



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

September 25, 2014

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Dr. Heather Beck
Superintendent
Lake Oswego School District 7J
P.O. Box 70
Lake Oswego, Oregon 97034

Re: Lake Oswego School District 7J
OCR Reference No. 10101111

Dear Superintendent Beck:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the referenced complaint of disability discrimination against Lake Oswego School District 7J. The complaint alleged that the district discriminated against a student during the 2009-2010 school year.

The specific allegations that OCR investigated are that the district discriminated against the student on the basis of disability by:

1. denying the student's parents the opportunity to have a regular parent/teacher conference in September 2009 that the district provided to parents of nondisabled students;
2. failing to consider the student for the talented and gifted (TAG) program, and provide a TAG plan for the student during the 2009-2010 school year;
3. failing to provide homework for the student during periods when he was suspended in fall 2009;
4. requiring the student to have parental supervision in order to participate in a school field trip in September 2009;
5. denying the student a free appropriate public education (FAPE) when it excluded him from school for more than 10 school days for disciplinary reasons in October 2009 without conducting a manifestation determination;
6. expelling the student for an incident on October 29, 2009; and

7. retaliating against the student's parents because the parents disagreed with the district's placement recommendations and/or determinations when the district expelled the student.

OCR conducted its investigation under section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district is a recipient and a public entity and therefore is subject to OCR's jurisdiction under these statutes.

We have determined that the findings in the investigation support a conclusion that the district failed to comply with Section 504 and Title II with respect to allegations Nos. 4 and 7, above. The information is insufficient to conclude that the district failed to comply with Section 504 or Title II regarding the other allegations. Our findings and conclusions set forth below are based on a review and analysis of written information provided by the student's parent and the district, and interviews with the student's parent and relevant district staff.

Findings of Fact - Background

1. The student attended school in the district for kindergarten and first grade. The parents withdrew the student from the district in October 2007, at the beginning of second grade. The student re-enrolled in the district as a third grader on May 14, 2009, at a different elementary school (the school).
2. The district identified the student as having a disability during the 2006-2007 school year and he received special education services under the category "Other Health Impaired" (OHI) based on a sensory processing disorder.
3. Prior to the student's re-enrollment, the district held a meeting on April 8, 2009, to review the student's individualized education program (IEP). The student's IEP team agreed to a placement in a regular education classroom with social/behavioral specially designed services and supplementary aids/services, including visual and verbal cueing, designated calming space, preferential seating, adult support for transitions, and a predictable schedule.

Issue No. 1 - Parent-Teacher Conference

Findings of Fact

1. The school has a practice of holding parent-teacher conferences twice a year, once in the fall and once in the spring, at which each student's teacher meets individually with the students' parents.
2. The parents and the student's teacher scheduled a parent-teacher conference for Monday, September 28, 2009.

3. On September 24, 2009, the student was suspended from school for a behavioral incident. The suspension notice states that the student used profanity toward staff, refused to follow staff directions, threw objects (one of which struck a teacher), kicked staff members, and attempted to bite them when they were removing him from the class. The suspension was scheduled through September 28, 2009, pending a plan to address the student's safety and the safety of other students.
4. On September 25, 2009, the student's teacher sent an e-mail to the parent stating that he was postponing the September 28, 2009, parent-teacher conference, because he believed it was important to address the student's most recent issues and implement any changes to the student's plan prior to the parent-teacher conference. The parent objected and the teacher responded that he was forwarding the matter to the district's executive director of special services.
5. In an e-mail on September 29, 2009, the director notified the parent that an IEP meeting would be held on October 7, 2009, and that the student's teacher would present information about the student's progress at that meeting.
6. The student's IEP team, which included the student's parents and the classroom teacher, met on October 7, 2009, and determined the student's placement should be changed to a special education class with social/emotional support.
7. According to the teacher, he presented the same information to the student's parents during the IEP meeting on October 7, 2009, that he provided to other parents during parent-teacher conferences, such as sharing assessments and observations and articulating goals for the student.
8. The parent did not identify any information that she did not receive through the IEP conference that she would have received at the parent-teacher conference. The parent's position is that the parent-teacher conference is a different process than an IEP meeting, and does not provide the same level of interaction between the parents and the teacher. Additionally, the parent alleged that the IEP meeting in question was "highly charged" because it dealt with the student's future educational placement and, therefore, not appropriate for a parent-teacher conference.

