and Title II.

Based on the above, OCR investigated the legal issue of whether the District failed to provide the Student with a FAPE during the 2014-2015 school year, when it failed to implement services in the

Student's Section 504 Plan, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. §§ 104.33(b)(1), and the Title II implementing regulation, at 28 C.F.R. § 35.130(b)(1)(iii).

OCR reviews evidence under the preponderance of the evidence standard. Under the preponderance of the evidence standard, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

During the investigation, OCR determined that the Student's teachers were unaware she had a Section 504 plan until September 17, 2014. When OCR informed the District that it would have to interview all teachers to discuss whether additional time was provided for work and tests; inquire whether Student received small group testing, and whether teacher review was provided post-absences, the District asked to voluntarily resolve the complaint issue.

Pursuant to § 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 complaint and signs a Resolution Agreement that addresses the complaint allegations. In such circumstances, the provisions of the Resolution Agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Based on the foregoing, OCR accepted the District's request to resolve this complaint. On September 16, 2015, OCR received the enclosed signed Resolution Agreement (Agreement) which, when fully implemented, will resolve the complaint. OCR will monitor the implementation of this 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 suit in federal court whether or not OCR finds a violation.

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 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. In the event that 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.

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

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 matter, please contact Ms. Sonia Lee, General Attorney, at (404) 974-9371, or me, at (404) 974-9354.

Sincerely,

Scott R. Sausser, Esq.
Compliance Team Leader

Enclosure