



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

August 9, 2018

XXXXXXXXX  
Superintendent  
Macon County Schools  
501 S. School Street  
Tuskegee, AL 36083

Re: OCR Complaint # 04-17-1411

Dear XXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of a complaint received by this office on April 25, 2017, alleging retaliation on the basis of disability by Macon County Schools (District). Specifically, the Complainant alleged that the District retaliated against her son (Student) after she advocated on his behalf during the XXXX school year for XXXXXXXXXXXX. More specifically, the Complainant alleged the District retaliated against the Student as follows:

1. By delaying the creation of a 504 Plan for the Student for an XXXXXXXX;
2. [Staff] Making inappropriate and demeaning comments to the Student;
3. Unfairly suspending the Student and unfairly accusing the Student of XXXXXXXX;
4. Referring the Student for XXXXXXXX, even though the School staff was aware of the Student's XXXXX; and
5. Arbitrarily XXX the Student, and exaggerating charges, which led to a XXXX charge that resulted in the Student being placed in an alternative school XXXXXXXX.

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 by recipients of Federal financial assistance; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

Based on the above, OCR investigated whether the District retaliated against the Student by: (1) delaying the creation of a 504 Plan for the Student; (2) making inappropriate and demeaning comments to the Student; (3) unfairly suspending the Student and accusing him of XXXXXXXX; (4) referring the Student for XXXXXXXX; (5) unfairly XXXX the student and exaggerating charges, which resulted in the Student being placed in the alternative school XXXXXXXX, in

noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.

#### Making Inappropriate and Demeaning Comments to the Student

On XXXXXX, the Complainant filed a complaint with the Alabama State Department of Education (ALSDE), alleging breach of a previous state mediation agreement. She also alleged retaliatory harassment and bullying of the Student by faculty and staff since the mediation hearing, which were similar to the allegations filed with OCR. On XXX, the Complainant submitted a letter to ALSDE, withdrawing the state complaint because the District had agreed to XXXXXXXX.

The Complainant sent this withdrawal letter to ALSDE after she filed her complaint with OCR. Also, the Student was placed at the alternative school on XXXXXXXX. Therefore, he had no further contact with the faculty and staff at his former high school. The Student graduated in XXXXX.

Under OCR's Case Processing Manual (CPM) § 108(i), OCR will dismiss an allegation when OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved or are no longer appropriate for investigation. OCR finds that this allegation is no longer appropriate for investigation because the Complainant resolved this allegation in state-level mediation with the District. Accordingly, OCR will dismiss this allegation as of the date of this letter.

#### Unfairly Suspending the Student and Accusing Him of XXXXXX

On XXXXXX, the Student received a three-day out-of-school suspension for XXXXXX. The boxes checked on the disciplinary referral were XXXXXXXX. Another form refers to the infraction(s) that led to this suspension as "other incidents." The disciplinary records do not specifically reference a charge for XXXXX.

Because the record does not include any referrals or reference to XXXXXX, OCR finds that this allegation is no longer appropriate for investigation as well and is dismissing this allegation as of the date of this letter.

#### Unfairly Targeting the Student and Exaggerating Charges, Resulting in an Alternative Placement

On XXXXXX, the District referred the Student for alternative placement, pending an expulsion hearing for XXXXXX. On XXXXX, the District held a Manifestation Determination Review XXXXXX. The offense the Student was charged with is an expellable offense per the District's Code of Conduct, but the District did not expel the Student. The XX XXXXX recommended that the Student be placed in a more restricted environment for 45 days and based on this recommendation the District placed the Student at the alternative school for 45 days.

OCR finds that this allegation is no longer appropriate for investigation because the preponderance of the evidence does not support the allegation that the Student was unfairly targeted or his charges were exaggerated. The Student did not deny the charges against him. Instead, he provided a justification for his actions. Accordingly, OCR will dismiss this allegation as of the date of this letter.

Referring the Student for XXXXX in XXXX & Delaying the Creation of a 504 Plan for the Student

Prior to OCR completing the investigation of this issue, the District offered to resolve these allegations. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint, or complaint allegations, may be resolved before the conclusion of an investigation when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any compliance concerns regarding the removal of the Student from the magnet school where he was enrolled, compensatory education services, and an evaluation of the Student for special education and/or related aids and services.

On August 9, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegation in the complaint. 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. 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, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Senior Attorney XXXX, or by email at [XXXXXX](mailto:XXXXXX), or the undersigned at XXXXX.

Sincerely,

XXXXXXXXXX

Supervisory General Attorney

Enclosure