Analysis and Conclusion - Issue No. 1

The issue OCR investigated was whether the district discriminated against the student, on the basis of disability, by denying the student's parents the same opportunity to have a parent/teacher conference as the district provided to parents of nondisabled students. The Section 504 regulation at 104.4(b)(1)(ii) states that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, afford a disabled person an

opportunity to participate in or benefit from the aid, benefit or service that is not equal to that provided to others.

OCR found that the student's teacher postponed the student's parent-teacher conference scheduled for September 28, 2009, after the student was suspended on September 25, pending a plan to address safety issues relating to the student's misconduct. The district notified the parent that the teacher would discuss the student's progress at an IEP meeting on October 7, 2009. The teacher's position is that he provided the same information to the student's parents at the student's IEP meeting that he provides to parents generally at a parent/teacher conference, and the evidence did not establish otherwise. Although the discussion between the teacher and the student's parents occurred during an IEP meeting, rather than a separate parent/teacher conference, OCR found that the district provided a legitimate, nondiscriminatory reason for doing so under these circumstances. Therefore, the evidence is insufficient to conclude that the district discriminated against the student, in violation of Section 504 or Title II, with regard to this issue.

Issue No. 2 - TAG Program

Findings of Fact

1. Students in the district can be identified and referred for TAG program consideration by a parent, teacher, or an administrator at any time of the year. Referred students are then screened and assessed using nationally normed standardized and classroom tests. The district accepts students who consistently perform at the 97th percentile or higher.
2. The student was identified as a TAG student in the first grade at the school he previously attended in the district, prior to the parent withdrawing the student from the district in October 2007.
3. The parent stated that she did not recall whether she formally requested TAG services when the student re-enrolled in the district but that she regularly brought up the student's need for TAG services at IEP meetings.
4. The parent's position is that the district was aware the student was previously identified as TAG, that previously identified students do not require a TAG evaluation upon re-enrolling in the district, and, therefore, the district should have developed a TAG plan and provided TAG services for the student during the 2009-2010 school year.
5. The student's April 8, 2009, IEP notes, in the section "The strengths of the student," that the student was identified as talented and gifted.

6. The district's executive director of special services stated that students do not lose their TAG status when they leave the district and later re-enroll. He stated that the student did not have a TAG plan during the 2009-2010 school year because the student's previous eligibility information had not been forwarded to his new school, and the student did not exhibit any TAG indicators in his classroom performance at the new school. The director also stated that TAG plans are generally developed during the first couple weeks in October, and the student missed several days of school during October due to his suspensions and his change in placement. The student did not return to school in the district after his expulsion on October 29, 2009. There was no evidence that the parent provided assessment information that would identify the student as eligible for TAG.
7. The school's TAG coordinator is responsible for coordinating TAG plans for students at the school. The TAG coordinator stated that she was not aware that the student was identified as TAG at the previous school because the student's TAG paperwork was not forwarded to her from that school due to personnel changes. The TAG coordinator also stated that she did not have any TAG information regarding the student while he attended the school.
8. The student's teacher stated that he did not refer the student for a TAG plan because the student was not performing at a TAG level in the classroom based on the limited amount of class work that the student completed.
9. The district provided information that it has 36 students in its TAG program that are also identified as eligible for special education services as students with disabilities.

Analysis and Conclusion - Issue No. 2

The issue OCR investigated was whether the district discriminated against the student, on the basis of disability, by failing to consider him for the TAG program and provide a TAG plan for him during the 2009-2010 school year.

