



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

July 18, 2016

Dr. Steven L. Walts
Superintendent
Prince William County Public Schools
Edward L. Kelly Leadership Center
14715 Bristow Road
Manassas, VA 20112

Re: OCR Complaint No. 11-16-1016
Letter of Findings

Dear Dr. Walts:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on October 14, 2015, against Prince William County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the Division:

1. Failed to draw upon and carefully consider information from a variety of sources in interpreting evaluation data and making placement decisions and failed to ensure that the placement decision was made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, when School staff predetermined that the Student's behavior was not a manifestation of his disability before his XXXX, Manifestation Determination Review; and
2. Failed to provide the Student with a free and appropriate public education by
 - a. failing to implement his IEP after he was placed on Computer-Based Instruction (CBI)/home-based services; and
 - b. basing the Student's special education services on what was available during his disciplinary placement at CBI/home-based instruction rather than on the Student's individual needs.

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. Because the Division

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by fostering educational excellence and ensuring equal access.*

receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division and interviewed the Complainant and Division faculty and staff. After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding allegation 2(a), which the Division agreed to resolve through the enclosed resolution agreement. However, OCR did not find sufficient evidence to support allegations 1 and 2(b).

OCR's findings and conclusions are discussed below.

Background

The Student is a ninth grader enrolled at the School. On XXXX, he was charged with a crime in the community. The Division initiated reassignments proceedings through the Office of Student Management and Alternative Programs (OSMAP). The Division conducted a Manifestation Determination Review on XXXX, at which the team concluded that the Student's behavior was not a manifestation of his disability.

On XXXX, the IEP team decided to provide services to the Student after school at the School three days a week until the OSMAP decision. Services started that day.

On XXXX, OSMAP held a hearing and on XXXX, OSMAP recommended that the Student be placed at New Directions Alternative Education Center (the Center). The October 5 letter specified that the IEP team would make the final placement decision, and OSMAP would determine the site location for implementation of the Student's placement.

The IEP team met on XXXX. The placement page of the IEP has "public day school" selected as the Student's placement. However the placement rationale states that the Student needs support and intervention provided in a non-traditional school setting, and that the Student will receive all of his services in this non-traditional setting for the duration of his disciplinary removal from school. The Prior Written Notice (PWN) adds that the placement is Computer Based Instruction (CBI) and home based instruction. The parent signed the IEP on XXXX.

The services in the Student's XXXX IEP are "special education" in the general class 180 minutes per week and "special education" in the general class 60 minutes per month. The Student has goals to address social skills, work habits, and interfering behavior.

The Student's previous IEP, dated June 17, 2015, provided for 225 minutes of "specific learning disability" services a week. The Student had goals to address social skills, work habits, and interfering behavior.

Legal Standards

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 Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a 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 may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

Analysis

1. Predetermination of Manifestation Determination

The Complainant alleged that School staff predetermined that the Student's behavior was a manifestation of his disability before his XXXX MDR. She alleged specifically that she received an email from the Student's case manager before the MDR in which the case manager assumed that the behavior was not a manifestation of the disability; that the assistant principal told her before the MDR that he did not think the behavior was a manifestation; and that at the MDR, one of the teachers, who she could not identify, was crying.

After the Division initiated OSMAP proceedings and suspended the Student in advance of his OSMAP hearing and MDR, the Student's case manager emailed his teachers on XXXX, requesting work for him because he would not be coming to class "for the next week or so." On XXXX, the case manager emailed the Complainant regarding the work assignments and added that "[a]fter the MDR tomorrow we will have to do a quick IEP for services until the OSMAP hearing." An IEP meeting would only be necessary if the team at the MDR meeting determined that the Student's behavior was not a manifestation of his disability; if the team decided that the Student's behavior was a manifestation of his disability, then the Student would not be disciplined further and he would return to the placement in his current IEP.

The Complainant wrote the case manager back, asking what the point of the MDR was if the team had already predetermined the decision. The case manager wrote back, stating that:

I apologize if it sounded like I had pre judged. Please forgive me, I am fairly new to this process and am still trying to figure out how all the processes for discipline works. I would in no way do that to a kid, I promise!

OCR interviewed the case manager to clarify why she sent the Complainant the initial email. She explained to OCR that she had misspoken in her initial email, and should have told the Complainant that they would only have an IEP meeting if it was determined that the Student's behavior was not a manifestation of his disability at the MDR. She further explained that that is why she sent the second email to the Complainant. She told OCR that at that point, she had only been chair of the Special Education department for a year or so and had not often set up MDR meetings. Because of her inexperience at the time, she failed to clarify the process well enough in her initial email to the Complainant.

