



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 12, 2016

Dr. Sean Alford
Superintendent
Aiken County Public School District
1000 Brookhaven Drive
Aiken, South Carolina 29803

RE: OCR Complaint No. 11-16-1250
Resolution Letter

Dear Dr. Alford:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on March 23, 2016 against Aiken County Public School District (the District), and specifically, XXXX (the School). The Complainant alleged that the District discriminated against her son, a student at the School (the Student), based on disability. Specifically, the Complainant alleged the following:

The District discriminated against the Student on the basis of disability when it denied him a free appropriate public education by:

- a. Failing to implement his 504 Plan during the 2015-2016 school year; and,
- b. The School failed to hold a manifestation determination for the Student after suspending him for more than 10 days.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District. After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The District agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Legal Standards

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

Factual Background and Legal Analysis

During the investigation of this complaint, OCR obtained documentation indicating that the Student's Behavior Intervention Plan (BIP) was not implemented for a significant portion of the school year and the Student was suspended for more than ten school days during the 2015-2016 school year without the District conducting a manifestation determination. According to the information obtained thus far, OCR provides the factual background below.

The Student was diagnosed with XXXX and XXXX and the Student has had a Section 504 plan since the XXXX grade. During the spring semester of 2015, while the Student attended the Pinecrest Center, the Student was reevaluated and given updated diagnoses of XXXX. The Student's 504 plan contained behavior interventions to address bullying, inappropriate language towards authority figures and peers, cursing, and threatening students. The Student's BIP required the District to provide him a "diffuse card." If the Student became upset, he was permitted to put this on his desk and this would allow him to go to another location to calm down.

At the beginning of the 2015-2016 school year, the Student attended XXXX School in the District in the XXXX grade. The Student transferred to XXXX (the School) in November 2015, and remained enrolled there until the end of 2015-2016 school year. According to information obtained during OCR's investigation, both schools the Student attended during the 2015-2016 school year were unaware of the Student's BIP and it was not implemented by staff. Instead, the Student was given disciplinary consequences when he exhibited behaviors that were addressed in

his Section 504 plan, including occurrences when the diffuse card could have been utilized. During a manifestation determination meeting in XXXX, School staff determined that the School did not have a copy of the Student's complete education file, including the BIP. Further, District staff determined that a proposed suspension was directly caused by the failure to implement the Section 504 plan of the Student. It was at this meeting that the Complainant realized that the Student's accommodations were not being implemented and that the School did not have access to the Student's complete Section 504 records. Although the District did conduct a manifestation determination meeting in XXXX, by the time the District held it the Student was already suspended out of school for more than ten school days. The disciplinary history of the Student indicated that the District suspended the Student out of school three times for a total of XXXX days between XXXX and XXXX. These suspensions were due to disciplinary infractions of fighting, refusal to obey/defiant, profanity and disrespect.

Based on the information obtained during the investigation, OCR found sufficient evidence that the District failed to implement the Student's BIP, which was incorporated into his Section 504 plan, from approximately XXXX. OCR also found sufficient evidence that the District failed to conduct a manifestation determination prior to imposing a significant change in placement in the form of a series of short-term exclusions totaling more than ten days.

Conclusion

On August 11, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on August 11, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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, or participates in an OCR proceeding. 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Timothy Riveria, the OCR attorney assigned to this complaint, at 202-453-6796 or Timothy.Riveria@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: William Burkhalter