The Section 504 regulation at 34 CFR 104.4(b)(1)(i) states that a recipient may not, on the basis of disability, deny a qualified disabled person the opportunity to participate in or benefit from an aid, benefit, or service that the recipient provides.

OCR found that the district identified the student as TAG in the fall of 2007 at a different district school, prior to the parent's withdrawal of the student from the district in October 2007. The student was not considered for TAG at this new school in the fall of 2009. The district's stated reasons for not considering the student for TAG were that the student's TAG paperwork was not forwarded to his new school, and, according to his teacher, the student was not performing at a TAG level in the classroom during the fall of 2009. The district's records indicate that students with disabilities are considered for and participate in its TAG program. Because the district

provided legitimate, nondiscriminatory reasons for not creating a TAG plan for the student, the evidence is insufficient for OCR to conclude that the district discriminated against the student on the basis of disability, in violation of Section 504 or Title II, regarding this issue.

Issue No. 3 - Homework During Suspension

Findings of Fact

1. The district has a written policy JFC which states, in part: “When disciplinary action involves suspension, teachers are encouraged to provide reasonable alternative methods of completing make-up work and students are expected to complete school work, including homework and make-up tests.”
2. The student was suspended on September 24, 2009. The parents received a letter providing notice of the suspension, with a copy of policy JFC attached.
3. The student’s school used a template for sending suspension letters to parents, and school staff stated that the template did not include notice to parents about procuring homework assignments.
4. The principal stated that his practice is to notify the teachers of a student’s suspension and asks them to provide homework assignments to the office. The principal sent an e-mail to the student’s teachers stating: “Please make sure that assignments and work sheets, including homework, are delivered to the front office each day while [the student] is suspended. These will be available for his parents to pick up daily.” The principal stated that he does not generally copy parents on this e-mail, and did not copy the student’s parent in this instance.
5. The school secretary stated that she puts homework assignments on a “pick-up table” and it is the responsibility of parents to pick up homework during a student’s suspension. She stated she followed the same procedure with the student as she does for other suspended students, including those who do not have a disability. She stated that the parent came to the office for another matter during the suspension period and picked up the student’s homework assignments that were in the office. According to the parent, when she was in the office during the student’s suspension, the secretary told her that there were items for her to pick up for the student.
6. The student’s teacher stated that he delivered the student’s homework to the office during the student’s suspension without notifying the parent directly. He stated that he follows the same procedure with any student that is suspended.

7. The district sent OCR a new letter template that the school uses to notify parents of suspensions, which now includes a notice for parents to pick up homework at the school's office.
8. On October 29, 2009, the student was suspended pending an expulsion hearing.
9. District staff stated that they do not follow the homework procedure for students going through the expulsion process because students are offered a home tutor during that time. The student's teacher stated that he did not provide homework to the office during this time period, but did provide the assigned tutor with textbooks, an explanation about what the class was working on, and an outline of requirements for a science project.
10. According to the student's parent, the district offered the student one hour of tutoring per day during the suspension that began on October 29, 2009.

Analysis and Conclusion - Issue No. 3

The issue OCR investigated is whether the district discriminated against the student, on the basis of disability, by failing to provide homework for the student during periods when he was suspended during fall 2009.

The Section 504 regulation at 104.4(b)(1)(ii) states that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, afford a disabled person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that provided to others.

The evidence established that, although the school notified the student's parents that students are expected to complete school work during a disciplinary suspension, the school did not notify the student's parents directly that the student's homework was available for pick-up in the office. The evidence did not establish, however, that the school provided different information to the student's parents than it provided to parents of other students who were suspended or that the district treated the student or his parents differently regarding the provision of school work during suspension. Regarding the suspension pending an expulsion hearing on October 29, 2009, the evidence established that the school did not provide homework assignments because it offered tutoring services during that time period. Because the evidence failed to establish that the district treated the student differently from other similarly situated nondisabled students regarding homework assignments during his suspensions, OCR has determined that the evidence is insufficient to support a conclusion that the district failed to comply with Section 504 or Title II regarding this issue.

