



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

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REGION IV
ALABAMA
FLORIDA
GEORGIA
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October 16, 2018

Dr. David F. Lewis
Superintendent
Muscogee County School District
2960 Macon Road
Columbus, Georgia 31906

Re: Complaint #04-17-1576

Dear Superintendent Lewis:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received on August 13, 2017, against the Muscogee County School District (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her son (Student), a student at Waddell Elementary School (School) on the basis of disability when: (1) the School failed to address the Student's behavioral issues in his individualized education program (IEP) (e.g., disrobing and aggression); (2) on May 17, 2017, the School disciplined the Student for behavior (e.g., aggression) that was a manifestation of his disability; and (3) a School staff member hit the Student on May 17, 2017. She alleged that she reported the hitting incident to the District on May 31 and July 26, 2017, but the District failed to investigate her report.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

OCR initiated an investigation of the following legal issues:

- Whether the District failed to provide the Student with a free and appropriate education (FAPE) when the School failed to address his behavioral issues in his IEP, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130
- Whether the District failed to provide the Student with a FAPE when disciplining him on May 17, 2017 for behavior that was a manifestation of his disability, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.

- Whether the District discriminated against the Student on the basis of disability by failing to take appropriate responsive action to redress the disability based harassing conduct and actions directed towards the Student when a staff member hit him on May 17, 2017, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4, and the Title II implementing regulation at 28 C.F.R. § 35.130

During the investigation, the Complainant voluntarily withdrew Allegation #1 and Allegation #2. Prior to the conclusion of the investigation, the District requested to voluntarily resolve this complaint under Section 302 of OCR's *Case Processing Manual (CPM)*. Pursuant to the CPM, a complaint may be resolved at any time when, prior to the conclusion of OCR's investigation, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement.

On October 12, 2018, the District signed the attached Resolution Agreement (Agreement), which once fully implemented, will resolve the complaint allegations in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to take actions that include: (1) review its September 2017 investigation conducted in response to the May 17, 2017 report that the Student was hit by a District paraprofessional (including evaluating whether the Student was subjected to different treatment that resulted in a denial of a free appropriate public education); (2) modify its harassment procedures to state that all procedures apply to harassment or discrimination carried out by students, personnel, and third parties (e.g., visiting students, contractors, vendors, or parents); and (3) conduct training for all administrators, faculty, and staff at the School regarding the prohibition of disability harassment, each staff member's role/responsibility in reporting incidents of harassment, and the responsibility of the individual(s) responsible for receiving and investigating complaints.

OCR will monitor the District's implementation of the 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.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

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. If 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, Willie Black, General Attorney, at (404) 974-9359, or me, at (404) 974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure