



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

August 9, 2019

Dr. Stephen Hefner
Interim Superintendent
Lexington County School District Three
338 West Columbia Avenue
Batesburg-Leesville, SC 29006

Re: OCR Complaint No. 11-19-1198
Letter of Findings/Resolution Letter

Dear Dr. Hefner:

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 (the Department) received on February 11, 2019, against Lexington County School District Three (the District). The Complainant alleges that the District discriminated against the Student on the basis of disability (Attention Deficit Hyperactivity Disorder) and sex (male). Specifically, the complaint alleges that:

1. The District discriminated against the Student based on disability
 - a. On or around XXXXX, when it made a determination that the Student no longer has a disability under Section 504 because the Student takes medication to control the symptoms of his disability; and
 - b. On or around XXXXX, by failing to conduct a manifestation determination before making a significant change in the Student's placement.
2. The District discriminated against the Student based on sex
 - a. In XXXXX, when teachers took no action when he XXXXX, but took action in XXXXX, when a XXXXX.
 - b. In XXXXX when the Principal XXXXX but did not XXXXX of a female student who XXXXX school year.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R.

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

Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II, and Title IX.

During the investigation, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant and District faculty/staff.

Before OCR completed its investigation, the District expressed a willingness to resolve allegation #1b pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

OCR completed its investigation of allegations #1a, 2a, and 2b. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegations. OCR's findings and conclusions regarding allegations #1a, 2a, and 2b are discussed below, as well as a summary of the evidence obtained by OCR to date regarding allegation #1b.

Facts

The Student was in XXXXX and attended XXXXX (the School) from the beginning of the XXXXX school year until XXXXX. The Student has ADHD and had been found eligible as a student with a disability under Section 504 on XXXXX. The Student had a Section 504 Plan dated XXXXX that provided him with XXXXX. At a Section 504 meeting on XXXXX, the Section 504 team determined that XXXXX" he should be XXXXX.

On XXXXX, a female student reported to the School administration that XXXXX. After notifying the Complainant about the accusation and investigating it, the Principal informed XXXXX.

After an XXXXX, the Student was informed that, XXXXX.

Allegation 1a: The District discriminated against the student based on disability on or around XXXXX, when it made a determination that the Student no longer has a disability under Section 504 because the Student takes medication to control the symptoms of his disability.

Legal Standard

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 definition of disability under Section 504 and Title II is an individual who has a physical or mental impairment that substantially limits a major life activity. In the ADA Amendments Act, Congress explicitly determined that "substantially limits" would be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. The ADA Amendments Act describes mitigating measures as medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. ADA Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).

Analysis

The Complainant informed OCR that the Student takes medication for ADHD. She said that at the 504 meeting XXXXX, she told the team that the Student was switching because the medication he was taking is very expensive. She felt that as a result of the fact that the Student was taking ADHD medication, the team decided that the Student no longer needed services under Section 504.

OCR reviewed notes of the XXXXX 504 meeting. The notes do not reflect that the Complainant raised a concern about the Student's medication status or that the team considered the Student's medication status during the meeting. Rather, meeting minutes indicate XXXXX. It further notes that the Complainant agreed with this determination. OCR determined that the Section 504 Plan also included XXXXX. In OCR interviews, school staff present at the XXXXX 504 meeting said that XXXXX. Several school staff mentioned, however, XXXXX.

The Complainant was unable to provide further information or documentation, beyond her own statement, to support her contention that the District made a determination that the Student no longer has a disability under Section 504 because the Student takes medication to control the symptoms of his disability.¹ Thus, OCR finds insufficient evidence that the allegation occurred as alleged and will take no further action with regard to this allegation.

Allegation 1b: On or around XXXXX, the District failed to conduct a manifestation determination before making a significant change in the Student's placement.

