



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

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ATLANTA, GA 30303-8927

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January 18, 2019

Mr. Johnny McDaniel
Director of Schools
Lawrence County School District
700 Mahr Avenue,
Lawrenceburg, Tennessee 38464

Re: Complaint #04-18-1236

Dear Director McDaniel:

On March 12, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against the Lawrence County Schools (District) alleging discrimination on the basis of disability (epilepsy, Attention Deficit Hyperactivity Disorder and developmental delays). The Complaint alleges that the District discriminated against a Kindergarten student at Ingram Sowell Elementary (School) by repeatedly disciplining and suspending him for behaviors related to his disability during the 2017-2018 school year.

The complaint was investigated pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

During the investigation, OCR reviewed documents provided by the Complainant and the District including the Student's IEPs and Behavioral Intervention Assessments and Plan, the Student's attendance and disciplinary records, and record of nurse visits. OCR also interviewed the Complainant and District faculty/staff. Prior to the conclusion of OCR's investigation, the District expressed a willingness to resolve the complaint allegation pursuant to Section 302 of OCR's Case Processing Manual (CPM).

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b)(1) requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the individual's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and (ii) are based

upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program is one means of meeting the standard. OCR interprets the Title II implementing regulation, at 28 C.F.R. § 35.130(a), consistent with the Section 504 implementing regulation.

Legal Issue

Whether the District failed to implement Student's Individualized Education Program (IEP) when it repeatedly disciplined and suspended him for behaviors related to his disability, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

Background

The Student was six years old and in Kindergarten at the School at the time the complaint was filed. He attended the School for three years: 1 year of Pre-Kindergarten and 2 years of Kindergarten. The Student had an IEP in place for ADHD, epilepsy, developmental delay, and other health issues. The Student completed the 2017-2018 term at the School and withdrew from the District on May 22, 2018.

Evidence Obtained Thus Far

In this matter, the Student had an IEP in place during the 2017-2018 school years dated September 6, 2017 and December 15, 2017, which list the Student's impairments as developmental delay, epilepsy, ADHD and other the medical conditions. The Student's IEPs include the following accommodations amongst others: Special education setting and instruction with a Special Education Teacher (30min)

- Occupational Therapy (30min a week)
- Language Therapy 30 min a week
- Pacing and breaks as needed
- A calm/safe space to support his ability to self-regulate his emotions

The IEP for the 2017-2018 school year dated September 6, 2017 placed him in a general education class for all but 30 minutes a day. However, the IEP was amended on December 15, 2018 to change his placement to a be with a SPED teacher for 6.25 minutes per day and an additional 15minutes a day of intervention with the Vision/SPED. Thus, the data confirms that the Student has been identified as a student with a disability, and that the Student's IEP team determined that he needs the related services of concern to meet his individual disability-related needs.

The Complainant alleged that the District failed to implement the behavioral supports in the Students IEP, because (he believes) if the Student was provided the appropriate behavioral supports and those included in his IEP, such as breaks and a clam/safe space, the behavioral issues for which he was disciplined would not have occurred or could have been managed without disciplinary measures. The Complainant also asserts that the School at times called him to pick up the Student rather than implement behavioral supports to manage incidents.

OCR examined the Student's attendance and disciplinary records and identified at least 9 occasions on which the Student was sent home for behavioral incidents either after being

sanctioned with OSS or without an official sanction/a verbal reprimand. Additionally, the Student's medical records indicate that there were other occasions on which the Student's parents were called in to take him home. In this instance, OCR has yet to determine exactly how many days the Student was sent home or whether the Student received services as required by his IEP.

Reasons to Resolve Pursuant to CPM Section 302

Prior to the completion of the investigation, OCR identified a potential compliance concern regarding the provision of a FAPE to the Student based on a possible failure to implement the Student's IEP.

Resolution and Conclusion

Prior to the completion of OCR's investigation, the District offered to resolve this complaint through a voluntary resolution agreement. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. OCR accepted the District's request to resolve the complaint and the District entered into the enclosed Agreement, which when fully implemented, will resolve the issue in this complaint. 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.

The Resolution Agreement signed by the District addresses the issues raised by the complaint by providing for training on Section 504's requirements regarding implementation of plans for the staff involved in this case. The Resolution Agreement also requires the District to notify the Complainant via a certified letter that, should the Student return to the District, a group of knowledgeable persons, including the parents (if they elect to attend), will meet and determine whether the Student needs compensatory and/or other remedial services as a result of any services or instructional time the Student may have missed due to any possible failures to adequately implement services in his IEP during the 2017-2018 school year.

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 a 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 individual 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.

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If you have any questions, please contact Edget Betru, General Attorney, at (404) 974-9351 or by email at edget.betru@ed.gov .

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure: Resolution Agreement