OCR interviewed the assistant principal to see if he recalled speaking with the Complainant before the MDR. He told OCR that he did not speak with the Complainant in advance of the MDR about the MDR or any other part of the disciplinary process.

The Student's IEP team met on XXXX, in order to determine whether the Student's behavior was a manifestation of his disability. The meeting was attended by the assistant principal, the Complainant, a general education teacher, a special education teacher, and a school social worker. The form completed at the meeting provides that the team reviewed incident reports, eligibility records, the Student's current IEP, teacher observations, information supplied by the parent, and information supplied by other committee members. The team concluded that the conduct in question was not caused by and did not have a direct substantial relationship to the Student's disability and that the conduct in question was not the direct result of a failure to implement the IEP. The team did not record any basis or reasoning for this conclusion. The meeting notes provide that the Complainant objected to this conclusion. She asserted that the Student's conduct was directly related to his XXXX because he made a split decision to run from the incident in question after an older friend told him to.

The PWN for the MDR states that in making its determination that the Student's behavior was not a manifestation of his disability, the team reviewed incident reports, eligibility information, the current IEP, teacher observations, information supplied by the parent, and information supplied by the TDT counselor.

OCR interviewed every available member of the team present at the MDR.¹ Each member asserted that the team considered the Student's records and history in arriving at the team's decision.

Each member of the team also told OCR that they did not discuss the MDR with other school staff before the MDR was held beyond determining the logistics for the meeting. No school staff reported crying at the MDR.

¹ The School social worker was present at the MDR, but was on leave of indeterminate length at the time of the OCR interviews.

The Student was recommended for a significant change in placement for disciplinary reasons, so the School had an obligation to determine at the MDR whether the student's disability caused the misconduct. 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.

Here, there is some evidence that the case manager assumed before the MDR that the Student's behavior was not a manifestation of his disability. The September 14, 2015, email from the case manager to the Complainant states that an IEP meeting would be held after the MDR. Although the case manager told OCR that she failed to include clarifying information in her email to explain that the IEP meeting would only be held if the Student's behavior was found to not be a manifestation of his disability at the MDR, a reasonable reading of the case manager's contemporaneous email is that she assumed the Student's behavior would not be found to be a manifestation of his disability.

However, a review of the written documentation from the MDR and interviews with school staff in attendance provide evidence that the team reviewed the Student's records, including his IEP and incident reports, and considered input from the Complainant. This evidence supports the conclusion that the determination was made by a group of persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options. OCR found no evidence that the School staff communicated before the MDR regarding the Student, and there is no evidence that other members of the IEP team present at the MDR made assumptions about the outcome.

To determine whether the IEP team predetermined its manifestation decision, OCR also examined whether other similarly-situated students had different outcomes at their MDRs. OCR asked the Division to provide copies of all MDRs for other students who received special education services for an Other Health Impairment at the School who engaged in behavior during the 2015-2016 school year for which reassignment was a potential consequence. The Division reports that there were no such MDRs for that period. OCR therefore does not find sufficient evidence to conclude that the Student was treated differently from other similarly-situated students in terms of predetermination of an MDR decision.

OCR finds that it has insufficient evidence to conclude that school staff predetermined that the Student's behavior was a manifestation of his disability before his September 15, 2015 MDR. Even though there is some evidence that a member of the IEP team assumed that the MDR would result in the team concluding that the Student's behavior was not a manifestation of his disability, this does not prevent her or other members of the IEP team from making its decision at the MDR in accordance with the guidelines specified in Section 504.

2. Failure to Provide FAPE

OCR will address each of the FAPE allegations below.

a. Failure to Implement IEP

The Complainant alleged that the School failed to implement the Student’s IEP after he was placed on computer-based instruction/home-based services.

The Student was suspended beginning XXXX. The School held a placement meeting on XXXX, and began providing the Student with interim services after school at the School later that day, which was the 10th day after the Student’s suspension began.

This IEP remained in effect until the team proposed computer-based instruction/home-based services at an XXXX IEP meeting and the Complainant signed the IEP on XXXX. The Division stated in its narrative response that the home-based services did not begin until XXXX, because it was difficult to find a certified teacher, as other teachers had already accepted home-based and homebound assignments. The Student’s home-based teacher also stated in an interview that she did not begin providing services until the end of November.

Because the interim services at the School began on the 10th day of removal, OCR concludes that the interim services comply with Section 504. However, based on the School’s admitted failure to provide home-based services from XXXX, OCR finds that the Division violated Section 504 for that time period.

