



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

February 4, 2022

By email only to hippk@acsd3.org

Kathy Hipp
Superintendent
Anderson County School District 3
335 West Front Street, P.O. Box 118
Iva, SC 29655

Re: Case No. 11-21-1295
Anderson County School District 3

Dear Ms. Hipp:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Anderson County School District 3. The Complainant filed the complaint on behalf of a student who XXXXX, who OCR will refer to as the Student. The Complainant alleged that the District discriminated against the Student on the basis of disability by failing to evaluate him to determine his eligibility for special education and/or related aids and services following requests the Complainant made beginning in June 2021.

OCR enforces 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 prohibit discrimination on the basis of disability in programs and activities receiving 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 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. 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.

During its investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed an interest in resolving the complaint allegation pursuant to Section 302 of OCR's *Case Processing Manual*. OCR determined that it would be appropriate to resolve the allegation because OCR's investigation to date identified concerns that could be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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

Facts

The Student was enrolled in XXXXX in the District during the 2020-2021 school year. The Student participated in XXXXX. At the end of the school year, the District determined that the Student should not be promoted to the XXXXX grade.

On June 3, 2021, the XXXXX, the Student's classroom teacher, the Student's virtual teacher and the Complainant met to discuss the District's determination to retain the Student. The Complainant told OCR that she requested an Individualized Education Program (IEP) for the Student at this meeting. The XXXXX and the classroom teacher denied this and told OCR that the Complainant did not request an IEP. The XXXXX noted that the District agreed to allow the Student to attend summer school and that, if the Student's test scores improved at the end of the summer, the District could promote the Student to the XXXXX grade. However, at the end of the summer, the District communicated to the Complainant that it determined that the Student's test scores did not improve enough to allow the District to promote him to the XXXXX grade.

On August 4, 2021, the Complainant, Student's grandmother, Student, Deputy Superintendent, XXXXX, and XXXXX met. The Complainant told OCR that she again requested an IEP for the Student at this meeting. The Complainant asserted that one of the meeting attendees told her that the District would not provide the Student with an IEP because the District did not want to "label him for life." OCR interviewed the administrators who attended the meeting, and they each denied that they, or anyone else at the meeting, made a statement related to "labeling" the Student during the meeting or at any other time. The Deputy Superintendent, XXXXX, and XXXXX acknowledged that at the end of the meeting, the Student's grandmother said, "What about an IEP?" The Deputy Superintendent and XXXXX indicated to OCR that they did not understand this comment to be a request for an evaluation, but rather a suggestion that if the Student was to be given an IEP, he could be promoted to the XXXXX grade. The XXXXX stated, in contrast, that he assumed that the comment was a request for an IEP, and that the XXXXX responded by explaining the District's Multi-Tiered System of Support (MTSS) process.¹ After this meeting, the Complainant XXXXX.

The XXXXX informed OCR that she oversaw the MTSS process at the School; and that the Student had been escalated to tier two of the MTSS process after falling behind academically while participating in XXXXX. The XXXXX informed OCR that neither she nor anyone she spoke with at the District had concerns that the Student may have a disability. However, the XXXXX also told OCR that she interacted with the Student frequently and believed he had XXXXX or XXXXX. She explained that she spent a lot of time personally observing the Student in the classroom, and noticed that he had trouble focusing when he sat down. She also stated that she had direct interaction with him and found that he was not paying attention during class and needed to be reminded to keep working. The XXXXX stated that she shared her observations with the MTSS team but nothing happened, noting to OCR that "it's not that we have lots of documentation; it wasn't a reg flag or anything. [She] thought he was diagnosed and on medication but it wasn't a big issue of his." She also noted that, in her experience, students with XXXXX or XXXXX typically did not receive IEPs, though they might have a Section 504 Plan.

¹ MTSS is a systemic, continuous-improvement framework in which data-based problem solving and decision-making is practiced across all levels of the educational system to support students.

The Student’s classroom teacher, who instructed the Student in-person from XXXXX, stated that she did not believe or suspect that the Student might need special education or related services. The teacher stated that although the Student was struggling with reading and math, she believed that he was receiving adequate assistance through the MTSS process.

During the course of the investigation, OCR also reviewed the District’s Child Find Policy, which indicates that the District is required to “identify, locate, and evaluate all children with disabilities.” It explains that parents and other care providers can request a referral for a student to determine whether the student is eligible for special education or related services.

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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

The Section 504 regulation, 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 does not require school districts to evaluate all students with suspected or diagnosed medical conditions. In determining whether a district has an obligation to evaluate a student, OCR considers the indicia of disability that were available to the district, including but not limited to academic performance and medical and behavioral conditions.

Analysis

OCR has concerns that the District may have had an obligation to evaluate the Student to determine his eligibility for special education and/or related aids and services in light of certain information available to the District during school year 2020-2021. Namely, the District provided information to OCR indicating that the Student struggled academically during XXXXX grade and was retained in XXXXX grade; the XXXXX believed the Student had XXXXX or XXXXX and had trouble focusing when sitting and paying attention during class; the XXXXX relayed her concerns about the Student to MTSS; and the Student’s grandmother stated “[w]hat about an IEP?” during the August 2021 meeting. As stated above, the District did not evaluate the Student.

With respect to the XXXXXp’s statements that neither she nor MTSS had documentation of any disability and that she believed the Student may be on medication, OCR notes that Section 504 does not require documentation before commencing the evaluation process and that, with rare

exceptions, mitigating measures such as a prescribed medication may not be considered in assessing whether a student has a disability under Section 504.

OCR also has concerns with the District's Child Find Policy. The District's Child Find Policy appears to limit who can identify the student as a student with disabilities to a parent or a provider. However, Section 504 indicates that anyone, including staff, teachers and administrators, who has suspicion or information that a student has a disability can refer the Student to determine whether the student is eligible for special education or related services.

Conclusion

On February 4, 2022, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. 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 revise the District's Child Find Policy and to train staff on the requirements of Section 504.² 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. OCR would like to make you aware that individuals who file complaints with OCR 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 against the District 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, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Katie Dullum, the OCR attorney assigned to this complaint, at 202-453-6389 or Katie.Dullum@ed.gov.

² OCR also provided information to the Complainant regarding a school district's obligation to evaluate a student who needs or is believed to need special education or related services due to a disability. The Student is currently enrolled in a new district and the Complainant informed OCR that she does not intend to return the Student to the District.

Sincerely,

Zorayda Moreira-Smith
Acting Team Leader, Team IV
Office for Civil Rights
District of Columbia Office