

August 10, 2016

Mr. Dorsey E. Hopson, II  
Superintendent  
Shelby County Schools  
160 S. Hollywood Street,  
Memphis, Tennessee 38112

**Re: Complaint # 04-15-1377**

Dear Mr. Hopson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on May 20, 2015, against the Shelby County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her son (Student), on the basis of disability (Autism), by refusing to allow him to attend the 2015 Summer Camp program (Program) at the XXXXXX Elementary School (School) based upon his disability.

As a recipient of Federal financial assistance from the Department and as a public education entity, the District is subject to the provisions of 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; 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.

OCR investigated whether the District denied the Student enrollment in the Program based on his disability, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and (b)(1)(i)-(v), and the Title II implementing regulation at 28 C.F.R. § 35.130(a), (b)(1)(i)-(v), (b)(7) and (b)(8).

OCR's investigation included a review of relevant District policies, student records, written communications (emails) and other relevant documents submitted by the Complainant and the District. OCR also interviewed the Complainant and the District staff person responsible for the administration of the Program.

OCR reviews evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation 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. The evidence is sufficient to support a finding that the District is in violation of the Section 504 and Title II regulations regarding the Complainant's allegation. The factual and legal bases of OCR's determination are set forth below.

### **Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4 (a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1)(i)-(v), states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, 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; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others; or aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an aid, benefit, or service to beneficiaries of the recipient's program or activity. The Title II regulation at 28 C.F.R. § 35.130(a) and (b) includes similar requirements.

Pursuant to Section 504, where a voluntary program is offered by a recipient on a free or fee basis, individuals with disabilities may not be categorically excluded. Students with disabilities must be offered meaningful and equal access to that program at the same cost to individuals without disabilities.

In order to establish that different treatment occurred, OCR determines whether the student was subjected to an adverse action (i.e., treated less favorably) as compared to a similarly-situated comparator (i.e., students without disabilities). If OCR establishes that different treatment has occurred, the District may proffer a legitimate nondiscriminatory justification for the different treatment; however, OCR will examine the District's proffered reason to determine whether it is pretextual.

### **Background**

During the time relevant to the complaint, the Student was six years old. He was diagnosed with Autism in 2011 and has an Individualized Education Program (IEP). The Complainant stated that the Student has a limited vocabulary and, in many respects, functions at a level equivalent to a child at the age of three to four years old. The Complainant stated that she began her requests to have the Student participate in the Summer Program at the School in 2012. The Complainant reported that each time she inquired about the Student attending the Program the School's School-Aged Childcare Director (Director), who manages the Program stated that the Student, categorically, could not be served. The Complainant reported that this occurred without any individualized discussion regarding the Student's needs.

### **District’s Policies and Procedures**

The District provided OCR with its policy titled “Participation in School Programs.” Upon review, OCR found the policy does not address providing services and/or accommodations to students with disabilities in order to gain equal access to extracurricular programming.<sup>1</sup> The District also provided a document titled “Shelby County Schools Summer Programs.” This document also fails to identify a process for providing summer program access to students who otherwise meet the qualifications for participation in the programs but, who because of disabilities, require accommodations or services in order to participate as their peers without disabilities. The District further acknowledged in its response to OCR that there is no formal policy or procedure for parents to request accommodations for the summer camp/after school program.

### **Findings of Fact**

In the spring of 2015, the Complainant verbally requested to enroll the Student in Program, but was informed that the Student could not enroll because the District did not have certified staff available to provide services to the Student. The Complainant stated that a District employee informed her that the District did not have money in the budget to hire a one-on-one aide for summer camp. The Complainant reported that the District again incorrectly assumed the Student needed a one-on-one aide for summer camp, which she stated he did not.

OCR reviewed the Student’s IEP dated January 16, 2015 to January 15, 2016. As it relates to extracurricular activities, the Student’s IEP states the Student will participate with students without disabilities in extracurricular and nonacademic activities. The IEP does not require any specific related aid or service for participation in extracurricular or nonacademic activities. The Student’s IEP also does not require extended school year services.

The Complainant stated that she exchanged emails with the School-level Program Director, the Director’s District-level Supervisor, and the District-level School-Aged Childcare Manager (Manager), in the Office of Extended Learning Opportunities and Programs but received no firm response to her request for her child to participate in the Program. She eventually enrolled the Student in an alternative program which was a significant distance from the family’s home.

District staff informed OCR that there were no records pertaining to the Complainant’s request to enroll in the District’s summer camp program; specifically, the District did not have any requests, records of complaints, or any other records pertaining to the Complainant’s request. The District also acknowledged that there were no records pertaining to any student with a disability who requested enrollment or who was enrolled in the School’s summer camp/after school programs.<sup>2</sup>

During an interview with OCR, the Director acknowledged that the Student was not able to attend the summer camp program because there was no certified staff available to provide

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<sup>1</sup> The District’s “Participation in School Programs” policy is available online at [http://www.scsk12.org/policy/pm/6000/2013/6013\\_Participation\\_School\\_Programs.pdf](http://www.scsk12.org/policy/pm/6000/2013/6013_Participation_School_Programs.pdf) (last accessed August 10, 2016)

<sup>2</sup> OCR requested documents for the 2013-2014 and 2014-2015 school years.

services to the Student and there was no money in the budget to hire certified staff, so she was not permitted to accept the Student.

### **Analysis and Conclusion**

The District does not have policies or procedures in place to ensure that students with disabilities are not treated differently because of a need for related aids and services to access the District's summer camp or after school programs.

District staff acknowledged that the Student was not allowed to enroll in the District's summer day camp because of a lack of funds to hire staff to address the Student's disability-related needs. The Student's IEP did not require any specific related aid or service for extracurricular or nonacademic services during the academic year. The Student's IEP also did not show that the Student required any specific related aid in order to participate in an extracurricular or nonacademic activity; therefore, there was no basis for the District to assume the Student needed a special service in order to access the summer camp program. Further, if the District questioned whether the Student required such services to access the Program, the District should have engaged in an appropriate process to fully assess his needs. Based on the preponderance of the evidence, including the District's acknowledgment, OCR finds that the District denied the Student access to its summer camp program in 2015 based on disability and, by so doing, subjected the Student to different treatment in violation of Section 504 and Title II, as alleged.

The District has entered into the enclosed signed Resolution Agreement, which once fully implemented, will resolve the complaint violations regarding the deficiencies in its summer program admissions process, the failure to evaluate the Student fully and appropriately to determine his needs for participation in the Program, reimburse the Complainant for expenses incurred during summer 2015, allow the Student future enrollment in the Program, as well as any other eligible student with a disability, and provide training to its staff.

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.

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

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 District's cooperation during the investigation of this complaint. If you have any questions, please contact Cassandra Williams, Investigator, at (404) 974-9393 or Wendy Gatlin, Compliance Team Leader, at (404) 974-9356.

Sincerely,

/s/

Melanie Velez  
Regional Director