



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

July 28, 2015

Mr. Chris Henson
Interim Director of Schools
Metropolitan Nashville Public Schools
2601 Bransford Avenue
Nashville, TN 37204

Re: Complaint #04-14-1013

Dear Mr. Henson:

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the resolution of the above-referenced complaint received on September 26, 2013, against Metro-Nashville Public Schools (District). The Complainant alleged that the District failed to conduct an appropriate manifestation determination hearing for their client's 14 year-old son (Student) in April 2013, prior to imposing discipline on the Student.

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. As a recipient of Federal financial assistance from the Department, the District is subject to Section 504. The District, as a public entity, is also subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12121 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

OCR opened an investigation to determine whether the District discriminated against the Student by failing to conduct a proper manifestation determination for the Student, in noncompliance with Section 504 and Title II. During the complaint resolution process, OCR reviewed documents provided by the District, and interviewed District staff and the Complainant. Based on our investigation, we have determined that the District failed to comply with Section 504 and Title II.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.35(a) requires recipients to conduct an evaluation of any person who because of disability needs or is believed to need special education, or related services, before taking any action with respect to the initial placement of the person in a regular

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

www.ed.gov

or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. §104.35(c) states that in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, (2) establish procedures to ensure that information obtained from all sources is documented and carefully considered, (3) ensure that the placement is made by a group of persons that include persons knowledgeable about the child, the meaning of evaluation data, and the placement options; and, (4) ensure that the placement decision is made in conformity with least restrictive environment requirements.

Before a student with a disability may be removed from school for more than 10 school days at a time in a school year or before implementing a series of suspensions in excess of 10 school days that constitute a pattern of exclusion, a recipient must first conduct a reevaluation of the student. The first step in the reevaluation includes a determination, by a group of persons knowledgeable about the child and the meaning of the evaluation data, whether the behavior for which the student is being disciplined is a manifestation of the student's disability. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the student's current behavior.

Disciplinary removal constituting a change in placement cannot be imposed unless the team determines that the misbehavior is not a manifestation of the student's disability. If it is determined that the behavior is a manifestation of the student's disability, the group must continue the evaluation, in accordance with Section 504, to determine whether the student's current educational placement is appropriate. Parents are entitled to notice of the results of the manifestation determination and of the procedural safeguards available to them to challenge the determination.

Summary of Investigation

On September 14, 2012, the District expelled the Student from the Middle School for a year for allegedly fighting with the School Resource Officer and making threats. The District then assigned the Student to McCann Alternative Learning Center (MALC), a more restrictive educational setting. The District had not identified the Student as a student with a disability at the time of the alleged incident.

On October 23, 2012, MALC school officials convened a Section 504 meeting to address the behavior of the Student. At this meeting, the Student was determined to have Attention Deficit Hyperactivity Disorder (ADHD) and found eligible to receive a Section 504 plan. The Student's parent signed the Section 504 plan, which included certain accommodations.

In a letter dated October 23, 2012, the Student's parent requested that the District also evaluate the Student for special education services. The evaluation took place over 4 days in December 2010 and the team determined that the Student was not eligible for special education services.

Following the October 2012 creation of a Section 504 plan for the Student, on February 6, 2013, the District imposed on the Student out-of-school suspension for 11 days over five instances of misconduct. School officials did not convene a manifestation meeting prior to suspending the

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

www.ed.gov

Student for more than ten (10) days in order to determine whether the alleged misbehavior was a manifestation of the Student's disability.

The Student continued to exhibit behavioral problems and school officials initiated a functional behavior assessment on February 11, 2013. During a Section 504 meeting held on February 15, 2013, while the student was suspended, the committee addressed the Student's behavioral issues in light of the multiple referrals the Student had received. The meeting was attended by the Section 504 Coordinator, a teacher, the School Counselor, the Transition Specialist, and the Complainant. The group determined that the Student's disability substantially prevented him from understanding the impact and consequences of the behavior that led to disciplinary action against the Student on February 6, 2013. As a result, the Student's Section 504 Plan was revised.