Issue No. 4 - Field Trip

Findings of Fact

1. The student's class was scheduled to go on a field trip on October 30, 2009, to see a play in Portland, Oregon. Prior to the trip, the principal notified the student's parents that he wanted them to supervise the student on the trip to Portland because he had safety concerns about the student riding the bus. The parents notified the principal they were unavailable on that day and asked if a neighbor could attend in their place.
2. The principal wrote an e-mail to the parents on October 27, 2009, regarding the field trip, stating in part, "it is important that you be there, either driving him or with him on the bus, so that any potential problem can be nipped in the bud before it gets started. The bus will be quite noisy and the field trip morning will be very different from the usual school day. A surrogate won't have the same ability as [his parents] will to detect subtle changes, so that is not a good option for [the student.]"
3. On October 29, 2009, the student was suspended pending an expulsion hearing. While the district's usual practice is not to permit suspended students to go on field trips, the executive director of student services stated that he and the principal decided to make an exception for the student to attend the field trip, as long as the parent supervised the student.
4. The principal stated that he felt it was necessary for the parent to attend because the student had numerous behavioral incidents in class which included several incidents of hitting and kicking other students and staff. He also stated a concern that the student was recently returning from a suspension for violent behavior and he thought the bus ride posed a potential danger to the student and others. The principal stated that information about the student's sensory processing disorder indicated that he is sensitive to certain sounds and that loud sounds can trigger an out-of-control response. The principal stated that the bus ride to Portland with 45-55 students with a lack of structure would risk a violent outburst from the student. He stated that the parents had the best understanding of the student and the things that trigger outbursts, so he felt their presence was necessary to help prevent an incident. He stated that there would be other parent chaperones on the bus trip.
5. Because the parents were unable to attend the field trip due to a conflict in schedule, the student did not participate in the field trip.
6. The student's IEP did not address field trip supervision.

7. When asked to provide examples of other parents who were required to attend field trips in order for their child to participate in the trip, the district gave the example of a parent who was required to accompany an autistic student, who was a flight concern, on a field trip. The district did not identify any parents of nondisabled students who were required to attend a field trip in order for their student to participate.

Analysis and Conclusion - Issue No. 4

The issue OCR investigated was whether the district discriminated against the student, on the basis of disability, by requiring the student to have parental supervision in order for him to participate in a school field trip.

The Section 504 regulation at 34 104.4(a) states that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of the recipient's programs or activities.

OCR found that the principal notified the student's parent that the student would be allowed to participate in a school field trip on October 30, 2009, only if the student's parent accompanied on the field trip. This requirement was based, at least in part, on the student's behavior related to his sensory processing disorder. The district did not provide information that it had ever imposed a similar requirement on a nondisabled student. The student's IEP did not address the student's participation in field trips.

While the Section 504 regulations allow a district to treat a disabled student differently in order to provide FAPE, those types of decisions must be based on evaluative information, and made by a group of people knowledgeable about the child, the evaluation data, and placement options. In this case, the decision to require the parent to accompany the student on this field trip due to his disability-related behavior was made unilaterally by the principal.

Because the evidence established that the student was treated differently from other students regarding his participation in the field trip, that the reason for the different treatment was related to his disability, and that the decision to impose a different requirement for his participation in the field trip was not made in accordance with Section 504 procedures, OCR concludes that the district failed to comply with Section 504 and Title II with regard to this issue.

Issue No. 5 - Manifestation Determination

The parent alleged that the district denied the student FAPE when it excluded him from school for more than 10 school days for disciplinary reasons without conducting a manifestation determination in October 2009, following a suspension on September 24, 2009.

