



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

August 25, 2021

Via E-mail Only to Jim.dombrowski@stepstoneacademy.org

Mr. Jim Dombrowski
Superintendent
Stepstone Academy
3328 Carnegie Avenue
Cleveland, Ohio 44115

Re: OCR Docket No. 15-17-1390

Dear Mr. Dombrowski:

This letter is to notify you of the disposition of the above-referenced complaint filed on April 20, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Stepstone Academy (the Academy) alleging that the Academy discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that:

1. From XXXXXXXX XXXXXXXX XXX, XXXX, the Academy failed to implement provisions regarding the Student's behavior in XXX individualized education program (IEP) or behavior plan and instead required XXX XXXXXXXXXXXX XXXXXXXX XX XXXXXXXX XXXXXXXX XX XXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX.
2. During the XXXX-XXXX school year, the Academy suspended the Student for more than ten days without conducting a manifestation determination to assess whether the underlying conduct was the result of a disability.
3. In response to the XXXXXXXXXXXX advocacy on behalf of the Student during XXXXX XXX XXX, XXXX, the District retaliated against the Student by XXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XX XXXX XX, XXXX, XXX XX XXXXXXXXXXXX XXXX XXXXXXXXXXXX XX XXXXXXX, XXXX.

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 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 at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also protected from retaliation by these laws. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to these laws.

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

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Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- Whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).
- Whether the District failed to conduct an evaluation of a qualified student with a disability prior to significantly changing his placement, in violation of 34 C.F.R. § 104.35(a).
- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II or because he/she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Section 504 or Title II, in violation of Section 504’s implementing regulation at 34 C.F.R. § 104.61 and Title II’s implementing regulation at 28 C.F.R. § 35.134.

To conduct its investigation, OCR reviewed information provided by the Complainant and the Academy and interviewed the Complainant, XXX partner, the Complainant’s advocate. OCR also interviewed the Academy superintendent and the individual who served as assistant principal (assistant principal) during the events in question.

Under Section 302 of OCR’s *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. In this case, the Academy expressed an interest in resolving allegations 1 and 2 prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate.

With regard to allegation 3, after a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is insufficient to support a finding that the Academy violated the regulations prohibiting retaliation on the basis of disability as alleged. The bases for OCR’s determination are explained below.

Background

The Student attended the Academy during the XXXX-XXXX school year. XXX qualified for special education services because of disabilities including XXXXXXXXXXXXXXXXXXXX XXXXXXXX XXXXXXXXXXX XXXXXXX, XXXXXXXXXXX XXXXXXX XXXXXXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXXX, XXX XXXXXXX. The Student transferred from the Academy to another school XX XXX XXXXXXXXXXXX XX XXX XXXX-XXXX XXXXXXX XXXX. XX XX XX XXXXXXX XXX XXX XXX XXXX XXXXXXXXXXXX X XXX XXXXXXXXXXX XXXXXXX XXXXXXX XXX XXX XXXX XXX XXXXXXX.

Summary of OCR’s Investigation

In the fall of XXXX, after the Student was suspended on multiple occasions for a total of ten days, the Academy held a manifestation determination review (MDR) to determine whether the Student’s behavior was a manifestation of the Student’s disabilities. The IEP team determined the Student’s conduct was caused by or had a direct and substantial relationship to the child’s disability, but the MDR form concluded, contrary to the form’s instructions, that the behavior was not a manifestation of the Student’s disability.

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

X---paragraph redacted---X

Allegation 1 – Failure to Implement

Applicable Regulatory Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a FAPE to each qualified individual with a disability who is in the recipient’s jurisdiction, regardless of the nature or the severity of the person’s disability. An appropriate education for purposes of FAPE is defined as the provision of 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 nondisabled students are met, and that are developed in accordance with procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice. In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the district provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

Analysis and Conclusion

The Complainant alleged that the Academy did not provide the Student with the services set forth in BIP, but instead X---remainder of paragraph redacted---X.

