



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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Ms. Melba Luciano
Superintendent
Osceola County School District
817 Bill Beck Blvd.
Kissimmee, FL 34744

Re: Complaint #04-13-1358

Dear Ms. Luciano:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint the Complainant filed against the Osceola County School District (District) on June 4, 2013. The Complainant alleged that the District discriminated against her daughter (Student) on the basis of disability at XXXXXXXXXX High School (School). Specifically, the Complainant alleged that during the 2012 – 2013 school year, the District discriminated against the Student when it failed to notify the Complainant of, and include the Student in, her senior activities such as senior graduation pictures, Grad Bash and the Senior Prom.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA); and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 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 and as a public entity, the District is subject to these laws.

Based on the complaint allegation, OCR investigated the legal issue of whether the District discriminated against the Student when the School failed to: (a) notify her of, and (b) include her in, the senior activities (senior graduation pictures, Grad Bash, and the Senior Prom), in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), (b)(1), and 104.37(a)(1) and the Title II implementing regulation at 28 C.F.R. § 35.130(a) and (b)(1).

OCR's investigation of the complaint included an analysis of data provided by the District and interviews with the Complainant, Complainant's witness, and District staff. OCR reviewed the evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. After a thorough review of all of the evidence, OCR has determined that there is sufficient evidence to support a finding of noncompliance with respect to a portion of the issue OCR investigated. The bases for OCR's determinations are set forth below.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a), (b)(1)(i) and (iii) states that no qualified person with a disability, shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. A recipient, in providing any aid, benefit or service, may not, directly or

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indirectly on the basis of disability deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or service. Further a recipient may not provide a qualified person with a disability an aid, benefit or service that is not as effective as that provided to others. The Section 504 regulation at 34 C.F.R. § 104.37(a)(1) provides that a recipient shall provide non-academic services and activities in such a manner as is necessary to afford students with a disability an equal opportunity for participation in such services and activities. The Title II implementing regulation is interpreted consistent with the Section 504 standards.

Background

The Student has been identified as a student with a disability (XXXXXX XXXXXXXXX) and is in an Exceptional Student Education (ESE) class at the School. She was in XXXXXXXX grade during the 2012 - 2013 school year and, according to the Complainant, had been in that grade for “a while.” The Student graduated in May 2013, at age XX, but can continue to attend the School through the age of 21. The Complainant alleged that in the 2012 - 2013 school year, the District discriminated against the Student on the basis of disability by failing to notify her and the Student of senior activities and by excluding the Student from senior activities. The Complainant informed OCR that the only information the District provided her regarding the 2013 graduation was notice about the cap, gown, ring, and the graduation practice schedule. The Complainant contended that the Student was not included in the following senior activities: senior graduation pictures, the homecoming dance, the “Grad Bash”, and the senior prom. The Complainant acknowledged that no one told the Student she could not participate in any activities.

(a) Notice of Senior Activities

According to statements from the XXXXXXXXX, the XXXXXXXXX and the XXXXXXX XXXXXXXXX, graduation information is disseminated to seniors at the beginning of the school year and throughout the year. The District provided documentation showing some of the information it sent home to senior parents regarding graduation and senior activities. According to District witnesses, graduation information was also posted on the District’s website and announced daily on the intercom. Upcoming activities were posted on the School’s marquee.

OCR reviewed the documentation that the District stated it sent home with all seniors during the 2012 - 2013 school year. The Senior Checklist, which various personnel informed OCR was given to seniors at the beginning of the 2012 - 2013 school year, lists monthly deadlines and activities that pertain to senior activities during the 2012 - 2013 school year. For example, the Senior Checklist informs seniors that: a) in August 2012, they should make an appointment for a senior portrait; b) in October 2012, the ring company would be at the School so that seniors could order class rings; c) in January 2013, senior trip tickets would be available; d) in February 2013, Grad Bash tickets would be available and the Senior trip would occur; e) Prom tickets would be available for purchase and Senior spirit would be held; and f) Grad Bash would occur in April 2013.

The District also provided a document entitled Graduation Information for Parents/Guardians of the Graduating Class of 2013 (Graduation Information), which the District provided to parents in May 2013. This document lists senior meetings, awards night and graduation rehearsal. Additionally, the document informs students and parents of the graduation dress code and how to acquire graduation tickets.

According to the XXXXXXXXX, the Senior Checklist is generally distributed to students in their English classes; and she also provided them to the XXX teachers for distribution. The XXXXXXX XXXXXXXXX told OCR that he wrote the Graduation Information letter and distributed it to English classes. He reported that he also gave the Graduation Information letter for ESE students to the XXXXXXXXX. The XXXXXXXXX XXXXXXXXX XXXXXXXXX (XXXXXXXXXX) informed OCR that she in turn emailed the May graduation letter, along with other senior information she received, to the XXX teachers. Further, the District provided a copy of a Graduation Information letter containing a handwritten note from the XXX XXXX to all ESE parents of graduating seniors, informing them of the graduation time and location, and also providing notice that the students would need a ride home from the senior barbecue. The XXX XXXX included her contact information if parents had questions. The

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XXX XXXX further informed OCR that some students might be capable of attending the barbecue without a chaperone. The Complainant informed OCR she did not get any information from the District regarding the senior barbecue.