The district provided OCR with an order from a due process hearing conducted by the Oregon Department of Education dated April 12, 2010 (DP 09-121). The hearing addressed whether the district violated the Individuals with Disabilities Education Act (IDEA) and denied the student FAPE by changing the student's placement without conducting a manifestation determination following the student's suspension on September 24, 2009, which is the same issue filed with OCR.

The hearings officer determined that the district did not remove the student for disciplinary reasons for longer than 10 days, which would have triggered the obligation to conduct a manifestation determination. The hearings officer found that the evidence established that the student's placement changed as part of the regular IEP process. Although the student had an extended absence after the suspension resulting from a placement dispute and the district's concerns about safety in the regular education environment, the hearing officer held that the extended absence was not disciplinary and, therefore, does not require the district to conduct a manifestation determination.

OCR's complaint processing manual states that OCR will close a complaint allegation if the same complaint allegation has been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings and the resolution meets OCR regulatory standards, *i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards.

The IDEA requirement for a district to conduct a manifestation hearing after a disciplinary removal of more than 10 days is similar to the Section 504 requirement. Because the Oregon Department of Education's due process order meets OCR regulatory standards, OCR is closing this allegation without further action.

Issue No. 6 - Expulsion (disability discrimination)

Findings of Fact

1. On October 29, 2009, the student was suspended for "battery." The "Threats of Violence" policy states that students will be subject to discipline up to, and including, expulsion.

2. The principal's letter to the student's parents notifying them of the suspension stated that, according to the student, "he kicked another boy in the privates because the other boy wouldn't let [the student] take possession of a hula hoop during gym class." The letter cited the following district policies as the basis for the suspension: JFC Student Conduct; JG Student Discipline; JFCM Threats of Violence; and JHF Student Safety. The letter stated that the student was suspended for 2 days, pending a manifestation meeting that could result in a longer suspension.
3. The district held a manifestation determination meeting on November 2, 2009, which resulted in a determination that the student's behavior for which he was suspended was not a manifestation of his disability.
4. At the end of the manifestation determination meeting, the executive director of student services and the principal stated that they had decided to recommend that the student be expelled for the entire school year because of the incident. The executive director and the principal told OCR that their decision to recommend expulsion was based on the student's forcefully kicking another student in the groin, the inability of the two trained aides who were with the student to prevent the incident, and the student's threatening comments after the incident.
5. According to the executive director of student services and the principal, they initially planned to go forward with an expulsion hearing soon after the manifestation determination meeting. The hearing was delayed, however, due to a settlement proposal from the parent's attorney that would have, among other provisions, removed the expulsion recommendation.
6. On November 24, 2009, the district received information that the parent did not agree to the terms of the settlement agreement proposed after the November 2, 2009, meeting.
7. By letter dated November 24, 2009, the principal notified the parents that, given the outcome of the November 2, 2009, manifestation hearing, he was recommending expulsion through June 17, 2010, and that the expulsion hearing would be held on December 3, 2009.
8. The district held an expulsion hearing for the student on December 8, 2009. The hearing officer was the district's executive director of secondary programs.
9. The principal testified at the expulsion hearing that: (1) the student told the educational assistant, shortly after kicking the other student, "too bad for him I'm wearing my PE shoes which have tough soles," in a mocking tone; and (2) when meeting with the principal after the incident, the student was angry and said the other student should have known that "if you mess with and do stuff I don't like,

that makes me mad. Nobody learns at this school... that I will kick them or hurt them or swear at them, and that makes it harder for me.” At the expulsion hearing, the student’s explanation about the second comment was that he has behaviors because of his disability, and other students do not realize those behaviors may happen again, so they do not help to try and prevent it. The transcript further states that the student’s parent called the principal the day after the incident for the student to apologize, and the student told the principal, “I’m sort of sorry I hurt that kid.”

