



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

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ATLANTA, GA 30303-8927

REGION IV
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March 14, 2016

Mr. Chris Henson
Interim Director of Schools
Metro Nashville Public Schools
2601 Bransford Avenue
Nashville, Tennessee 37204

Re: OCR Complaint# 04-15-1554

Dear Mr. Henson:

On September 25, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against the Metro-Nashville Public Schools District (District) alleging disability discrimination. The Complainant alleged that the District discriminated against her daughter (Student), by failing to evaluate the Students during the 2014-2015 school year despite the Complaint's repeated requests. The Complainant also alleges that the District denied the Student a free appropriate public education (FAPE) during the 2015-2016 school year when it informed the Complainant the Student was Section 504 eligible in August of 2015, but failed to develop a plan for her.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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 by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District is a recipient of Federal financial assistance from the Department and is a public entity, it is subject to the above statutes. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR initiated an investigation of:

1. Whether the District discriminated against the Student on the basis of disability by failing to evaluate the Student during the 2014-2015 school year in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.35, and Title II and its implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District discriminated against the Student on the basis of disability by failing to provide the Student with a FAPE during the 2014-2015 school year when it informed the Complainant the Student was Section 504 eligible, but failed to develop and implement a plan for him in noncompliance with Section 504 and its implementing regulation at 34 CFR § 104.33(a)(b) and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Legal Standards

34 C.F.R. §104.35 provides: (a) *Preplacement evaluation*. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, 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 regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures*. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures*. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) 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 (4) ensure that the placement decision is made in conformity with 104.34.

34 C.F.R. § 104.33(a)-(b)(2) requires a recipient that operates a public elementary or secondary education program or activity to provide a FAPE to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. The provision of an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and that satisfy the requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (relating to educational setting, evaluation and placement, and procedural safeguards).

Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

The Title II implementing regulation is interpreted consistent with the foregoing standard with respect to the complaint allegation.

Summary of Investigation

Upon the receipt of this complaint, the District provided OCR with the Student's records and its policies and procedures for Students with disabilities and requested to voluntarily resolve this complaint under Section 302 of OCR's *Case Processing Manual*. Pursuant to these procedures, 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 upon information provided by the District, OCR learned that the Student's Psychological Evaluation dated January 21, 2014 from Vanderbilt University which indicates that the Student was to be considered for certification as other health impaired ADHD. Her accommodations should be frequent redirection, preferential seating, and segmentation of assigned work. It was also noted that entry into social skill training program. Information provided by the District showed that due to the Student's withdrawal and failure to re-enroll in the District, the District has not been provided the opportunity to comply with the August 18, 2015 504 Plan or complete the evaluation for determining eligibility for exceptional education services.

Resolution Agreement

On February XX, 2016, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to 1) initiate annual training of administrators and staff at McGavock High School (School) involved in the provision of a free and appropriate public education (FAPE) to students regarding:

- a. The Section 504 requirements regarding completion of an evaluation for students suspected to be a student in need of services pursuant to Section 504 in a reasonable time period (generally 60 days);
- b. The necessity to include persons knowledgeable about a student, including parents/guardians, on the evaluation team and to consider current evaluation data;
- c. The necessity to provide procedural due process to a parent or guardian as soon as the District is notified of the request for Section 504 services.

2) District will remove all reference of the expulsion, which resulted from disciplinary incident # 1350606, from the Student's disciplinary records.

OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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, you may file another complaint alleging such treatment.

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.

If you have any questions, please contact Mr. Darryl Dennis, Senior Investigator, at (404) 974-9358 or me at 404-974-9408.

Sincerely,

April England-Albright, Esq.
Acting Compliance Team Leader

Enclosure