



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

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REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

July 23, 2020

Via Electronic Mail

Dr. Chris Marczak
Superintendent of Maury County School District
cmarczak@mauryk12.org

**Re: Maury County School District
OCR Complaint No. 04-20-1250**

Dear Dr. Marczak:

The Department of Education (Department), Office for Civil Rights (OCR) has resolved the above complaint received on November 26, 2019, against Maury County School District (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her son (Student) on the basis of disability when staff at Spring Hill Middle School (School) failed to timely evaluate the Student for education services and failed to conduct a manifestation proceeding prior to the Student's assignment to an alternative school without consideration of his disability in October 2019.

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 prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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. As a recipient of Federal financial assistance and public entity, the District is subject to these laws.

Based on the above, OCR investigated the following legal issue: whether the District discriminated against the Student on the basis of disability when it failed to timely evaluate the Student for education services and failed to conduct a manifestation proceeding prior to the Student's assignment to an alternative school, 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.

During the investigation, OCR reviewed documents provided by the District and Complainant, including the Student's transcript and discipline records, medical records related to the Student's diagnosis, investigative documents, the District's Section 504 Policies and Procedures, a hearing transcript, and email correspondence between the Complainant and the District. However, prior to completing the investigation, the District requested to voluntarily resolve the complaint pursuant to OCR's case process manual (CPM), section 302. Set forth below is a summary of OCR's investigation thus far.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.35(a) requires that a recipient conduct an evaluation of persons who need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent change in placement.

The Section 504 regulation at 34 C.F.R. § 104.35(c) states that in interpreting evaluation data and in making placement decisions, a recipient shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

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.

Summary of Evidence Gathered Thus Far

The Student started attending the School on August 1, 2019, and the School received his educational records from his prior school on August 25, 2019. Even though the Complainant advised the School at the time of the enrollment that the Student had a Section 504 Plan at his prior school, the Student's records did not include a Section 504 Plan or an Individual Education Plan. The School contacted special education staff at the Student's former school to determine if the Student indeed had a Section 504 Plan and was advised the Student did not have a Section 504 Plan, IEP or Behavior Plan. On September 19, 2019, the School assembled a meeting with the Complainant to determine why the Complainant believed the Student had or needed a 504 Plan, and the Complainant advised them that she did not pursue a 504 Plan at the prior school, but desired to have one at this new school because of concerns related to the Student's behavior. In response, the School scheduled a student support team for October 3, 2019 to review teacher observation forms and other testing data to determine if the Student was eligible to receive services pursuant to Section 504.

On September 26, 2019, the Student received a discipline referral for threat, harassment, and intimidation for telling students that he was "making a death list and writing their names in his book". The School received statements from the Student and other students, who witnessed the incident, and even though the Student denied malicious intent when making the statement, he was remanded to the District's Alternative School on the same day. The School also contacted the Youthful Offender Office on September 26, 2019, and the Student was charged with "Commission of Act of Terrorism" and sent to a juvenile detention center. On September 30, 2019, the Complainant appealed the decision, and presented a Physician's letter dated September 30, 2019, diagnosing the Student with ADHD, which could cause impulsive behavior and speech. In her

appeal, the Complainant also stated that the School failed to consider the Student's disability before placing him in an alternative school.

On October 17, 2019, a hearing on the Complainant's appeal was conducted. At the conclusion of the hearing, the District denied the Complainant's appeal, and the Student remained at the Alternative School until March 2020, when the District sent students home for the remainder of the school year due to Covid-19. The District also advised OCR that their Section 504 Coordinator left on September 5, 2019, and a new person was not hired until November 4, 2019, which subsequently caused a delay in the evaluations in the District.

Resolution and Conclusion

As indicated above, prior to OCR's completion of the investigation the District expressed an interest in resolving the complaint pursuant to Section 302 of the CPM. OCR determined that it would be appropriate to resolve this complaint under Section 302 because OCR's investigation had identified issues that could be addressed through a Resolution Agreement (Agreement).

To address the complaint allegations regarding disability discrimination, the Agreement requires the District: 1) to remove any reference in the Student's file which indicates that he was removed from the School as a result of behavior-related problems in prior to being remanded to the Alternative School; 2) to conduct an evaluation to determine whether the Student requires related aids and services because of his disability; 3) to convene a meeting with a team of knowledgeable people to determine whether the Student is entitled to compensatory education during the 2019-2020 school year as a result in a delay in evaluation; and 4) to conduct training to staff at the School regarding Section 504's requirement to conduct a manifestation determination proceeding prior to any significant change in placement.

OCR received the enclosed signed Agreement on July 23, 2020 that, when fully implemented, will resolve the allegations in the complaint pursuant to CPM Section 302, as discussed above. 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.

Please be advised that the District may 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 occurs, the individual may file a retaliation complaint with OCR. Also, 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.

If you have any questions about this letter, please contact Sairalina Montesino, General Attorney at sairalina.montesino@ed.gov or at (404) 974-9448.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney

Enclosure