10. By letter dated December 15, 2009, the hearing officer concurred with the principal’s recommendation for expulsion and, due to the length of time between the incident and the expulsion hearing, imposed an expulsion term of October 30 through December 18, 2009 (32 school days).
11. The hearing officer based her decision on the student’s violation of school board policy JFC (Student Conduct) and JFCM (Threats of Violence). The hearing officer’s letter stated that the student kicked another student in the groin and made threatening statements.
12. The parent appealed to the school board and, on February 3, 2010, the board upheld the hearing officer’s decision.
13. During the 2009-2010 school year, prior to the student’s suspension on October 29, 2009, the student had received one other disciplinary exclusion from school, a 9-day suspension beginning on September 24, 2009. That suspension was for using profanity toward staff, refusing to follow directions, throwing objects (one of which struck a teacher), kicking staff members, and attempting to bite them.
14. The student had exhibited many instances of misconduct since the beginning of the 2009-2010 school year, including kicking two students in the crotch, punching five students, kicking a student, slapping a student, pulling a student’s hair, using profanity, throwing pens and rulers, and ripping a worksheet. The principal stated that he did not impose discipline on the student for these incidents because the student was new to the school and he wanted to give the student a chance to settle in.
15. The district provided to OCR a summary of its discipline of other elementary school students for similar behavior during the time period from the 2008-2009 school year through October 2010, which stated that the district suspended 42 students (disabled and nondisabled included) for behaviors such as hitting, kicking, biting, and spitting and that the suspensions ranged from 2 to 10 days.
16. The district provided to OCR records of disciplinary action for 23 elementary students suspended during the 2008-2009 and 2009-2010 school years.

The records show that eight students received a one day out-of-school suspension, and eight students received a one day or less in-school suspension, for behavior such as fighting, kicking, hitting other students or staff, or repeated theft. Students received a one-day suspension for the following behaviors: spitting, inappropriate comments, destroying property, and spreading feces; throwing sticks at a student, pushing a student, and throwing bark chips; threatening a student, grabbing his chest, telling the teacher who intervened, "I am not finished yet," and chasing the other student and hitting him in the back; and writing a note for another student stating "you will be killed." One of the 23 students received a 2-day suspension for his second fight.

17. The district also provided examples of students who were recommended for expulsion. One elementary student was recommended for expulsion for stating he was going to kill the bus driver with a gun, and acting disruptively on the school bus. The expulsion hearing was held 3 days after the incident, at the end of which the hearings officer overturned the expulsion, and the student ended up serving a 3-day suspension. Five fifth and sixth graders were recommended for expulsion for breaking into the school, vandalizing property, and stealing classroom items. The result of the expulsion hearing was not provided to OCR.

Analysis and Conclusion - Issue No. 6

The issue OCR investigated was whether the district discriminated against the student, on the basis of disability, by expelling the student for an incident on October 29, 2009. The Section 504 regulation at 34 CFR 104.4(a) states that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity the receives federal financial assistance. The Section 504 regulation at 104.4(b)(1)(ii) states that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, afford a disabled person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that provided to others.

On October 29, 2009, the student engaged in misconduct at school for which he was suspended pending a manifestation determination meeting, which was held on November 2, 2009. At that meeting, the determination was that the student's misconduct was not related to his disability. The district representatives informed the parents that they were going to recommend that the student be expelled from school for the misconduct.

Following the manifestation determination meeting, the parents presented a settlement proposal to the district, which would have eliminated the expulsion recommendation. Based on that proposal, the district did not hold the expulsion hearing. On November 24, 2009, the parents informed the district that they did not agree to the settlement terms. As a result, the district informed the parents that an expulsion hearing would be held on December 3, 2009. The hearing was held on December 8,

2009, and the decision approving the expulsion through December 18, 2009, was made on December 15, 2009.

The student had many other instances of misconduct that included kicking other students in the crotch, punching and slapping other students, pulling a student's hair, using profanity, throwing pens and rulers, and ripping a worksheet. The principal stated that he did not impose discipline on the student for these incidents because the student was new to the school and he wanted to give the student a chance to settle in. Prior to the October 29, 2009, incident, the student had been suspended once, on September 24, 2009.