On March 1, 2013, the school again convened a meeting to address the Student's behavior. At this meeting, school officials and the parent discussed the functional behavior assessment and determined they had failed to convene the manifestation determination meeting for the behavior that occurred on February 6, 2013 *prior* to the Student being placed on out-of-school suspension. As a result of its failing to convene a manifestation determination meeting, the District determined that it would provide compensatory services to the Student for the services he missed while suspended on February 7 and 8, 2013.

On March 14, 2013, the Student was cited for violating the code of conduct for pushing past his teacher as she stood in the doorway at dismissal. The Student was suspended indefinitely pending the manifestation meeting. Following spring break, on April 5, 2013, the District convened a manifestation determination meeting and suspended the Student out of school for a total of five days.

Eleven persons attended the Section 504 Review Committee meeting - the parent, the principal, the counselor, the teacher, the psychologist, the Youth Villages (private) therapist, the District 504 Coordinator, the District's Exceptional Education Coordinator, an advocate, another Youth Villages representative, and the behavior specialist. According to the School's records and the interviews OCR conducted, school officials were unable to reach a consensus about whether the Student's behavior was a manifestation of his disability.

The manifestation determination record states that the Review Committee determined that the Student's 504 plan had been implemented at the time of the misconduct and that the Student would be disciplined in accordance with the District's policies for disciplining students without disabilities. However, only three district staff members signed the manifestation determination form indicating their agreement that the behavior was not a manifestation of the disability - the principal, the School 504 coordinator and the general education teacher. The Complainant signed indicating her disagreement with the determination. No meeting minutes were kept by the District, so there is no documentation concerning the details of the disagreement, and what materials were reviewed. The principal informed OCR that as the local administrator she made the tie-breaking decision and that a major influence on her decision was the school psychologist's position. However, the school psychologist had no recollection of what happened at the meeting. On April 30, 2013, the Student sustained serious injuries in an accident, requiring extended medical attention and preventing him from being in school until recently.

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

www.ed.gov

Conclusion

The preponderance of the evidence in this matter demonstrates that the District failed to conduct appropriate manifestation determination meetings regarding the Student's February 2013 and March 2013 disciplinary infractions prior to implementation of disciplinary removals that constituted a significant change in placement. Further, the preponderance of the evidence does not establish that the April 2013 manifestation determination was based upon consideration of appropriate evaluation materials consistent with the requirements of the Section 504 implementing regulation at 34 C.F.R. Section 104.35(c). While there were eleven people in attendance of the April 2013 meeting, of which seven were District staff, only three signed the manifestation determination form indicating agreement with the decision. The District acknowledged that the decision was made solely by the principal instead of being made by a "group" of persons, as required. While the Principal told OCR that the School's psychologist expressed the view that the misconduct was not a manifestation of the Student's disability, the psychologist did not recall what occurred at the meeting, and there was no documentation reflecting what took place at the meeting.

The Section 504 regulation requires that a group of knowledgeable persons make the manifestation determination based upon appropriate materials. The preponderance of the evidence does not establish that the April 2013 manifestation determination was made through a process that comports with the Section 504 regulation.

To resolve these compliance issues, the District voluntarily entered into the enclosed Resolution Agreement (Agreement), that when implemented, will resolve the compliance issues. The proposed Agreement requires that the District submit a procedure for OCR's approval that will ensure that (i) manifestation determination decisions are made in a timely manner; (ii) committees are comprised of a group of persons who are knowledgeable about the student, evaluation results, psychological data, and information related to the behavior; (iii) information from all sources will be documented and carefully considered; (iv) minutes of the meeting will be maintained as a part of the manifestation determination; and (v) all persons who are members of the committees sign the manifestation form indicating whether they agree or disagree with the determination. After approval of the District's procedure by OCR, the District will submit evidence of implementation and will provide training to staff who participate in manifestation determinations at McCann Alternative Learning Center. OCR will monitor the implementation of the Agreement to ensure that it is fully implemented.

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.

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 provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court whether or not OCR finds a violation. Please be advised that the District may not harass, coerce, intimidate, 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.

If you have any questions, please contact Phyllis Kane, Investigator at (404) 974-9388.

Sincerely,

Melanie Velez
Regional Director

Enclosure: Resolution Agreement