



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
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July 19, 2017

Mr. Wayne Henry
Director of Schools
Park Hill School District
350 Mulberry Avenue, Suite 2
Selmer, TN 38375

Re: OCR Complaint #04-16-1447

Dear Mr. Henry:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint filed with our office on May 9, 2016, against McNairy County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated on the basis of disability because students in special education classrooms at McNairy Central High School (School) do not have an equal opportunity to participate in non-academic services and activities when it placed the pictures of students in special education classrooms in grades 9, 10, and 11 as a separate group in the yearbook instead of with their peers without disabilities. The Complainant also alleged that the School used smaller pictures for the students in special education.

As a recipient of Federal financial assistance from the Department, the District is subject to the requirements 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also applied 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 educational institutions. Because the District is a recipient of Federal financial assistance from the Department and a public entity, it is subject to these regulations.

OCR investigated the following legal issue:

Whether the District failed to provide special education students at the School an equal opportunity to participate in non-academic services and activities when it placed smaller pictures of students in special education classes as a separate group in the yearbook for grades 9, 10, and 11 instead of placing them, using the same size pictures, with their peers without disabilities on the same pages of the yearbook, in noncompliance with the Section

504 implementing regulation at 34 C.F.R. §§ 104.4(a) and (b) and the Title II implementing regulation at 28 C.F.R. §§ 35.130(a) and (b).

During its investigation, OCR reviewed and analyzed relevant documents submitted by the Complainant and the District. OCR also interviewed the Complainant and the Yearbook Advisor. OCR found sufficient evidence to support a finding of noncompliance with regard to the issue above. The attached Resolution Agreement, when fully complied with, resolves the noncompliance issue. Set forth below is a summary of OCR's findings.

Legal Standards

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

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) 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 under any program or activity which receives Federal financial assistance. Pursuant to 34 C.F.R. §§ 104.4(b)(1)(i), (ii), and (vii), a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) 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; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Background

Complainant's son (Student) was a freshman at McNairy County High School (School). The Student is a student in the Least Restrictive Environment (LRE) class at the School. The District self-contained and resource classroom for students with disabilities is called the "LRE classroom" and students placed in the room are considered "LRE students."

Complainant stated that photos of some members of the LRE class, including the Student, were placed on a separate yearbook page. The page was labeled LRE Class and the individual student pictures were smaller than the pictures of students who were not members of the LRE class. In addition, members of the LRE class for grades 9, 10, and 11 were not pictured with their respective graduating classes. One LRE student, a senior, was pictured with the graduating senior class. The Complainant further stated that in previous years, LRE students were pictured with their respective class and with the LRE class. The Complainant also stated in previous years that the individual pictures were of equal size.

Factual Findings and Analysis

Whether the District failed to provide special education students at the School an equal opportunity to participate in non-academic services and activities when it placed smaller pictures of students in special education classes as a separate group in the yearbook for grades 9, 10, and 11 instead of placing them using the same size pictures on the same pages of the yearbook, with their peers without disabilities, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a) and (b) and the Title II implementing regulation at 28 C.F.R. §§ 35.130(a) and (b).

Yearbook process

The yearbook is compiled over the course of a year by District students. The students are overseen by the Yearbook Advisor. Layouts are sent to the printer periodically over the course of the year once the Yearbook Advisor has approved them. The Yearbook Advisor has final decision-making power over the yearbook and no additional District staff reviews the yearbook decisions.

Yearbook pictures

The Yearbook Advisor described the process for obtaining pictures. Seniors typically have pictures taken over the summer and submit the senior picture to the yearbook. One LRE student was a senior, and her picture was placed with the senior class. Freshmen, sophomores, and juniors all have class pictures taken the first week of school. Freshman class pictures are taken the first day of school. Sophomore and junior class pictures are taken the day after. The Yearbook Advisor informed OCR because she was unaware of all class placements, the LRE underclassmen were not pictured with their respective graduating classes. Instead, they were pictured on the LRE page.