The district provided OCR records of disciplinary suspensions and expulsions of other elementary school students. The examples of students expelled included students who broke into a school building, vandalized, and stole items, and a student who threatened to kill a bus driver. (In contrast, a student who threatened to kill another student was given a one-day suspension.) However, the disability status of these students is unknown.

Because the evidence did not establish that the district's treatment of the student regarding the expulsion for misconduct that occurred on October 9, 2009, was because of his disability, OCR has determined that the evidence is insufficient to conclude that the district discriminated against the student on the basis of disability with respect to this issue.

Issue No. 7 - Expulsion (retaliation)

Findings of Fact

1. OCR incorporates the findings from issue No. 6, above, that describe the student's expulsion.
2. After the IEP team changed the student's placement on October 7, 2009, away from the student's regular school to a self-contained alternative educational school, the parent filed a due process hearing request on October 7, 2009. The parent then invoked the IDEA's stay-put provision in order to return the student to his previous placement in the regular classroom. The district sought a restraining order for the stay-put procedure in court, but the court denied the order, and the student returned to his regular classroom in late October 2009.
3. The principal was aware of the parent's due process complaint and stay-put requirement when he recommended expelling the student for the October 29, 2009 incident.

Analysis and Conclusion - Issue No. 7

The issue OCR investigated was whether the district retaliated against the parents for the parents' disagreement with the district's placement recommendations and/or determinations when the district expelled the student.

The Section 504 regulation at 34 CFR 104.61 incorporates by reference the procedural provisions from Title VI of the Civil Rights Act of 1964, including 34 CFR 100.7 which states that no recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any Section 504 right, or because the individual has made, or participated in, a disability discrimination complaint.

The parent filed a due process complaint challenging the district's placement decision to remove the student from his school and place him in a self-contained alternative educational program. The parent then invoked the IDEA's stay-put provision which required the school district to keep him in his regular education placement. The district attempted to secure a court order to override the stay-put in order to prevent the student's return to the school, but the court refused the order and the student returned in late October 2009. A few days later, the student kicked another student in the groin and made comments about the incident, and was emergency suspended then recommended for expulsion for the remainder of the school year. While the expulsion hearing officer reduced the expulsion to 32 school days, the disciplinary action was significantly more severe than any other incident the district provided for kicking, hitting, or fighting types of behavior. Further, the principal did not impose discipline on the student for the student's similar earlier behavior except for one suspension, but then recommended a year expulsion shortly after the student returned under the IDEA stay put provision.

Because the severity of the discipline imposed on the student did not appear to be in proportion to other kicking, hitting, and fighting types of behavior, even with consideration of the student's comments afterward, and the principal recommended the expulsion only days after the district failed to obtain the restraining order for the stay put provision, OCR finds that the evidence is sufficient to establish that the district imposed a harsher discipline on the student because the parent filed the due process complaint and invoked the stay put provision.

Based on the foregoing, OCR concludes that the district failed to comply with the regulations implementing Section 504 and Title II with respect to allegations Nos. 4 and 7, above.

The district voluntarily agreed to resolve these compliance issues by submitting the enclosed Resolution Agreement (agreement). The agreement reflects information received by OCR that the school attended by the student during the time period of the complaint allegations, Bryant Elementary School, has since closed and the student no longer lives or attends school within the district's jurisdiction. OCR will monitor the district's implementation of the agreement.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the district's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR's investigation of the complaint. 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 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 complainant 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.

Thank you and your staff for your cooperation during the investigation of this complaint. If you have any questions regarding this letter, please contact Paul Goodwin, attorney, at (206) 607 1612, or by e-mail at paul.goodwin@ed.gov.

Sincerely,

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Sukien Luu
Supervisory Attorney

Enclosure: Settlement Agreement

cc: Rob Saxton, Deputy Superintendent of Public Instruction