



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

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ATLANTA, GA 30303-8927

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December 6, 2017

Dr. David C. Mosely
Superintendent
Dougherty County School District
200 Pine Ave.
Albany, GA 31701

Re: Complaint #04-16-1209

Dear Dr. Mosely:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution process of the above-referenced complaint, received on February 8, 2016, which alleged discrimination on the basis of disability by the Dougherty County School District (District). Specifically, the Complainant alleged that during the 2015-16 school year, the District discriminated against her daughter (Student), who attends South Georgia Regional Achievement Center (Center), when it failed to hold a manifestation meeting prior to suspending the Student on several occasions.

OCR investigated this complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (Title II), as amended, 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. The District receives Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over this complaint.

OCR investigated the following legal issue:

Whether, during the 2015-16 school year, the District discriminated against the Student by suspending her several times and subjecting her to a change in placement without holding a manifestation determination hearing, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. §104.35, and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

During the course of this investigation, OCR reviewed evidence submitted by the Complainant and the District and interviewed the Complainant and District staff. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the District requested to address the complaint allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Provided below is an overview of OCR's investigation thus far.

Legal Standards

§ 104.35 Preplacement, Evaluation, and Placement.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(a)-(c) requires recipients to evaluate students who, because of their disability, need or are believe to need special education or related services before taking action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement, and provides that, 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 decisions are made by a group of 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. The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires a recipient to establish and implement a system of procedural safeguards that includes notice, an opportunity to examine records, and an impartial hearing. The regulation implementing Title II at 28 C.F.R. § 35.130(a) and (b) is interpreted consistently with the standards set forth in the Section 504 regulation.

As set forth in Appendix A, Subpart D, of the Section 504 regulation, it is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the District complies with the "process" requirements of the § 504 regulation concerning the identification and location, evaluation, and due process procedures.

Summary of Investigation to Date

District's Section 504 Policy and Procedures

The District's Section 504 Procedures (Procedures) requires the Section 504 Coordinator (Coordinator) or designee to begin collecting relevant information from the student's educators and school staff upon receipt of a completed Section 504 referral. The Policy states that the Coordinator will notify the parents and other members of the Section Team of the meeting to determine the student's eligibility or whether additional information is needed to determine eligibility. The Section 504 Team is then responsible for reviewing all relevant information and completing the Section 504 eligibility form during the initial meeting.

The Procedures also state that “if a decision is made to remove a student who is eligible for Section 504 services from school for more than 10 consecutive days in a school year or if a student eligible for Section 504 services has been subjected to a series of removals during a school year that results in a significant change in placement, then the determination must be made whether the behavior requiring disciplinary action is a manifestation of the student’s disability.”

The Student’s Evaluation Process

The Complainant alleged that during the 2015-16 school year, the District discriminated against the Student, when it failed to hold a manifestation meeting prior to suspending the Student on several occasions. The Student was first enrolled at the Center in the fall of the 2014-2015 school year. The Complainant stated that she requested that the District evaluate the Student for special education services in August 2015.

Documentation shows that on September 11, 2015, the Complainant signed a Tier II/Student Support Team (SST) form to start the evaluation process. The SST process began on September 15, 2015, and the RTI intervention team was to work with the Student on his behavior. Documentation indicates that the Student was given short and long term suspensions during the fall 2015 semester. Documentation shows that the Student was given two days out-of-school (OSS) suspension in September 2015 for disorderly conduct/disruptive behavior. The Student was also given nine days OSS on September 24, 2015 for hitting another student in the face with a folder, which was later extended to a non-permanent expulsion until the end of the semester. District staff stated that the initial evaluation was conducted on October 13, 2015, but the team did not have sufficient information from the first semester to determine whether the Student was eligible for special education services. The documentation does not indicate that a manifestation meeting was held for the Student prior to her suspension.

District staff said that the Student’s evaluation was delayed because there were not enough work samples from the Student to evaluate because of her suspensions, and the evaluation process resumed in October 15, 2015. District staff contends that the Student’s suspension was lifted, and she returned to school for assessments. District staff stated that on December 15, 2015, the committee met and decided to “table their decision about the Student’s eligibility because of lack of data.” Documentation indicates that the Student was suspended again on January 29, 2016 for hitting a student in the ear (three days in-school (ISS) suspension; on February 3, 2016 for use of profanity (three days ISS); and on February 10, 2016, for threatening to hit a teacher (five days OSS)

On February 11, 2016, an eligibility meeting was held for the Student. The Eligibility Determination Committee (Committee) considered the Student for Emotional and Behavior Disorder (EBD) and Other Health Impaired (OHI) programs. The Student was enrolled in the Center at the time of the meeting. The Committee included a group of individuals knowledgeable about the Student and the evaluation data. The Committee determined that the Student was ineligible for special education services because her behavior was “more conduct in nature than emotional”. The Complainant requested an Independent Educational Evaluation (IEE). On March 22, 2016, the Committee met to determine the Student’s eligibility for EBD and OHI services. The

Committee determined that the Student met the eligibility requirements for EBD. District staff stated that two different psychologists evaluated the Student for EBD eligibility, which may have resulted in the different determinations. She stated that the psychologist may have focused on different criteria during the evaluation. Further investigation would be needed to conclude OCR's investigation as to whether the Student was subjected to a significant change in placement when she was believed to need special education and related services. In addition, based on the information obtained thus far, OCR would also consider whether the evaluation criteria used by the District for determining the Student's Section 504 eligibility for EBD was applied consistently.

Information Necessary to Complete Investigation

On September 14, 2016, the District voluntarily requested that OCR resolve this complaint pursuant to Section 504 of OCR's *Complaint Processing Manual*, which states allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. In order to complete its investigation of the Complainant's allegations, OCR will need to interview members of the Section 504 team to determine the evaluation data used to determine eligibility for the Student and the reason the evaluation process was suspended twice due to lack of information to make an eligibility determination. OCR will also need to interview both psychologists that evaluated the Student to determine the training they received to conduct evaluations and the process they used when evaluating the Student in order to determine whether their process for evaluating the Student was consistent, if not why, and the reason two different eligibility determinations were made based on the same evaluation data.

Proposed Resolution and Conclusion

The attached Agreement requires the District to (1) develop procedures to clearly inform special education staff that students cannot be suspended from school for more than 10 days or for a series of suspensions if they are currently being evaluated to determine if they qualify for special education services without completing the evaluation or conducting a manifestation meeting to determine if the disability caused the behavior. Staff will be informed that suspensions cannot delay the evaluation; (2) convene a committee to determine if the Student needs compensatory services to make up for delays in evaluating her need for special education services; and (3) schedule training for psychologists to ensure that there is consistency in the way students with behavior problems are evaluated.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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 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.

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.

OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact Wayne Awtrey, at (404) 974-9377, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer
Compliance Team Leader