According to XXXXXXXX X, he sent information to parents throughout the school year starting in August 2012, by including it in student agendas, and by sending and attaching information that did not fit in the agenda in students' book bags. XXXXXXXX X informed OCR that he sent the Senior Checklist, the Prom flyer and the Graduation Information to his students' ESE parents by including them in his students' book bags. He further informed OCR that he was positive he put all the senior information in the Student's book bag when he received it. XXXXXXXX X further informed OCR that he spoke to the Complainant prior to Grad Bash and informed her of the event. Specifically, he told the Complainant that the event was off campus and that teachers were not attending. He further informed OCR that the Student did not want to attend the event and that he never told the Complainant she had to accompany the Student to Grad Bash.

During a December 10, 2013, rebuttal call, the Complainant insisted the District did not provide her with notice of most of the senior activities. She contended that she did not receive information from the District concerning the barbecue or pictures; did not see information on the marquee; does not use a computer; and, had to "beg" for graduation information, which she did not receive until May 3, 2013. She also stated that as a matter of routine, the Student always gave the Complainant the documents she received from school as soon as she got off of the bus.

On December 10, 2013, OCR also spoke to a parent (Parent 2) of an XXX student at the School (the Complainant provided OCR with her contact information). According to Parent 2, her son (Student 2) walked in the 2013 graduation. Parent 2 stated that she also did not receive information about graduation. However, Student 2's teacher (XXXXXXX X) told OCR that she provided all of the paperwork to the seniors in her class. Further, Parent 2 had no specific knowledge about whether XXXXXXXX X provided notice to the Complainant.

Also, the Complainant informed OCR that the District never gave her information regarding a school portrait. However, the documentation shows the Specialist provided the Complainant with that information on May 6, 2013. Additionally, while the Complainant, in her complaint, alleges she got graduation information from the District on May 3, 2013, the evidence shows she called the District on May 14, 2013, complaining that she had not received any graduation information.

OCR reviewed the evidence under the preponderance standard to determine whether the District provided the Complainant the same information that was available to graduating seniors without a disability, in a manner necessary to provide the Student an equal opportunity to participate in activities.

The preponderance of the evidence shows that the District provided graduation folders (which contained the Graduation Checklist) to seniors at the beginning of the 2012 - 2013 school year, including the Student. The evidence also shows that the XXX XXXXXXXX sent information to parents by the students' agenda and by placing information in the students' book bags.

Additionally, the preponderance of the evidence shows that the Student attended senior meetings, that she was invited to senior activities, and that she declined to attend some activities. The evidence also shows that, while the District states it sent information to the Complainant regarding the senior barbecue and the Grad Bash, the Complainant denies she received anything.

Based on the above, because the evidence supplied by the Complainant and the District was verbal and largely undocumented, OCR finds that some of the evidence supplied by both the Complainant and the District was inconsistent and contradictory. Therefore, OCR finds that there is insufficient evidence to conclude that the School failed to provide the Complainant with notice of the Student's senior activities as alleged.

Based on the preponderance of the evidence, OCR concludes that there is insufficient evidence to conclude that the District discriminated against the Student in noncompliance with Section 504 or Title II and their implementing regulations, with respect to providing her with notice as alleged.

(b) Opportunity to Participate Senior Activities

The Complainant stated that at the beginning of the 2012 - 2013 school year, she spoke to XXXXXXXX X who told her that, if the Student marched in graduation, her Social Security benefits might be affected. The Complainant further informed OCR that she checked with Social Security and, a few days later, informed XXXXXXXX X that the Student's participation in graduation would not affect her Social Security benefits.

XXXXXXX X states the Complainant informed him before Christmas 2012, that she did not want the Student to walk at graduation. The District also provided information that the Complainant spoke to XXXXXXXX X about this matter in January 2013.

Prior to the conclusion of OCR's investigation, the District asked to resolve any compliance concerns OCR might have regarding whether the Student was given the opportunity to participate in senior activities. Pursuant to Section 302 of the OCR's *Case Processing Manual (CPM)*, a complaint may be resolved when, before the conclusion of an investigation the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement will require the District to take actions to remedy any compliance concerns regarding the Student's participation opportunities.

Please be advised that the District may not harass, coerce, 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.

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.

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 the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If the event 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.

Thank you very much for the cooperation your staff provided during the complaint investigation. If you have any questions regarding this letter, please contact XXXXX XXXXXXXX, Compliance Team Leader, at (XXX) XXX-XXXX.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director