



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

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March 26, 2015

Dr. Del Phillips III  
Director of Schools  
Sumner County School District  
695 East Main Street  
Gallatin, Tennessee 37066

Re: Complaint #04-14-1788

Dear Dr. Phillips:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that the Complainant filed against the Sumner County School District (District), on September 30, 2014, alleging discrimination against the Student on the basis of disability. Specifically, the Complainant alleged that staff at White House Middle School (School) denied the Student a free appropriate public education (FAPE) by failing to contact the Student's parents immediately in circumstances where his disability could be exacerbated due to stress related to school disciplinary matters.

As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, the District is subject to 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. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following issue:

Whether the District denied the Student a FAPE when School employees failed to contact the Student's parents immediately in circumstances where his disability could be exacerbated due to stress related to school disciplinary matters, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.33(a) and (b)(1) and the Title II implementing regulation at 28 C.F.R. §35.130.

During the complaint resolution process, OCR reviewed documents provided by the District and the Complainant and conducted interviews with the Complainant and District staff. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient (such as the District) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Based upon the preponderance of evidence, OCR found insufficient evidence to support a finding that the District was in noncompliance with the regulations implementing Section 504 and Title II with regard to the complaint allegations. However, OCR found an unalleged compliance concern. Set forth below is a summary of OCR's findings.

## **Applicable Regulatory Standards**

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a), requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. The regulation implementing Section 504 at 34 C.F.R. § 104.33(b)(1) provides that FAPE is the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards). The regulation implementing Section 504 at 34 C.F.R. § 104.33(b)(2) states that implementation of an individualized education program developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these standards.

The Section 504 implementing regulation at 34 C.F.R. § 104.35(b) requires recipients to establish standards and procedures for the evaluation and placement of individuals who, because of disability, need or are believed to need special education or related services before taking any action with respect to the initial placement of the individual in regular or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions for students with disabilities, a recipient must: 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 knowledgeable about the individual, the meaning of evaluation data, and placement options; and 4) ensure that the placement decision is made in conformance with the education setting requirements at 34 C.F.R. § 104.35(d).

Except in extraordinary circumstances, OCR does not review the results of individual placement and other educational decisions as long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. *See*, Appendix A to 34 C.F.R. Part 104.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires that recipients establish and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of individuals who, because of disability, need or are believed to need special instruction or related services. Pursuant to 34 C.F.R. § 104.36 recipients are required to provide the parents or guardians of students with disabilities 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.

As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 standards.

## Factual Findings

**Issue: Whether the District denied the Student a FAPE when School employees failed to contact the Student's parents immediately in circumstances where his disability could be exacerbated due to stress related to school disciplinary matters.**

At the time the complaint was filed with OCR, the Student was a sixth grade student at the School. The District's policies, the "Parent/Guardian's Guide to Section 504 of the Rehabilitation Act" (Section 504 Procedures) state, "[p]lacement decisions must be made by a group of persons (i.e. Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluative data, the placement options, and the legal requirements for least restrictive environment and comparable facilities." The Section 504 Procedures further state a parent or guardian may challenge the actions of the district's Section 504 Committee in regard to their child's identification, evaluation, or educational placement by filing a request for a due process hearing.

On August 29, 2013, the Complainant met with the Principal following an incident where the Student received detention for being "fidgety." The Student had not been identified as a student with a disability as of the start of the meeting. During this meeting, the Complainant inferred that they had an agreement that the Student's parents would be called if there was any issue related to the Student's anxiety. During an interview with OCR, the Principal was unable to recall this meeting; however, he stated that he did agree to call the Student's parents if the Student had an anxiety attack.

On September 23, 2013, the School's 504 Team, which included the Student's mother, met to develop a 504 plan for the Student based on his disability (anxiety). The 504 Team determined that the following related aid or service would be provided for the Student: "physical environment – allow student to go to guidance office for a safe place when upset." The Student's mother signed the 504 Plan acknowledging that she: (1) participated in the development of this plan, (2) gave consent for its implementation, and (3) received a copy of the Notice of Parent's Rights.

The School Guidance Counselor advised OCR that the Student has utilized the related aid or service included in the 504 Plan at least two times. On one occasion, the Student initiated a request to go to the guidance office. On another occasion the before-school monitor escorted the Student to the guidance office for a safe place to calm.

On May 8, 2014, the Band Teacher was in the band room at the end of the school day when the Art Teacher reported to him that the Student, one of his band students, pulled a female student's backpack. The Art Teacher told the Band Director that she told the Student to stop and he gave her a disrespectful look. The Band Director instructed the Student to apologize to the Art Teacher.

On May 9, 2014, the Band Director reiterated to the Student that he owed the Art Teacher an apology. The Student said "sorry" in what was believed to be a sarcastic manner by both teachers. The Art Teacher responded that it was not a sincere apology and the Band Teacher verbally counseled the Student telling him that his behavior reflected on the Band department. According to the Complainant, the Band Teacher became irate and raised his voice causing the Student to begin suffering an anxiety attack. However, during his OCR interview the Band Director said that he talked to the Student about his conduct and the Student did not become upset during the discussion.

