



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

November 3, 2015

Dr. Suzanne Bailey, Superintendent
Lonoke School District
401 W. Holly Street
Lonoke, AR 72086

RE: OCR Case No. 06151463
Lonoke School District

Dear Dr. Bailey:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint that was filed against the Lonoke School District (District), in Lonoke, Arkansas. In this complaint, the complainant alleged that the District discriminated against her son (the Student) on the basis of disability. Specifically, the complainant alleged:

1. During the 2014-2015 school year, the District failed to evaluate the Student for eligibility under Section 504, despite being aware that he has a disability that was affecting him in school and despite the complainant's request that the Student be provided a Section 504 Plan, and as a result the Student was inappropriately disciplined for actions XXX.
2. During the 2014-2015 school year, the District failed to provide the complainant information about her right to challenge its decision to not evaluate the Student for eligibility under Section 504.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination against individuals with disabilities. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. § 12131, and its implementing regulations at 28 C.F.R. Part 35, which prohibit public entities from discriminating against individuals with disabilities. The District is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to resolve this complaint under Section 504 and Title II.

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

In a letter dated July 10, 2015, OCR notified the District and the complainant that it was opening for investigation the following issues:

Whether, during the 2014-2015 school year, the District denied the Student a free appropriate public education (FAPE) by:

- a. failing to evaluate him for regular or special education and related aids and services necessary to meet his individual educational needs, in violation of Section 504 at 34 C.F.R. §§ 104.33 and 104.35, and Title II at 28 C.F.R. § 35.130; and
- b. failing to provide the complainant procedural safeguards after she requested evaluation of the Student, in violation of Section 504 at 34 C.F.R. § 104.36, and Title II at 28 C.F.R. § 35.130.

During the course of this investigation, OCR reviewed pertinent District policies and procedures for initial and subsequent evaluation of students with disabilities, documents regarding the Student's severe food allergies and chronic asthma, and documents from the Student's educational record, including grades, attendance, and discipline.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). Based on OCR's careful review and analysis of the information obtained, OCR has determined that the District is in non-compliance with Section 504 and Title II with regard to Issue 1. The basis for the determination is set forth below.

Legal Standards

The regulation implementing Section 504 at 34.C.F.R. § 104.33 requires a recipient that operates a public elementary and secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is within their jurisdiction. Section 504's implementing regulation at 34 C.F.R. § 104.33(b)(1) provides that the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with a disability as adequately as the needs of non-disabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35 and 104.36. OCR interprets the Title II regulation at C.F.R. § 35.130(b), to require school districts to provide a FAPE to the same extent as the requirement under the Section 504 regulation.

The regulation at 34 C.F.R. § 104.35 requires recipients to conduct an evaluation, in accordance with the evaluation and placement procedures of 104.35(b), of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to initial placement of the person in regular or special education and any subsequent significant change in placement. The recipient is required to establish standards and procedures for the evaluation and placement, which ensure that: (1) Tests and

other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Further, the regulation at 34 C.F.R. § 104.35 (c) provides that, in interpreting evaluation data and in making placement decisions, the recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

The regulation at 34 C.F.R. 104.36 provides that the recipient is required to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure

Factual Analysis

In response to OCR's initial data request, the District provided OCR the District's policies and procedures for initial and subsequent evaluation of students with disabilities, documents regarding the Student's XXX, and documents from the Student's educational record, including grades, attendance, and discipline. The Student's discipline records indicated that the Student had several write-ups and referrals during the 2014-2015 school year, including XXX days of In-School Suspension (ISS). The District provided OCR a summary of conferences that were held between school officials and the complainant during the 2014-2015 school year. Included in the summary, the District acknowledged that, in XXX and again in XXX, the complainant informed school officials that the Student's behavior was attributed to XXX.

The District reported to OCR that school personnel were unaware of the complainant requesting that her son be evaluated under Section 504. However, the complainant reported to OCR that during the XXX *to end of paragraph*.

Issue 1

Based on information regarding the Student's XXX, OCR found that the District had sufficient information to trigger the District's obligation to evaluate the Student to determine whether he was eligible to receive services under Section 504, and that this obligation arose during the fall semester of the 2014-2015 school year.

Issue 2

In the District's data response, it denied that the complainant requested that the Student be evaluated under Section 504, but the District did not state whether the complainant inquired about why the Student did not have "504 Plan." If the complainant did make this inquiry and the District did not evaluate the Student, the District would have had the obligation to provide the complainant procedural safeguards, which include a right to impartial hearing to challenge the District's decision to not evaluate. To make a determination on this issue, OCR would have conducted interviews of District personnel and/or request additional information from the District. However, prior to the completion of this investigation, OCR determined that there is sufficient evidence of noncompliance with regard to Issue 1 and the remedies for Issue 1 will include the requirement that the District provides procedural safeguards to the complainant. Accordingly, OCR suspended its investigation of this issue prior to making a compliance determination.

Conclusion

OCR determined that there is sufficient evidence to support a finding that the District denied the Student a FAPE by failing to evaluate him for regular or special education and related aids and services necessary to meet his individual educational needs, in violation of Section 504 at 34 C.F.R. §§ 104.33 and 104.35, and Title II at 28 C.F.R. § 35.130. Consistent with Section 207(c) of OCR's Complaint Processing Manual, the District submitted a Resolution Agreement (Agreement) on November 3, 2015, which OCR has determined addresses the compliance concern identified during OCR's investigation. A copy of the Resolution Agreement is enclosed. The dates for specific actions are detailed in the Resolution Agreement.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the District to determine whether the commitments made by the District have been implemented consistently with the terms of the Agreement. If the District fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the District determines a need to modify any portion of the Agreement, the District may submit, for consideration, proposed revisions to OCR.

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.

Under OCR procedures, we are obligated to advise the complainant and the institution against which a complaint has been filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

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.

OCR appreciates the cooperation and assistance of the District in coordinating the complaint resolution activities. If you have questions or concerns, please contact Tiffany Gray, the attorney assigned to this matter, at 214-661-9611, Tiffany.Gray@ed.gov, or me at 214-661-9608, Paul.Coxe@ed.gov.

Sincerely,

Paul Edward Coxe
Supervisory Attorney-Team Leader
Office for Civil Rights
Dallas Office