



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

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

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

September 15, 2016

Via U.S. & Electronic Mail

XXXXXXXXXXXX

Superintendent
Opelika City Schools
300 Simmons Street
Opelika, AL 36801

Re: OCR Complaint # 04-16-1362

Dear XXXXXXXXX:

On April 4, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Opelika City Schools (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated her son (Student), who is a student at XXXXXXXXXX (School), when the District failed to evaluate the Student to determine if he was eligible for Section 504 services prior to placing him in an alternative education program.

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 by recipients of Federal financial assistance; and, Title II of the Americans 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 public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II.

OCR investigated the legal issue of whether the District denied the Student a free appropriate public education (FAPE) when it failed to evaluate him to determine if he was eligible for Section 504 services prior to placing him in an alternative education setting, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.33(a)-(b) and 104.35(a)-(c), and the Title II implementing regulation at 28 C.F.R. § 35.130.

Prior to OCR's completion of its investigation of this complaint, the District offered to voluntarily resolve the allegations of this complaint. Set forth below is a summary of the evidence obtained thus far that supports resolution of this complaint through the proposed resolution agreement.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons 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. Implementation of an Individualized Educational Plan (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

The Section 504 implementing regulation at 34 C.F.R. § 104.35(a) requires that a recipient conduct an evaluation of persons who need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent change in placement. Although the Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation, a recipient should conduct an evaluation within a reasonable period of time after it has reason to suspect that a student, because of disability, may need special education or related services. OCR may consider state law when determining whether a district has conducted a timely evaluation of a student.

The Section 504 regulation at 34 C.F.R. § 104.35(c) states that in interpreting evaluation data and in making placement decisions, a recipient shall: draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and ensure that the placement decision is made in conformity with § 104.34.

The Section 504 implementing regulation, at 34 C.F.R. § 104.36, requires recipients to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, the right to examine relevant records, and an impartial hearing. If parents request a disability evaluation, the recipient has two choices: it may either (1) evaluate the student in question within a reasonable period of time; or (2) decline to evaluate the student, because the district does not believe that the student has a disability. In the latter case, the district must explain to the parents the reason for the refusal and inform the parents that they have the right to challenge the refusal to evaluate the student by requesting an impartial hearing by a person knowledgeable about the requirements of Section 504.

Summary of the Evidence

During the 2015-2016 school year, the Student was XXXX years old and in the XXXX grade. The Student's diagnosis is XXXXXXXXXXXX, which means that the XXXXXXXXXXXX. One of the effects of his medical condition is hyperactivity.

The Complainant alleged that she made several requests for the District to evaluate the Student, particularly in early March 2016 when the Student's behavior started going downhill. The Complainant further alleged that throughout the school year, she had multiple meetings with the Principal and the Student's Teacher about their plan to help the Student. The Principal mentioned an alternative school placement. The Complainant stated that she subsequently met with District officials on March 31, 2016, and they stated that the District would evaluate the Student. Instead of evaluating the Student, the District placed him at the alternative school from April 1, 2016, until April 5, 2016. He returned to regular school on April 6, 2016.

The Complainant stated that the Student's Teacher informed her that the District had put something in place for the Student on or about April 11, 2016; however, the District did not conduct a full evaluation. According to the Complainant, the District only did some type of classroom observations. The Complainant stated that the School never met with her or convened a group of knowledgeable persons to determine if the Student was eligible for services, and she was not provided with her parental rights.

The Student does not have an IEP or Section 504 Plan in place. The District contends that the Complainant never requested that the District evaluate the Student. However, the District paid for an outside expert to evaluate the Student and put interventions in place. The District submitted evidence that it provided numerous behavioral interventions for the Student, including classroom behavioral management system, conference with the Principal, School counselling, time-out in the School office, time-out with another teacher, regular communication with the Parent, In-School Suspension, Alternative to Out-of-School Suspension, behavioral observations by an outside expert, and revised student and classroom management system based on the outside expert's observations. The District also submitted the Student's disciplinary reports, including the last incidents that led to his eventual alternative placement.

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 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 15, 2016, 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 XXXXXXXXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXX
Compliance Team Leader

Enclosure

cc: XXXXXXXXXXXXXXXX