



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
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[date]

VIA U.S. MAIL AND EMAIL

Mr. Scott Devillier, Superintendent
Zachary Community School Board
3755 Church Street
Zachary, Louisiana 70791
scott.devillier@zacharyschools.org

RE: Zachary Community School Board
OCR Reference Number: 06-19-1467

Dear Superintendent Devillier:

This letter is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office against the Zachary Community School Board (District), in Zachary, Louisiana, which was received in our office on March 26, 2019. The complaint alleges discrimination on the basis of disability (ADHD). Specifically, the complaint alleges that the District discriminated the Student during the 2018-2019 school year by placing him in the CAT room, in school suspension, suspension (out of school suspension) and after school detention for not being able to stay on task or stay focus during instructional time.

Based on the complaint allegations, OCR opened the following legal issue for investigation:

- Whether the District discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services before taking any action with respect to a significant change in placement (i.e., placing him in the CAT room, in school suspension, suspension (out of school suspension) and after school detention for behavior related to his disability without conducting a manifestation determination hearing) and thereby denied the Student a free appropriate public education during the 2018-2019 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.35, and 28 C.F.R. § 35.130, respectively.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department or an agency that has delegated investigative authority to the Department are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities, including public elementary and secondary educational institutions.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The District is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction to process this complaint to resolution pursuant to Section 504 and Title II.

OCR began its investigation of this complaint by requesting written documentation from the District in response to the complaint allegations. The documentation provided by the District reveals that the Student may not have been reevaluated to identify appropriate individually tailored behavioral interventions pursuant to Section 504 during the 2018-2019 school year. OCR determined that the Student is a qualified individual with a disability of Attention Deficit Hyper-Activity Disorder (ADHD). A review of a Section 504 Individual Accommodation Plan (IAP), dated November 8, 2018, shows that the IAP is needed in all subject areas. The IAP also stipulates that the Student is to receive assigned preferential seating and that all instructors are to check for understanding and have the student restate directions for understanding. There is no disagreement between the recipient and the complainant regarding the Student status as student with a disability. OCR's review of discipline records provided by the District shows that the Student received multiple classroom infractions during the 2018-2019 school year for infractions such as multiple missed homework assignments, not following directions, disrespecting time, not following directions, sleeping in class, poor hallway behavior. OCR's analysis of a 6-month period shows that the Student received 57 classroom infractions, 5 days of after school detention and 4 days of in school suspension. The complainant alleged that the Student is not a problem child and that he only needs redirecting from the teachers. The complainant asserts that the Student has been placed in in-school-suspension, suspension and after school suspension for not being able to stay on task or stay focused and that the school officials are telling her that they can only redirect the Student so many times, then he has to be held accountable for his actions.

OCR's review of a Behavior Intervention Plan (BIP), dated November 8, 2018, stipulates that the Student is to receive the following consequences for non-compliance: redirection and warning; teacher will speak to student in the hallway, restating the rules, expectations, and consequences; parent contact; office discipline referral for major offenses; and, removal from PE if classwork is completed in a timely manner. There is no indication from the documentation submitted that the District ever provided the behavioral interventions. On May 17, 2019, 52 days after the complaint was filed with OCR, the District conducted a Manifestation Determination Review (MDR). The IEP team determined that the Student's conduct in question was caused by and had a direct and substantial relationship to the Student's disability. OCR has concerns that the District did not conduct an MDR in a timely manner. A review of the documentation provided by the District seems to support the complainant's contention that if the District had conducted an MDR sooner, the Student would not have been subjected to the disciplinary sanctions he received, nor would he have missed the educational time that he did as a result of the disciplinary sanctions imposed upon him. OCR also has concerns regarding District staff training as it relates to identifying behaviors related to student disability. As such, there are concerns relating to missed education time for the Student and training for relevant staff regarding when to conduct an MDR.

Prior to OCR investigating further and making determinations regarding the District's compliance with Section 504 and Title II, the District expressed interest in taking actions to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, a complaint may be resolved at any time when, prior to the point when OCR issues a final determination, the recipient

expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them. In light of the District's willingness to address this complaint's allegations without further investigation, OCR has determined that entering into a voluntary resolution agreement with the District is appropriate in this case. Accordingly, OCR approved the District's request to voluntarily resolve this complaint pursuant to Section 302 of the CPM.

The District submitted the enclosed Voluntary Resolution Agreement (Agreement), which was signed by the District on **July 26, 2019**. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's preliminary investigation and are consistent with applicable law and regulations. OCR has determined that the Agreement, upon full implementation by the District, satisfactorily resolves the allegations presented in this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

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.

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.

OCR would like to thank the District for its cooperation in promptly resolving this complaint. If you have any questions regarding this letter, please contact Edward Jackson, Senior Investigator, at (214) 661-9624, or at edward.jackson@ed.gov. You may also contact me, at (214) 661-96738, or at adriane.martin@ed.gov.

Sincerely,

Taylor D. August
Regional Director
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement