



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

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REGION IV

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May 19, 2020

Via Email Only ([lipthrott@glynn.k12.ga.us](mailto:lipthrott@glynn.k12.ga.us))

Dr. Virgil Cole  
Superintendent  
Glynn County Schools  
P.O. Box 1677  
Brunswick, GA 31521

RE: OCR Complaint No. 04-20-1167  
Resolution Letter

Dear Dr. Cole:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) received on December 13, 2019, against the Glynn County School System (District), alleging discrimination on the basis of disability. Specifically, the Complainants alleged the following:

1. The District failed to evaluate the Student during the 2018-2019 school year, and
2. The District, by failing to follow the procedures required by Section 504, did not conduct an appropriate manifestation determination of the Student in August 2019 or an appropriate Section 504 evaluation of the Student during the 2019-2020 school year.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the allegations, OCR investigated the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to evaluate the Student during the 2018-2019 school year, in noncompliance

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with Section 504 and its implementing regulation at 34 C.F.R § 104.33, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

2. Whether the District, in conducting the Student's manifestation determination and Section 504 evaluation, failed to follow the procedures required by Section 504, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R § 104.35, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

OCR's investigation to date consists of an interview with the Complainants and a review of documents produced by the Complainants and the District. The documents reviewed to date include, amongst others, the Student's Section 504 records, behavior reports, and records of communications between the Complainant and the District, and internally amongst District staff, relevant to the issues under investigation.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegations by entering into a resolution agreement (Agreement). Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation."

Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the Agreement entered into by the District.

### **Legal Standard**

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards.

The regulation implementing Section 504 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. The regulation implementing Section 504 at 34 C.F.R. § 104.35(b) requires a school district to establish standards and procedures for the evaluation and placement of persons who, because of disability, 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, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

In interpreting evaluation data and making placement decisions, the Section 504 regulation at 34 C.F.R. § 104.35(c) requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegations in this complaint.

### **Facts**

During the 2018-2019 school year, the Student was enrolled in the seventh grade at Risley Middle School (School 1). The Student's school records include a *Physician Authorization for Medication Administration* document, identifying a medical diagnosis of ADHD with medication taken at school during lunch. At School 1, the Student was not identified as a student with a disability under Section 504. During his enrollment at School 1, the Student received a total of 7 office discipline referrals, which resulted in 18 days of in school suspension.

During the first semester of the 2019-2020 school year, the Student was enrolled in the 8<sup>th</sup> grade at Needwood Middle School (School 2). On August 23, 2019, the Student received an office referral resulting in 10 days of out of school suspension pending a tribunal hearing. At the time of this discipline referral, the Student was not identified as a student with a disability under Section 504 and there was no pending request for an evaluation for the Student pursuant to Section 504. On August 26, 2019, the District notified the Complainants that a manifestation determination meeting for a suspected disability was scheduled for August 29, 2019. On August 29, 2019, the manifestation determination, attended by the Complainants, the Student's teachers, the Intervention Coordinator and the Assistant Principal, was held. Relying on the Student's behavior history and medical information shared by the parents regarding the Student's ADHD diagnosis, the team determined that the behavior, subject of the discipline referral, was not a manifestation of a suspected disability. At the conclusion of the manifestation determination meeting the District provided the parents a consent form for evaluation under Section 504. The Student's disciplinary tribunal hearing was held on September 11, 2019, and on September 13, 2019, the District notified the Complainants that the tribunal panel found the Student not guilty of the offense.

On September 25, 2019, the Complainants signed parental consent for the Student's Section 504 evaluation and for the District to conduct a number of assessments, including vision and hearing

screenings, behavior rating scales, academic achievement, classroom observations and cognitive ability. On October 9, 2019, the District held the Student's initial eligibility meeting under Section 504, finding the Student eligible for services. The minutes for the Student's initial evaluation/eligibility meeting reflect that the Counselor would complete a functional behavioral assessment (FBA) and behavior intervention plan (BIP). Some of the Student's teachers completed the Functional Screening Tool on October 11, 2019. The Complainant produced a document, entitled, "Behavior Intervention Plan (BIP)," dated October 18, 2019, identifying the Student and indicating that an FBA was completed prior to developing the BIP. The minutes from a Section 504 meeting held for the Student on October 29, 2019, reflect that the Counselor would seek more input from the District on conducting an FBA. On January 9, 2020, in response to a notice of discrimination letter from the Complainants, the District indicated that the FBA was started by the Section 504 team at School 1 and would continue in his new setting, Glynn Middle School (School 3). The response states further that the District's behavior specialists will continue to work with the Student's new team and guide the process of conducting the FBA. This response from the District also indicates that the District administered the Kauffman Test of Educational Achievement (KTEA) to the Student on October 30, 2019, the Kauffman Brief Intelligence Test (KBIT) on November 21, 2019, and the Emotional and Behavior Problem Scale – Second Edition (EBPS-2) on December 18, 2019.

In January 2020, for the second semester of the 2019-2020 school year, the Student enrolled at School 3, to complete his eighth grade year. On January 29, 2020, the District held a Section 504 meeting to review the Student's Section 504 plan. The District reviewed the results for the Student's KTEA, KBIT, EBPS and private psychoeducational evaluation. The minutes for this meeting reflect that the Complainants did not wish to pursue a referral for special education.

### **Conclusion**

Prior to OCR's completion of the investigation, the District expressed an interest in resolving the allegations and issues under Section 302 of the CPM and OCR determined that resolution with an agreement during the course of the investigation was appropriate. Accordingly, to remedy the allegations raised by OCR's complaint, the District agreed to implement the provisions of the enclosed Agreement, which when fully implemented, will resolve the issues in this complaint. Pursuant to the terms of the Agreement, the District will conduct an FBA for the Student, and convene a meeting to discuss the results of the FBA, develop a BIP and determine whether the Student requires compensatory and/or remedial services.

The Agreement is aligned with the complaint allegations and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the 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.

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 Claudia Campo, the OCR attorney assigned to this complaint, at 404-974-9378, or me, at 404-974-9376.

Sincerely,

/s/

Arthur Manigault  
Compliance Team Leader

Enclosure

cc: Andy Lakin, Esq. (via email only to [judgelakin6@gmail.com](mailto:judgelakin6@gmail.com))