June 20, 2017

Dr. Mark Scott, Superintendent
Houston County Board of Education
1100 Main Street
Perry, Georgia 31069

Re: Complaint # 04-17-1195

Dear Dr. Scott:

On December 28, 2016, the U.S. Department of Education (Department), Office for Civil Rights ("OCR"), received the above-referenced complaint that filed against the Houston County School District (District). The complaint alleged that staff at Huntington Middle School (School) discriminated against a Student on the basis of disability by failing to evaluate him for special education and related services after learning that he had been diagnosed with attention deficit disorder/attention deficit hyperactivity disorder (ADD/ADHD) in March 2016 and after observing behaviors consistent with the ADD/ADHD diagnosis (impulsivity and distractibility) at the beginning of the 2016-2017 school year.

Further, the complaint alleged that as a result of the School’s failure to evaluate the Student, in November 2016, the Student was suspended and his placement changed for conduct that may have been a manifestation of his disability. There was no evaluation of the Student following the conduct that precipitated his November 2016 suspension and alternative school placement.

As a recipient of Federal financial aid from the Department, the District is subject to 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 public entity, the District is subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 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. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at www.ed.gov/ocr.

OCR opened an investigation of whether the District failed to evaluate the Student to determine his eligibility for special education, related services, or accommodations after the District received notice of the Student’s disability on March 1, 2016 and when the Student’s behavior during the 2016-2017 school year suggested a need for evaluation, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35 and Title II implementing regulation at 35 C.F.R. § 35.130.
Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.35 states that 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. 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.

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. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

The Title II implementing regulation at 35 C.F.R. § 35.130 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Summary of the Investigation

OCR reviewed the District’s data submission dated March 14, 2017, including the District’s notice of non-discrimination, Section 504 grievance procedures, and records from the Student’s academic and discipline files. The available data showed that in 2014, the District was notified that the Student was diagnosed with ADD/ADHD. The documentation showed that beginning in 2015, the Student received interventions administered through the Response to Intervention
The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR reviewed the District’s RTI handbooks, training materials, and documentation to determine whether its use of the RTI process was consistent with the requirements of the regulation implementing Section 504 and Title II. OCR notes that unlike Section 504, the goals of RTI are not aimed at providing equal access and/or an individualized and appropriate education for students with disabilities. In addition, there was no evidence that the Student’s disability (ADD/ADHD) was considered in determining appropriate interventions, aids, or services. Also, there was no evidence that the RTI process entitled the Student’s Parent to procedural safeguards consistent with the regulation implementing Section 504.

The RTI process is inconsistent with the evaluation requirements of the Section 504 implementing regulation. Therefore, the evidence is sufficient to conclude that the District failed to evaluate the Student, in non-compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35 and Title II.

The District entered into the enclosed Agreement and submitted it to OCR on June 16, 2017. The enclosed Agreement, when fully implemented, will resolve all of the allegations and compliance concerns identified during the course of the investigation. OCR will monitor the District’s implementation of this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. Further, the Complainant may file a private lawsuit in federal court regardless of whether 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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

OCR appreciates the District’s cooperation in this matter and looks forward to receiving the monitoring reports, as required by the enclosed Agreement. If you have any questions, please contact Cerrone Lockett, General Attorney at 404-974-9318.

Sincerely,

Andrea de Vries
Compliance Team Leader