Before the conclusion of OCR’s investigation, on XXXX, the Student’s IEP team met, determined that the Student “is owed 6 hours of compensatory services” and “proposed that these services be provided . . . at a mutually agreed upon time and location.” OCR appreciates the Division’s proactivity in resolving the identified issues.

The Complainant also raised concerns with the amount of hours prescribed in the XXXX IEP. Please note that OCR’s investigation of these allegations was limited to determining whether the Division 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 Division 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, which includes the determination of the number of hours needed to provide a free appropriate public education, are more appropriately addressed through a due process proceeding. You may find information about Virginia’s IDEA due process procedures at http://www.doe.virginia.gov/special_ed/resolving_disputes/index.shtml.

b. Basing Services on Availability Rather Than Need

The Complainant alleged that in determining the student’s placement at the XXXX meeting, the IEP team based his placement on what was available during his disciplinary placement rather than on his individual needs.

Because the IEP team found that the Student’s behavior for which he was disciplined was not a manifestation of his disability, the Division may discipline the student in the same manner as it disciplines students without disabilities. The Division’s decision to exclude the Student from the public school setting was not a violation of Section 504.

The XXXX, meeting was attended by the Complainant, the principal, the case manager, a general education teacher, the Student, and a special education supervisor. The placement page of the IEP has “public day school” selected as the Student’s placement. However the placement rationale states that the Student needs support and intervention provided in a non-traditional school setting, and that the Student will receive all of his services in this non-traditional setting for the duration of his disciplinary removal from school.

The PWN states that OSMAP determined that the Student could not attend a traditional school and would be assigned to New Directions Alternative Education Center (NDAEC). The IEP team proposed CBI and home-based instruction. The PWN further stated that the Complainant did not want the Student to attend NDAEC, and instead wanted him to attend the School.

The special factors page of the IEP lists several factors that the team may check off to indicate that each factor was considered during the meeting. The team checked off every box at the XXXX meeting, including:

- The strengths of the Student;
- The concerns of the Complainant;
- The Student’s most recent evaluation;
- The academic, developmental, and functional needs of the Student;
- The communication needs of the Student;
- Assistive technology devices and services required by the Student; and
- All appropriate behavioral interventions and supports.

OCR interviewed all attendees of the XXXX IEP meeting. Each asserted that the team reviewed the Student’s records and considered his needs in determining the appropriate placement for him. The Principal explained that the team discussed placements at NDAEC, the School, and the CBI/home-based services, and decided upon CBI/home-based because the Complainant did not agree with the OSMAP-recommended placement at NDAEC, but the OSMAP decision precluded a placement in the full public school setting at the School. The principal further explained that he believed the placement was most appropriate for the Student because he was academically bright and would be able to receive his special education services through CBI and additional support with a designated teacher through the home-based services.

Based on our review of interviews with the Complainant and school staff and a review of the written documentation, OCR finds insufficient evidence to conclude that the IEP team did not determine the Student’s placement based on his individual needs. The Division drew upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; ensured that information obtained from all such sources was documented and carefully considered; ensured that the placement decision was made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensured that the Student was educated with peers without disabilities to the maximum extent appropriate to the needs of the Student. Although the options available to the team were limited by the OSMAP decision, this limitation does not violate Section 504. There is

insufficient evidence to conclude that the team did not appropriately consider the options on the table and place the Student based on his individual needs.

Please note that OCR’s investigation of these allegations was limited to determining whether the Division 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 Division 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 find information about Virginia’s IDEA due process procedures at http://www.doe.virginia.gov/special_ed/resolving_disputes/index.shtml.

Conclusion

OCR finds that it has insufficient evidence to conclude that school staff predetermined that the Student’s behavior was a manifestation of his disability before his XXXX, MDR. OCR finds sufficient evidence that the Division violated Section 504 by failing to implement the Student’s IEP from approximately XXXX. OCR finds insufficient evidence to conclude that the IEP team based the Student’s post-October 26 disciplinary placement on what was available rather than on his individual needs.

To resolve the compliance concern identified above, the Division held an IEP meeting on XXXX, and entered into the attached Resolution Agreement, signed on July 18, 2016. Once the Resolution Agreement is fully implemented, the Division will be in compliance with Section 504 and Title II with respect to the issues addressed in this letter. OCR will monitor the Division’s implementation of the Resolution Agreement until the Division is in compliance with the statutes and regulations at issue in the case.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the Division’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.

Please be advised that the Division 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, or participates in an OCR proceeding. 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 Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Nicole Dooley, the OCR attorney assigned to this complaint, at (202) 453-5675 or nicole.dooley@ed.gov.

Sincerely,

/S/

Michael Hing
Supervisory Attorney
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Patrick Andriano and LaRana Owens, Division Counsel