The Student requested to call his father and the Band Teacher took the Student to the Assistant Principal's (AP) office to call Complainant. The Complainant advised OCR that the Student observed the Band Teacher pick up the phone, dial two numbers, then hang up the phone. However, the Band Teacher informed OCR that he attempted to call the Complainant, but the call would not go through. According to the Band Teacher, the Student became upset that he was unable to reach the Complainant and walked out of the AP's office. A written statement by the Band Teacher likewise states that the Student did not become upset until the Band Teacher was unable to place the call. Both the AP and Band Teacher called the Student back into the office. The AP told the Band Teacher he would handle the situation with the Student and instructed the Band Teacher to return to class.

The Complainant alleges that the Student made a second request to call his parents, and the AP denied it stating, "No, we are not going to call." Thereafter, the Student sent a text to his mother using his personal cell phone in the restroom. The District staff denied depriving the Student of a second attempt to call the Complainant. Specifically, during interviews with OCR, the AP stated that he attempted to call the Complainant's cell phone and received no answer. The AP said that he had the Student sit down. After he talked with the Student the AP asked the Student if he was okay to return to class and the Student responded "yes." The AP observed that the Student was calm when he left to return to class.

On May 14, 2014, the Complainant had a meeting with the Principal where he expressed concern about the District's denial of the Student's request to call his parents. The Complainant conveyed that he wanted to be contacted about any incident involving the Student that may cause the Student to become upset. The Principal advised that the School was not going to call the Student's parents on every issue. The Complainant advised the Principal of his intent to file a complaint with the Office for Civil Rights and the Principal told him to file a complaint.

To date, the Student's parents have not made a request for a due process hearing, or otherwise requested to modify the Student's 504 Plan. The Complainant removed the Student from the School for the end of the 2013-2014 school year, and the Student did not return for the 2014-2015 school year.

## **Analysis and Conclusion**

OCR reviewed the evidence under the preponderance standard, to determine whether the District failed to provide a related aid or service identified through an appropriate process as necessary to meet the Student's disability related needs. The Complainant contends that the District failed to provide FAPE because it did not contact the Student's parents when the Student became upset during a May 9, 2014 incident involving the Band and Art Teachers.

After the Student's parents disclosed the Student's disability, a Section 504 team convened, including the Student's mother, and developed a plan for the Student. In addition to participating on the 504 team, the Student's mother signed the 504 Plan, acknowledging her receipt of the plan. While there is evidence of an informal agreement between the Principal and Complainant regarding parent phone calls under certain circumstances<sup>1</sup>, the Student's 504 Plan did not include a provision that the Student's parents would be contacted

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<sup>1</sup> While the Complainant believed that the School agreed to contact the Student's parents regarding any issue that upset the student, the Principal interpreted the agreement to only apply to an anxiety attack. While the parent contact was not a related aid or service identified by the Student's 504 team and the Principal contends that the Student did not have an anxiety attack on May 9, 2014, OCR

if he became upset and the evidence did not establish that the 504 team informally agreed that such contact was needed to meet the Student's disability-related needs. As noted above, the appropriate forum for addressing disagreement with the content of a plan is a due process hearing. There is no evidence that the Student's parents made a request for a due process hearing or otherwise requested to have the Student's 504 plan modified. Moreover, OCR notes that while phone calls to the Student's parents were not identified as a related aid or service in the Student's plan, the Band Teacher and AP both attempted to call the Complainant on May 9, 2014.

Based on the foregoing, OCR concludes that there is insufficient evidence to support a finding of noncompliance with Section 504 or Title II, as alleged with respect to this complaint.

### **Compliance Concerns and Recommendations**

While OCR did not find any noncompliance issues with respect to the particular allegations raised by the Complainant, OCR found that the procedural safeguards available to parents and the Sumner County Board Policies on the District website did not contain due process hearing review procedures, required pursuant to 34 C.F.R § 104.36<sup>2</sup>. To address this compliance concern, the District has entered into a Resolution Agreement, which when fully implemented, will resolve this issue in this complaint. OCR will monitor the District's implementation of the Agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint. Please be advised that a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter.

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notes that the preponderance of the evidence shows that District staff did attempt to reach the Complainant before and after the Student became upset.

<sup>2</sup> The correct due process hearing review procedures were included in the Parent/Guardian's Guide to Section 504 of the Rehabilitation Act available on the District website and in the Employee's Guide to Free Appropriate Public Education.

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If you have any questions regarding this matter, please contact Adrienne Harris, Attorney, at 404- 974-9370, or Andrea de Vries, Compliance Team Leader, at 404-974-9314.

Sincerely,

/ s /

Deborah Floyd  
Acting Regional Director