¹ Please note that OCR's investigation of this allegation was limited to determining whether the District followed the procedures required by Section 504. OCR generally does not review or second-guess the result of individual evaluation, placement, and other educational decisions as long as the District follows the "process" requirements of Section 504 (concerning identification and location, evaluation, placement, and procedural safeguards). Substantive disagreements over a student's evaluation, services, placement, or educational program are more appropriately addressed through a due process proceeding. You may contact your school district for more information about the impartial hearing process under Section 504.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to any significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district must continue the reevaluation to determine the appropriateness of the student's current educational placement.

Analysis

After the XXXXX investigation of the allegations made by XXXXX, as described above, the Student was suspended from school XXXXX. After the XXXXX, OCR determined that the District did not conduct a manifestation determination when it XXXXX.

The District informed OCR that the XXXXX. As part of the program, the Student would XXXXX. This is a XXXXX, and students are eligible to receive course credits for completion of this work. The program includes both an XXXXX.

While the Student had been XXXXX from his Section 504 Plan in XXXXX based on his grades, test scores, and classroom behavior, as described above, the documentation reviewed by OCR to date, on balance, appears to indicate that the group of knowledgeable persons agreed that the Student remained a student with a disability; instead, they felt that the Student XXXXX. For example, OCR reviewed the Section 504 Plan and the meeting minutes of XXXXX meeting in which the group agreed that the Student XXXXX. None of the documentation indicates that the group believed that the Student no longer had a disability under Section 504. Moreover, the District informed OCR that XXXXX, XXXXX informed the Complainant that XXXXX. Additionally, XXXXX, who attended the XXXXX Section 504 meeting, informed OCR that the Student XXXXX. However, XXXXX, who also attended the XXXXX meeting, told OCR that she assumed the team decided that the Student XXXXX, but that the group never said this explicitly.

Given the aforementioned evidence, OCR has concerns that the alternative program, XXXXX, constituted a significant change in placement that, given his apparent status as a student with a disability, should have triggered a manifestation determination.

Allegation 2a: The District discriminated against the Student based on sex XXXXX, when teachers XXXXX, but took action XXXXX, when a female student reported XXXXX.

Allegation 2b: The District discriminated against the Student based on sex XXXXX when the XXXXX but did not recommend XXXXX

Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.31(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's education programs or activities on the basis of sex.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals of the opposite sex. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Analysis

Allegation 2a

The Complainant alleged that on two occasions, the Student XXXXX. The Student elaborated when he told the teachers about these incidents XXXXX. The Complainant contrasted the response of XXXXX.

With respect to the allegation by XXXXX told OCR that XXXXXX. Moreover, regarding the allegation by XXXXX told OCR that she was unaware of this alleged incident. Neither the Complainant nor the Student were able to provide, nor was OCR able to find, further evidence indicating that XXXXX. Thus, OCR was unable to find, by a preponderance of the evidence, that XXXXX treated the Student differently as a result of his sex.

XXXXX. Consistent with the Student's version of events, XXXXX. The Student declined.

With respect to XXXXX against the Student, however, there is conflicting evidence about how XXXXX responded. The evidence is clear that XXXXX. However, the evidence is less clear as to whether XXXXX. In interviews with OCR, the Complainant and the XXXXX both informed OCR XXXXX, which ultimately resulted in XXXXX. However, XXXXX reporting the incident to the Principal; instead, she stated that she XXXXX and suggested that XXXXX may have contacted the Principal. OCR spoke to the XXXXX. Given these inconsistencies, OCR will assume for purposes of this investigation that XXXXX had some involvement in the reporting of

this incident. As such, OCR will assume a prima facie case of sex discrimination, i.e. that the Student was treated less favorably when XXXXX.

However, even assuming the District treated the Student less favorably than a female student, contemporaneous documentation indicates that there was a legitimate, non-discriminatory reason for XXXXX to the Principal. XXXXX informed OCR that after hearing about the alleged incident from XXXXX later in the day. OCR reviewed a copy of this email exchange, which indicates that the impetus for XXXXX to the Principal was the email from XXXXX rather than the Student's sex. OCR determined that this constitutes a legitimate, non-discriminatory reason for reporting XXXXX.

