



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

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ATLANTA, GA 30303-8927

REGION IV

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October 22, 2019

Matt Hixson
Director of Schools
Hawkins County School District
200 N. Depot Street
Rogersville, TN 37857

RE: OCR Complaint No. 04-19-1516
Resolution Letter

Dear Mr. Hixson:

This letter is to advise you of the outcome of the U.S. Department of Education (the Department), Office for Civil Rights (OCR) complaint received on August 11, 2019 against Hawkins County School District (the District). Specifically, the Complainant¹ alleged that the District discriminated against her son (the Student) on the basis of disability when she requested that the Student be evaluated for special education services during a meeting in January of 2019 and was verbally told that it was not time.

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- 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. Title II prohibits discrimination on the basis of disability by public entities.

Accordingly, on September 17, 2019, OCR opened an investigation into whether the District failed to provide the Student a free appropriate public education (FAPE) when it failed to evaluate the Student after the Complainant requested an evaluation in January of 2019, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §104.35, and Title II and its implementing regulation at 35 C.F.R. § 35.130.

¹ The Complainant and Student were previously identified to the District and their names are being withheld now to protect their privacy.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

Background

The District provided OCR their procedures for initial evaluations for students suspected of having a disability which includes soliciting parental consent, conducting an evaluation and determining eligibility within 60 calendar days of the District's receipt of parental consent and the provision of procedural safeguards.

The Student is currently in the third grade. During the 2018-2019 school year, the Student attended second grade at the XXXX (School). During the 2018-2019 school year, the Student was in the District's Response to Intervention (RTI) program for reading support but did not have a Section 504 Plan or an Individualized Education Program (IEP). The Complainant alleges that in a January 2019 meeting with the Principal and the Student's reading interventionist, she requested the Student be evaluated for special education services and her request was denied verbally. The District submitted statements from the Principal and reading interventionist stating that the Complainant did not request a Section 504 evaluation. Rather, the Complainant asked if special education would be something in the Student's future.

To date, the District has not conducted a psychoeducational evaluation for the Student. However, the District has already spoken to the Complainant to offer to determine the Student's eligibility for special education services at the District.

Conclusion

Prior to the completion of the investigation, the District requested to voluntarily resolve this issue with a resolution agreement pursuant to Section 302 of OCR's Case Processing Manual (CPM). Pursuant to Section 302 of the CPM, a complaint may be resolved before the conclusion of an investigation when the recipient or public entity expresses an interest in resolving the complaint. OCR determined that this complaint was appropriate for a voluntary resolution agreement as to date the Student has not yet been evaluated by the District and the Complainant informed OCR that a private psychologist recently diagnosed the Student with dyslexia.

Additionally, the District's Director of Special Education stated that the District has already spoken to the Complainant to offer to determine the Student's eligibility for special education services at the District.

On October 14, 2019, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the Complainant's allegation. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively.

This concludes OCR's investigation of the complaint. This letter 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Eulen Jang, the OCR attorney assigned to this complaint, at 404-974-9467 or me at 404-974-9354.

Sincerely,

Scott R. Sausser
Supervisory General Attorney

Enclosure