



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

October 31, 2016

XXXXXX

Griffin-Spalding County School System
216 S. 6th Street
Griffin, GA 30224

Re: OCR Complaint #04-16-1459

Dear XXXXXX:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Atlanta Office has completed its investigation of the above referenced complaint, filed against the Griffin-Spalding County School System received by OCR on May 13, 2016. The Complainant¹ alleged that the District discriminated against the Student on the basis of disability and retaliation.

During investigation, OCR determined the following allegations were appropriate for investigation:

1. Whether the District retaliated against the Complainant and Student when it disciplined him and failed to provide the Student make up work while he was suspended, and
2. Whether the District discriminated against the Student on the basis of disability when it failed to evaluate the Student for a Section 504 Plan

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>.

In reaching its determination, OCR reviewed and analyzed documents submitted by the Complainant and the District. OCR also conducted interviews with the Complainant and District officials.

¹ OCR identified the names of the Complainant and Student in previous correspondence and is withholding their names in this letter to protect their privacy.

OCR reviews evidence under the preponderance of the evidence standard. The factual and legal bases for OCR's determination are set forth below.

Applicable Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of a disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. In determining whether a District has timely evaluated a Student, OCR uses the requirements in IDEA to evaluate and hold a placement meeting within 60 days of a parent's request as a guide.

The Section 504 implementing regulation at 34 C.F.R. § 104.61 adopts the anti-retaliation provisions of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI anti-retaliation regulation, as incorporated by Section 504, provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law enforced by OCR, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. The Title II implementing regulation, at 28 C.F.R. § 35.134, similarly prohibits retaliation by public entities.

A prima facie case of retaliation is established by showing that: (1) the Complainant engaged in a protected activity; (2) the District was aware of the Complainant's activity; (3) the District took adverse action against the Complainant contemporaneous with or subsequent to the protected activity; and (4) there was an apparent causal connection between the adverse action and participation in the protected activity. If the elements of a prima facie case are established, then OCR determines whether the District has a legitimate, nondiscriminatory reason for taking action adverse against the Complainant. The evidence is then analyzed to determine whether the proffered reason is a pretext for retaliation.

Background: The Student's disability is attention deficit disorder and hyperactivity. The data submitted by the District shows that on April 26, 2016, the District met with the Complainant to determine the eligibility of the Student for the Section 504 Plan on April 26, 2016. At the time, the student was determined ineligible. Procedural safeguards were provided to the Parent. The Student's disciplinary file for the 2015-2016 school year showed that the Student had four disciplinary referrals for the 2015-2016 school year. The Student had referrals for the following dates: September 24, 2015 for "Insubordination/Disrespect Level 1", on December 7, 2015 for "Student Incivility – Other Level 1", March 23, 2016 for "Fighting Level 1", and on May 12, 2016 "Fighting Level One". The Student received two days of in school suspension (ISS), One day of ISS, three days of OSS, and five days of out of school suspension (OSS) for each incident respectively. Moreover, the District's disciplinary actions were consistent with the District's Student Code of Conduct, Level One disciplinary incidents. Additionally, the Student's grades records reflects that during the days that the Student was suspended, only one assignment was reflected as "missing."

Allegation one: Whether the District retaliated against the Complainant and Student when it disciplined him and failed to provide the Student make up work while he was suspended

Summary of Findings:

Protected Activity and Knowledge: Evidence provided by both the Complainant and District demonstrates that Complainant and the School were in contact throughout the 2015-2016 school year regarding the Complainant's request for an evaluation. The Complainant's advocacy for the aforementioned evaluation is considered protected activity and the District had knowledge of this activity, therefore the first two elements of a prima facie case of retaliation are established.

Adverse Action:

An adverse action is one that affects a person's education, or well-being in an unwarranted, serious, lasting, and usually tangible manner (i.e., something that is more than a transient, unpleasant incident). OCR could not establish that the above-mentioned discipline administered by the District to the Student nor the one missing assignment affected the Student's education or well-being in any unwarranted, serious, lasting manner and therefore no adverse action was established.

Absent an adverse action, OCR does not proceed further with retaliation analysis.

Conclusion

Therefore based on the preponderance of evidence, OCR concludes that the District did not subject the Complainant to retaliation.

Allegation Two: Whether the District discriminated against the Student on the basis of disability when it failed to evaluate the Student for a Section 504 Plan.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint.

Prior to the completion of OCR's investigation, the District expressed to OCR its interest in voluntarily resolving this allegation. Specifically, OCR needed to analyze additional documents from the District and interview specific District staff members in order to reach a finding on this allegation.

On October 31, 2016, the District voluntarily signed the attached agreement (Agreement) to resolve Allegation One. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Section 504 with respect to Allegation One. In sum, the Agreement requires the District provide written notification to the Student's parent that the District will conduct a comprehensive evaluation for the Student to determine if the Student is eligible to receive related aids and services pursuant to Section 504/Title II. If so, within one week of its determination, an IEP or Section 504 Team will develop an IEP or 504 Plan to reflect the related aids and services needed by the Student. Additionally, the District will provide to relevant administration and staff involved in the provision of a free and appropriate public education (FAPE) to students, training that encompasses 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.

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, the Complainant 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.

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.

OCR would like to thank the District for their cooperation. If you have any questions, please contact the assigned investigating attorney, Eulen Jang at (404) 974-9467, or by email, at Eulen.Jang@ed.gov, or me, at (404) 974-9374.

Sincerely,

G. Anthony Brown, Esq.
Acting Compliance Team Leader

cc: Shepherd Law Offices, L.L.C.