Complainant and the District agree that LRE students are placed a separate class in the District 2015-2016 Yearbook. The District submitted two examples of a year book page for the LRE class. In both examples, students are pictured under a heading “LRE Class.”

Sizing of LRE class pictures

The documentation reviewed confirms that for the 2015-2016 school year, the LRE class pictures were smaller than the class pictures for students without disabilities. The Yearbook Advisor informed OCR that some students did not have a clear class placement. To include students who did not have a class placement, all students in the LRE class were pictured on a separate page. This practice occurred for approximately fifteen (15) years.

The Yearbook Advisor also informed OCR that all classes from freshman to senior have a “class activity page.” On each class activity page, only students in that particular class are pictured. Pictures with students of various ages (for example a group of juniors and sophomores) would not be included on a class activity page. The Yearbook Advisor informed OCR they wished to include a full class activity page for LRE students. Due to layout constraints, it was not possible

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by fostering educational excellence and ensuring equal access.*

to have two pages of equally sized photos and a full class activity page.

The District informed OCR that the 2016-2017 school yearbook will not have an LRE class page. Instead, LRE students will be pictured with their respective graduating classes.

Placement of LRE staff aides with LRE students

OCR discovered in its investigation that for the 2015-2016 school year, LRE aides were placed on the same page as LRE students. The Yearbook Advisor informed OCR that no other school staff or faculty members were placed on the same page as students. All other faculty and staff members were placed on their respective faculty and staff pages. OCR inquired why LRE aides were not placed with other school staff. The Yearbook Advisor stated that LRE aides should be placed with their class because the class knew them best.

The District has stated that LRE students have been placed in a separate yearbook page for approximately 15 years. The LRE class is only composed of students with disabilities. The 2015-2016 yearbook layout denied students with disabilities the opportunity to be placed with their respective graduating class. In addition, LRE students were placed in a separate “class activity” page rather than being included with their respective graduating class pages. Finally, the LRE class page includes individual pictures of LRE aides. The District acknowledged that no other class pages include pictures of faculty or staff on the same page as the students. The District further acknowledged that all faculty and staff, except for LRE aides, are placed on their respective faculty and staff pages.

Conclusion

OCR has determined that the separate placement of students with disabilities on an “LRE page” and omitting the placement of students with disabilities in grades 9, 10 and 11 with their respective graduating limits students with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. In addition, a recipient may not 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. The only staff placed on a separate page is the LRE staff. Other faculty members and staff are placed on their respective faculty and staff pages. The separate placement of LRE aides on the LRE page is not equal to other District faculty and staff who are placed on the same yearbook page with School faculty and staff.

Accordingly, OCR finds, using a preponderance of the evidence standard, that there is sufficient evidence to support a finding that the District is in noncompliance with Section 504 and Title II when it placed smaller pictures of students in special education classes as a separate group in the yearbook for grades 9, 10, and 11 instead of placing them, using the same size pictures, with their peers without disabilities on the same pages of the yearbook. OCR also finds, using a preponderance of the evidence standard, that there is sufficient evidence to support a finding that the District is in noncompliance with Section 504 and Title II when it placed LRE class aides on the same page as LRE students instead of placing them on School staff page.

The District has entered into the enclosed Resolution Agreement (Agreement) to remedy the non-compliance issue in this complaint which, when fully implemented, will resolve the issue of this complaint. The Agreement requires the District to revise its yearbook practices to comply with the requirements of Section 504 and Title II. It also requires the provide training to prevent future violations of Section 504 and Title II.

OCR will closely monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this case. If the District fails to fully implement this Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR found a violation.

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

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 or other individual may file a complaint with OCR alleging such treatment.

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.

OCR is committed to a high-quality resolution of every case. If you have any questions regarding this letter, please contact Malicia Hitch, General Attorney, at (470) 231-1994 or the undersigned at (404) 974-9366.

Sincerely,

Virgil Hollis
Compliance Team Leader

Enclosure (Signed Resolution Agreement)