



OFFICE FOR CIVIL RIGHTS, REGION IV

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August 1, 2017

Benjamin L. Pace, Director of Schools
Lewis County School District
2017 S. Court St.
Hohenwald, TN 38472

Re: Docket # 04-17-1290

Dear Mr. Pace:

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 February 17, 2017, against Lewis County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against the Student by punishing her for behaviors that are a manifestation of her disability and that the Student was sent to the hallway as discipline during instructional time.

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 issues:

- Whether the District subjected the Student to discrimination on the basis of disability by disciplining the Student for behaviors that are a manifestation of her disability, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §104.4 and Title II and its implementing regulation at 28 C.F.R. §35.130.
- Whether the District denied the Student a free and appropriate public education (FAPE) when sending her to the hallway during instructional time as discipline, in noncompliance with Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R § 35.130.

During its investigation, OCR reviewed and analyzed relevant documents submitted by the District. OCR reviewed the evidence under a 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 the District failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a

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conclusion. After a thorough review of all of the available evidence, OCR determined, by a preponderance of the evidence, that there is insufficient evidence to establish that the District violated Section 504 with respect to the District denying the Student a FAPE when sending her to the hallway during instructional time.

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving the complaint pursuant to Section 302 of OCR's Complaint Processing Manual (CPM). Pursuant to OCR's procedures, a complaint may be resolved when, before the conclusion of an investigation, the recipient requests to resolve the complaint. The Agreement resolves the issue of whether the District subjected the Student to discrimination on the basis of disability by disciplining the Student for behaviors that are a manifestation of her disability. Based on the foregoing, the District entered into the enclosed Resolution Agreement (Agreement) on July 31, 2017, which, when fully implemented, will resolve the allegation.

Findings of Fact

At the time of the complaint filing, the Student, who attends school in the District, had an Individualized Education Plan (IEP) and a behavior plan. The Complainant alleged the Student was punished for behaviors that are a manifestation of her disability, including walking laps, being sent to the hall during instructional time, paddled, and being sent to the office.

During the first two weeks of February, 2017, the Student's teacher (Teacher) informed the Complainant that the Student disrupted class, was rude to staff, and refused to follow directions. As a result of the Student's behavior, she was not allowed to attend an extracurricular activity (a cakewalk) with her peers. The School refunded the Student's money for the cakewalk. The Student was the only person in her grade who was not allowed to participate in the cake walk.

Analysis and Conclusion

Allegation 1

The Complainant alleged that the Student was discriminated against when the District disciplined the Student for behaviors that are a manifestation of her disability. As the Title II implementing regulation proves 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.

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving the complaint issues in pursuant to Section 302 of OCR's Complaint Processing Manual (CPM). Based on the foregoing, OCR accepted the District's request to resolve the complaint issue, and the District entered into the enclosed Resolution Agreement (Agreement) on July 31, 2017, which, when fully implemented, will resolve the complaint issue.

Allegation 2

The Complainant alleged that the Student was sent to the hallway during instruction time as punishment for her behavior.

The District provided OCR with a note from the Teacher to the Complainant dated February 13, 2017. The note mentions the Student was sent to the hall. The note also states that February 13, 2017, was the only time the Student was sent to the hallway. The District also stated that the Student was sent during independent study, for approximately 5-10 minutes due to class disruption. The primary purpose was for the Teacher to speak to her about her behavior. The Student was allowed back in independent study after talking with the Teacher.

Based on the data presented by the District, OCR concludes that although the District took an adverse action towards the Student, OCR determined that the action did not significantly disadvantage the Student in the participation of the educational program and a denial of FAPE. The Student was not sent to the hallway during instructional time, but was instead sent during independent study for approximately 5-10 minutes for the Teacher to speak to her about her behavior. Based on the above, OCR finds insufficient evidence to conclude that the District is in noncompliance with Section 504 regarding the allegation.

This concludes OCR's consideration of this 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. OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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 prompt and effective service. If you have any questions, please contact Malicia Hitch, Attorney, at (470) 231-1994 or the undersigned at (404) 974-9366.

Sincerely,

Virgil Hollis
Compliance Team Leader

Enclosure (Signed Resolution Agreement)

CC: Jennifer Craig, Esq. (with/encl.) via email