



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 2, 2015

Dr. Jed Bowman
Superintendent
WPSD Administration Office
155 Panther Way
Woodland Park, CO 80863

Re: Woodland Park School District Re-2
OCR Case Number: 08-15-1065

Dear Dr. Bowman:

We completed our investigation of the above-referenced complaint filed on December 4, 2014, against the Woodland Park School District Re-2. The Complainant first alleged that the Student could not attend school based on his disabilities when a paraprofessional was not available to ride in the District's van transportation. The Complainant also alleged that the District's use of restraint and seclusion denied the Student an opportunity to receive a free appropriate public education (FAPE) when the District used restraint and seclusion techniques on the Student where the Student's Individualized Education Program (IEP) or Behavior Intervention Plan (BIP) did not call for restraint and seclusion.

We began investigating the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 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; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

During the course of processing this complaint, the District indicated its desire to voluntarily enter into an agreement to resolve the first allegation pursuant to Section 302 of the *Case Processing Manual (CPM)*. We reviewed this request and determined that it justified entering into an agreement without conducting further investigation. We completed our investigation of the Complainant's second allegation and determined that the Student was not denied an opportunity to receive FAPE as alleged regarding the use of restraint and seclusion techniques.

Alleged Denial of FAPE regarding use of Restraint and Seclusion Techniques

The Complainant alleged that the District used restraint and seclusion techniques with the Student and that the Student's IEP and BIP do not call for the use of restraint or seclusion. Upon receipt of the data response from the District, we learned that the Student attended a school program operated by the Pikes Peak Board of Cooperative Educational Services (BOCES).

Since the BOCES is a recipient of Federal financial assistance and a public entity, we opened a separate complaint investigation concerning the BOCES (OCR case number 08-15-1143). The accepted allegation in that investigation is whether the BOCES' use of restraint and seclusion denied the Student an opportunity to receive a free appropriate public education (FAPE).

Since we opened the complaint against the BOCES to look at the allegation of its use of restraint and seclusion with the Student during instructional time, we limited our investigation regarding the District's use of restraint and seclusion to the time when the District was transporting the Student to and from the school operated by the BOCES.

The Section 504 regulation at 34 C.F.R. § 104.4 provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination in a public school district's programs and activities. The regulation further provides that a public school district may not otherwise limit an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II at 28 C.F.R. § 35.130 contains similar provisions. OCR interprets these provisions to require that public school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities.

On May 15, 2012, the Department issued a resource document entitled "Restraint and Seclusion," located at www.ed.gov/policy/restraintseclusion, (resource document) which outlines principles for schools to consider regarding the use of restraint and seclusion. According to the resource document: "Restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff."

According to our resource document, "Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle" are not mechanical restraints. The District provided information that it used a harness or seatbelt with the Student while in the vehicle. We did not consider whether the use of either the harness or a seatbelt denied the Student FAPE, since they do not meet the definition of mechanical restraint.

The District provided information that the Complainant signed an acknowledgement of receipt of the BOCES's policies¹ regarding the use of restraint and seclusion and a copy of an IEP that includes the use of restraint and seclusion techniques for the Student. The Student's IEP in relevant part states "non-violent Crises Intervention techniques will be used to help de-escalate [the Student] in the event of physical violence."

The District provided, and OCR reviewed, documentation of materials used for training the District and BOCES staff. The District's staff is trained on restraint and seclusion intervention

¹ The BOCES's restraint policies are being reviewed as part of OCR case 08-15-1143.

by District staff and administrators certified in the Crisis Prevention Intervention (CPI) method, which teaches nonviolent crisis intervention.

The Student is identified as a person with multiple disabilities, including, as written in his IEP, mental retardation, mood disorders, and grand mal seizures. The educational records for the Student describe that he exhibits aggressive behavior, including hitting, kicking, and spitting. The Student has minimal verbal communication and he exhibited aggressive behaviors in the Spring of 2014, which resulted in a functional behavior assessment and changes in his BIP. At the start of the 2014-15 school year, the Student's aggressive behaviors were significantly decreased.

However, starting in October 2014, the Student began releasing his safety harness while the van was transporting him and would move around in the van. Upon removing the harness on one occasion on October 21, 2014, the Student wrapped himself around the driver, creating a safety problem and potentially hurting the other student riding in the van with him. The District met with the Complainant several times between October 21, 2014, and January 8, 2015, because of the Student's continued behavior of releasing his safety harness and moving around inside the vehicle. During the October, November, and December meetings, the District agreed to provide a monitor to ride with the student to assist in teaching the Student to ride safely in the van using a regular seat belt. During these months, two monitors were employed to work with the Student during transportation from October through December. Each of the employees described using movies, music, books, blankets, food, and drawing as positive behavior interventions.

The District reported only the one incident in which the Student had gotten out of his seat while riding in the van and wrapped his legs around the driver. As a result, a trained Ute Pass BOCES² behavior specialist, for approximately 60 seconds, placed the Student in a "CPI Interim Control Position" in accordance with the non-violent Crisis intervention program used at the Student's School. The control position was only used because the driver of the van could not move his arms causing him not to be able to steer the vehicle. OCR found no other evidence indicating that there were other incidents of restraint when the Student was transported by the District.

OCR determined that the initiation and termination of the restraint described above was in compliance with the District's restraint policies JKA and JKA-R, to use restraint in emergency situations by trained staff. The District's policies are consistent with the Department's resource document on restraint/seclusion, which offers principles for schools to consider regarding the use of restraint and seclusion. The applicable element of these principles in this situation is that "restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others." See Principle 3 in Resource Document on page 12.

² Ute Pass BOCES provides special education to students of the District and was riding the van in order to observe the Student's behavior to determine appropriate positive interventions.

Conclusion

The restraint technique was used only one time as a result of the Student creating a safety emergency for everyone riding in the van. Additionally, while transportation is a service provided as part of the Student's IEP, the Student did not lose any educational benefit as a result of the use of the restraint technique. Therefore, the Student was not denied an opportunity to receive FAPE because of this one incident and, as a result, there is insufficient evidence of a compliance concern with regard to the second allegation.

We received a signed Resolution Agreement for the first allegation, which is enclosed. When the Agreement is fully implemented, the first allegation and compliance concerns will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

We thank the District for voluntarily entering into an Agreement to resolve the first allegation in this complaint. This concludes OCR's investigation of the complaint and 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. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close Case Number 08-15-1065 and will send a letter to the District, copied to the Complainant, stating that the case is closed.

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.

Please be advised that the District 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 Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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. If OCR receives such a request, we will protect personal information to the extent provided by law.

Dr. Jed Bowman
OCR Case Number 08-15-1065
Page 5

Thank you for the courtesy and cooperation extended to us throughout the investigation. If you have any questions about this letter, you may contact Heidi Kutcher at 303-844-4572, or me at 303-844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory Attorney Advisor

Enclosure

cc: Adric Arndt
District Representative