



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION III  
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**September 5, 2017**

**IN RESPONSE, PLEASE REFER TO: 03171171**

Dr. Kevin M. Maxwell, CEO  
Prince George County Public Schools  
Office of the Superintendent  
Sasscer Administration Building  
14201 School Lane  
Upper Marlboro, MD 20772

Dear Dr. Maxwell:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Prince George's County Public Schools (the District). This complaint was filed by XXXXXX on behalf of XXXXXX (the Student).

Specifically, it was alleged that the District discriminated against the Student on the basis of disability by:

1. Suspending him multiple times during the 2016-17 school year for behaviors that are a manifestation of his disability; and
2. Failing to assess the Student over a period of six (6) years, resulting in an inappropriate academic environment.

It was also alleged that the District:

3. XXXXXX.

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- 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. Title II prohibits discrimination on the basis of disability by public entities.

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

As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

### **Legal Standards:**

#### *Reevaluations*

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires that recipients that operate a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets Title II and its implementing regulations at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii) to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Section 504 regulation at 34 C.F.R § 104.35(d) regarding reevaluation provides that a recipient shall establish procedures, in accordance with the evaluation procedures of 34 C.F.R. § 140.35 (b), for the periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

#### *Manifestation Determinations*

Under Section 504, a student with a disability cannot be disciplined for behavior that is a manifestation of his disability if the disciplinary action constitutes a significant change in placement. According to OCR policy, a suspension or expulsion from School for more than ten consecutive school days is a significant change in placement. Additionally, a series of suspensions that are each ten days or fewer in duration, but which total more than ten days in the aggregate, may create a pattern of exclusion that constitutes a significant change in placement. Additionally, under OCR policy, a manifestation determination of a student with a disability must be conducted to determine if a student's behavior is related to his or her disability before implementing a significant change in placement.

#### *Retaliation*

To establish a *prima facie* case of retaliation, OCR must find that: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If any one of these elements is not established, no *prima facie* case of retaliation can be found to exist.

In order for an activity to be considered “protected,” the complainant must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by a recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. OCR considers whether the action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claims. Merely unpleasant or transient incidents usually are not considered adverse.

If the evidence demonstrates a *prima facie* case of retaliation, a presumption or inference of unlawful retaliation or interference is raised. OCR must then determine whether the recipient had a legitimate non-discriminatory reason for the adverse action. If OCR finds that the recipient did have a legitimate reason for the adverse action, OCR must determine whether the recipient’s reason is a pretext for retaliation. Alternatively, if OCR finds that the recipient had both a legitimate non-discriminatory reason and an illegitimate, retaliatory reason; OCR must determine whether the recipient would have made the same decision even without taking into account the retaliatory motive. If the recipient would have made the same decision even if it had not considered the retaliatory motive, OCR cannot conclude that a violation occurred. However, if the retaliatory motivation was a determining factor in the adverse action, such that “but for” the retaliatory motive the recipient would not have taken the adverse action, OCR must conclude that a violation occurred.

### **Factual Background**

XX – paragraphs redacted – XX

### **Resolution Agreement**

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement. The provisions of the agreement must be aligned with the complaint allegations and the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations. Consistent with OCR’s procedures, the District requested to resolve the issues in this complaint through a voluntary resolution agreement, which was signed by the District on August 15, 2017. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District’s implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District’s compliance with Section 504, Title II, and their implementing regulations that may exist and are not discussed herein.

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, it 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Irene Town, at 215-656-8586 or [irene.town@ed.gov](mailto:irene.town@ed.gov).

Sincerely,

/s/

Nancy E. Potter  
Team Leader

Enclosure

cc: Gail Viens