OCR does not find this to be a pretext for sex discrimination. The email exchange between XXXXX is consistent with this explanation. XXXXX. In the email, XXXXX. In a reply email on XXXXX. Approximately three hours later, XXXXX. The email exchange indicates that XXXXX planned to meet with the administration about the incident only after speaking with XXXXX. Moreover, the Complainant, in her initial interview with OCR, said that she believes the Student XXXXX were treated differently in part because XXXXXX. This is further indication that XXXXX of the Student's conduct was motivated by the email contact with XXXXX, rather than by the Student's sex. Thus, OCR finds that a preponderance of the evidence indicates that XXXXX motivation was not based on sex, but rather on her contacts and communications with XXXXX. Accordingly, OCR will take no further action with respect to Allegation 2a.

Allegation 2b

As stated above, after an investigation of the conduct outlined above, XXXXX. The Complainant alleged that the Student was treated less favorably than a female student XXXXX.

OCR reviewed discipline data from the School XXXXX and found that there was a prima facie case of sex discrimination because the Student was treated less favorably than some female students that had engaged XXXXX.

OCR then evaluated the District's reason for treating the Student less favorably than similarly situated female students. Both the XXXXXX, to whom the Student was referred for discipline after the investigation, and XXXXX. XXXXX explained to OCR that, in addition to admitting XXXXX, when XXXXX. XXXXX and warranted additional discipline. XXXXX when she told him about the possible disciplinary consequences for his behavior and said that he told her XXXXX. OCR found that this reason was legitimate and nondiscriminatory.

OCR then examined whether the District's reason for the different treatment was a pretext for discrimination and found insufficient evidence that it was. First, OCR reviewed copies of eye-witness statements from XXXXX investigation of the allegations and found that these statements corroborate XXXXX. In addition, in an interview with OCR, the Complainant told OCR that she witnessed XXXXX, although the Complainant does not believe it was XXXXX.

Second, OCR reviewed the District's disciplinary policy and found that the discipline recommended by the School to XXXXX was consistent with that policy. The District has a

discipline policy with four levels of offenses. All levels of offenses XXXX. The Student's behavior toward XXXXX was coded for the purposes of discipline XXXXX under the District's policy. In lieu of XXXXX the Student's behavior could have been coded as XXXXX offense under the District's policy. Moreover, the Student's behavior toward the Principal was coded as XXXXX as well. OCR finds that a sanction of recommending XXXXX is consistent with the possible sanctions listed for XXXXX behavior.

Third, OCR further reviewed discipline referral information for students referred for discipline involving XXXXX and determined that School administrators applied the discipline policy in a consistent manner to students displaying similar types of conduct to that of the Student. The referral for the Student's conduct characterized it as XXXXX. Among other students who were recommended for XXXXX. The same female student XXXXX.² Of these students, the first two students received the lesser sanction of XXXXX. The latter two students were XXXXX.

Among the students who XXXXX.

Thus, OCR found that, consistent with the District's nondiscriminatory justification for recommending the Student XXXXX.

Finally, OCR notes that the XXXXX appeared to be guided by XXXXX in assigning sanctions, consistent with the District's statement. The XXXXX. In contrast, XXXXX.

Based on the foregoing, OCR found insufficient evidence that the District discriminated against the Student based on sex XXXXX but did not recommend XXXXX.

Conclusion

On August 9, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address allegation #1b. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to hold a manifestation determination meeting for the Student and develop and provide training to all staff and administrators at the School involved in developing Section 504 Plans and Individualized Education Programs. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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.

² The evidence provided indicates that this female student is likely the same student the Complainant cited to OCR as engaging in a similar XXXXX as the Student but not being XXXXX.

The Complainant has a right to appeal OCR's determination regarding allegations #1a, 2a, and 2b, within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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 regarding this letter, please contact XXXXX.

Sincerely,

David Hensel
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Kathy Mahoney, Esquire