With regard to the Complainant’s specific allegation that XXX XXXXXXXXXXXX XXX XXXXXXXXXXXX XX XXXXXXXX XXXXXXXX XXXX XXX XXXXXXXX, XXX XXXXXXXX XX XXX XXXXXXXX XXX XXXXXXXXXXXX XXXX XXX XXXXXXXX XXX XXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX XX X XXXXXXXXXXXX XX XXX XXXXXXXX XXXXXXXXXXXX XXXXXXX. However, with respect to Allegation 1, OCR determined that an agreement was appropriate as some of the evidence indicates a concern that the Student’s IEP and BIPs were not fully implemented during the relevant timeframe.

On August 20, 2021, the Academy signed the enclosed Resolution Agreement, which, when fully implemented, will address Allegation 1 of the complaint.

Allegation 2 – Change of Placement Without Reevaluation

Applicable Regulatory Standards

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action regarding the person's initial placement or any subsequent significant change in placement. School districts must reevaluate a student with disabilities periodically and before any significant change in placement. The Section 504 regulation at 34 C.F.R. § 104.35(c) further provides that in making placement decisions, the recipient shall draw upon information from a variety of sources, including aptitude and achievement tests and teacher recommendations. Additionally, a recipient must ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Under OCR policy, any suspension, exclusion, or expulsion that exceeds 10 days or any series of shorter suspensions or exclusions that in the aggregate totals more than 10 days and creates a pattern of exclusions constitutes a significant change of placement that would trigger the district's duty to reevaluate a student under 34 C.F.R. § 104.35(a). OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

The student's educational team should re-evaluate the student to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the misconduct was caused by the student's disability. If the team determines that the student's misconduct is a manifestation of the student's disabling condition, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary to provide the student with a free appropriate public education (FAPE). In some instances, the Academy may need to consider whether a student has additional or different disabilities than previously identified. If, on the other hand, the group determines that the conduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded. The group conducting evaluations, including the manifestation determination, must be knowledgeable about the student, the evaluation data and placement options. The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the eleventh day of the suspension or removal.

Analysis

As noted above, prior to the completion of OCR's investigation, the Academy asked to resolve this allegation pursuant to Section 302 of OCR's CPM. The information obtained to date

indicates concern that although the Academy held a manifestation determination review in XXXXXXXX XXXX, the Academy did not complete the re-evaluation of the Student.

On August 20, 2021, the Academy signed the enclosed Resolution Agreement, which, when fully implemented, will address Allegation 2 of the complaint.

Allegation 3 – Retaliation

Applicable Regulatory Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.61, incorporating by reference the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by Section 504 because the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504. The Title II implementing regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

OCR has established the following general framework for analyzing retaliation claims. To establish a *prima facie* case of retaliation, i.e., one capable of creating an inference that retaliation occurred, OCR examines whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. Upon rebuttal, if the recipient articulates a facially legitimate, non-retaliatory reason for the materially adverse action. OCR then evaluates if the proffered reasons advanced by the recipient are a pretext to cover a retaliatory motive.

While OCR would need to address all of the above elements in order to find a violation, OCR need not address all of these elements to establish that there has been no violation where the evidence otherwise demonstrates that retaliation cannot be established.

Analysis and Conclusion

The weight of the information does not support a finding of retaliation as alleged. The preponderance of the evidence does not support the Complainant's allegation that the Academy X---remainder of paragraph redacted---X.

X---paragraph redacted---X

For these reasons, OCR determined the evidence is insufficient to support a finding that the Academy retaliated against the Student.

On August 20, 2021, the Academy signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Academy'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 has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why 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 of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the Academy 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, OCR 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the Academy's first monitoring report by **August 31, 2021**. For questions about implementation of the Agreement, please contact Ms. Julie Gran. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2684 or by e-mail at Julianne.gran@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure