



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

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ATLANTA, GA 30303-8927

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October 23, 2018

VIA ELECTRONIC MAIL ONLY

Ms. Jennifer Fields
Director of Schools
Campbell County Schools
172 Valley St.
Jacksboro, TN 37757
jennifer.fields@ccpstn.net

RE: OCR Complaint #04-18-1469

Dear Ms. Fields:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint received by this office on April 27, 2018, and filed against Campbell County Schools (District) alleging disability discrimination. More specifically, the Complainant alleged that the following occurred between the end of October and December 2017:

1. The District harassed the Student on the basis of her disability status when, in response to her disability-related crying fits:
 - a. the Director of Schools said the Student was giving her school, “a black eye,”
 - b. a teacher told the Student to, “shut up,” and
 - c. the Student was repeatedly suspended.
2. The District failed to implement the provision of the Student’s Individualized Education Program (IEP) requiring that her math assignments be modified to her functional grade-level equivalent, causing her to lose her desk in her math class during the unit on the token economy.
3. The District failed to timely re-evaluate the Student and conduct a manifestation determination proceeding, which resulted in the Student being suspended between 15 and 20 days for disability-related crying fits.

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). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of FFA

from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II.

Based on the above, OCR opened the following legal issue(s) for investigation:

1. Whether the District harassed the Student on the basis of her disability status when, in response to her disability-related crying fits, she was (a) said to give her school a “black eye,” (b) told to “shut up,” and (c) repeatedly suspended, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.
2. Whether the District failed to implement the provision of the Student’s IEP related to modifying her math assignments, which resulted in her losing her desk in her math class, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33 and the Title II implementing regulation at 28 C.F.R. § 35.130.
3. Whether the District failed to timely re-evaluate the Student and conduct a manifestation determination proceeding, which resulted in the Student being suspended between 15 and 20 days for disability-related crying fits, noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130.

I. Summary of Investigation/Analysis of Evidence Received thus Far

OCR’s investigation of the complaint included an analysis of data provided by the Complainant and the District and interviews with the Complainant and 12 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 insufficient evidence to support a finding of noncompliance with Section 504 and Title II with respect to Issues 1 (a) – (b), and 2. However, for Issues 1(c) and 3, the District requested to voluntarily resolve the complaint pursuant to Section 302 of OCR’s Case Processing Manual (CPM), prior to the completion of the investigation. The bases for OCR’s determinations are set forth below.

II. Legal Standards

The regulation implementing Section 504 at 34 C.F.R. §104.33(a)-(b)(2), requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual’s disability. The provision of an appropriate education is defined as 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. §104.35(a) requires a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. A suspension for more than 10 consecutive days constitutes a significant change in placement. A series of short term suspensions that in the aggregate are for more than ten cumulative days in a school year may also create a pattern of exclusion that constitutes a significant change in placement. The determination of whether a series of short term suspensions creates such a pattern of exclusion that constitutes a significant change in placement is made on a case-by-case basis. If it is determined that disciplinary actions involving a student with a disability constitute a significant change in placement, a District must conduct a reevaluation of the student pursuant to 34 C.F.R. § 104.35(a) prior to the significant change in placement. As a first step in the reevaluation, the District must determine whether the misconduct was caused by the student's disability. If the District determines that the student's behavior is a manifestation of the student's disability, the student may not be disciplined and the District must determine whether the student's current educational placement is appropriate and, if not, make appropriate changes to the placement. If it is determined that the student's behavior resulting in the discipline is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly-situated students without disabilities are excluded.

The Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations.

III. Background:

The Student began fifth grade in the fall of 2017. During this period, she had two IEPs. The first of these IEPs (IEP 1) was created when the Student was in the fourth grade and was in effect on the first day of fifth grade through the end of November 2017. The second IEP (IEP 2) was created in November 2017 and placed the Student in a special education setting. To effect this change, the IEP Team promoted the Student to the sixth grade and changed her school of attendance. Both IEP1 and IEP 2 indicate that the Student had an Intellectual Disability; they also state that she had a diagnosis of ADHD and Disruptive Behavior Disorder.

Allegation 1(a) – (b): Whether the District harassed the Student on the bases of her disability status when, in response to her disability-induced crying fits, she was (a) said to give her school a “black eye,” and (b) told to “shut up.”

Factual Findings

The Complainant alleged that the District discriminated against the Student on the basis of her disability status when, in response to her disability-induced crying fits, she was said to give her school a “black eye” (cause the School to look bad) and told to “shut up.”

OCR interviewed the Director of Schools, who, according to the Complainant, allegedly said the Student was giving her school a “black eye” and the employee (Employee 1) whom the Complainant alleged witnessed the incident. The Director of Schools, who served in another District position at the time of the alleged incident but was not assigned to the Student’s School, denied that she made this statement, knew the Student, or was ever present at the Student’s School. Employee 1 also denied ever hearing the Director of Schools make this statement or any disparaging remark about the Student.

OCR interviewed the employee (Employee 2) who according to the Complainant, told the Student to, “shut up,” as well as the employee (Employee 3) who allegedly witnessed the incident. Employee 2 denied that she ever told the Student to “shut up,” and stated that she had no interactions with the Student during the period in question. Employee 3 also denied ever hearing Employee 2 say “shut up” to the Student.

OCR provided the Complainant an opportunity to respond to the evidence gathered in response to Allegation 1 (a) – (b), but the Complainant did not offer information to rebut the evidence.

Analysis & Conclusion

To determine whether the Student was subject to a hostile environment due to harassment from staff in response to her disability-induced crying fits, as alleged, OCR first considered whether there was any evidence to corroborate that the Student was said to give her school a “black eye” or told to “shut up” by staff at the District.

Because neither the Director of Schools nor Employee 2 acknowledged making the alleged statements and none of the witnesses reported hearing them make these statements, there is insufficient evidence, under a preponderance of evidence standard, to establish that the Student was subject to a hostile environment based on her disability as described in Allegation 1 (a)-(b).

Without evidence supporting this portion of the allegation, further analysis would not prove necessary and OCR determined that there is insufficient evidence to conclude that the District is in non-compliance with Title II and Section 504 as alleged.

Allegation #2: Whether the District failed to implement the provision of the Student’s IEP related to modifying her math assignments to her functional grade level equivalent, which resulted in her losing her desk in her math class.

The Complainant alleged that the Student’s IEP required her math assignment to be modified to her functional grade level equivalent. The Complainant said that the Student is unable to do basic math, and that, for example, if the Student was asked what one plus one equals, she would

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by fostering educational excellence and ensuring equal access.*

count her fingers and say that the answer is seven. Based on this, the Complainant believed that the Student's grade level equivalent in math was kindergarten or first grade. The Complainant further alleged that the Student's math assignments were not modified and, as a result, when her math class was doing an economy-based lesson, which entailed students earning pretend money based on their academic performance and paying rent for their desks, the Student lost her desk and was made to sit on the floor.

To understand the Student's math level during fifth grade, OCR primarily considered IEP 2 because it includes the results of three contemporaneously administered math assessments. One was designed to determine computational skills for grade placement by sampling a student's ability to solve calculations involving addition, subtraction, multiplication, division, fractions and percentages. On that assessment, the Student correctly computed three of four problems at the second grade level. IEP 2 further noted that her difficulties with regrouping hindered her participation in general education math. Another assessment was designed to test grade level skills for items like word problems, time, money, and measurement. On that assessment, the Student's percentile (less than 1%) was well below average, with scores of 25% -75% falling in the average range. IEP 2 observed that the Student had challenges with solving problems containing two digit numbers. On the third assessment, the Student was able to correctly solve one of two problems at a second grade level; IEP 2 noted that her deficits with math calculation and low reading ability hindered her mastery of grade level math standards. (OCR notes that IEP 1, which captured the Student's performance on math assessments that were administered in the fall of the Student's fourth grade year, reflected the similar results.)

OCR primarily reviewed the "accommodations" section of IEP 1 to understand what assignment modifications, if any, were required for math because IEP 1 covered all but a few days of the period the Student was in fifth grade. Under IEP 1, the Math Teacher was required to provide: 1) additional time, 2) a modified grading scale (pass/fail or points); 3) extra grade opportunities (redo items missed, extra credit, etc.), 4) abbreviated assignments (fewer items/questions); 5) directions in multiple formats (e.g., written and orally); 6) directions in small, distinct steps; 7) modification of content level difficulty, and 7) extra cues and prompts.

According to the Student's Math Teacher, she implemented all the Student's IEP provisions, as presented in the IEP at a glance. She did not have the grade-level information available in the full version of IEP 1 because she was only given the IEP at a glance. She was aware, however, that the Student could not do multi-digit arithmetic, did not comprehend the value of money, and was below grade level, based on a benchmark assessment that she administered to the Student. The Math Teacher said the Student's responses on the assessment indicated that the Student was in the intervention group, so she modified the Student's assignments, accordingly. For example, the Math Teacher said that she used an online program, called Reflex Math, to build the Student's fluency in basic addition. Because of the Student's challenges in reading, the Math Teacher said she typically did not give the Student word problems and read them to the Student, when she did. Also, the Math Teacher said she gave the Student extended time on assignments, reduced the amount of problems for her to solve, and permitted the use of a calculator. The Math Teacher said she rarely gave the Student homework and when she did, she assisted the Student with it in class.

When asked, the Math Teacher acknowledged that the entire fifth grade utilized a classroom economy lesson, which involved students earning and paying fines with pretend money. OCR noted that District documentation describing the economy lesson stated that as part of the lesson, students were required to perform multi-digit arithmetic and read banking logs, slips, and checks. Also, a letter sent home to parents about the economy lesson stated that students (a) could earn money for things like helping others and getting excellent grades and (b) had to pay rent for their desks. Given the Student's math and reading deficiencies, OCR asked whether and, if so, how she could participate. In response, the Math Teacher clarified that, in practice, the economy lesson was not as described in District documentation. Rather than earning money for academic performance, students earned money for coming to school, turning in homework, and good behavior. Conversely, they were fined for not coming to school, not turning in homework, and poor behavior.

In any event, she insisted that neither the Student nor any other student ever lost their desks or were made to sit on the floor because of this lesson. OCR also noted that Principal sent the fifth grade teachers an email indicating that he had received some complaints from parents alleging that students had to pay rent to have a desk to sit in and if not, they had to sit on the floor. He wrote that students must have a desk to sit in. The Math Teacher speculated that this may have been a misconception some parents may have had due to misunderstanding the notice to parents about the economy lesson. She insisted, however, that this did not occur with any student. When OCR talked with the Principal, he said he did not recall whether he learned of the complaints directly through parents or indirectly from the central office. He said that in addition to sending the email, he spoke with the fifth grade teachers before concluding that no student was actually required to sit on the floor.

OCR provided the Complainant an opportunity to respond to the evidence gathered in response to Allegation 2, but the Complainant did not offer information that would to rebut the evidence.

Analysis & Conclusion

For Allegation 2, OCR first examined whether the District failed to implement the provision of the Student's IEP related to modifying her math assignments. Then, OCR investigated whether the Student lost her desk in her math class.

Though the relevant IEP indicated the need to modify the difficulty level of the Student's math assignments, it did not specifically require the modification to be to her functional grade level equivalent. Nevertheless, the Student's teacher showed awareness of the Student's math and reading deficiencies, administered a benchmark math assessment, and stated that she modified the assignments, accordingly. Also, while District documentation indicated that, under the economy lesson, students could earn pretend money through excellent grades, the Math Teacher asserted that during this lesson, academic performance was not a basis for earning pretend money. She also asserted that no one, including the Student, lost a desk pursuant to the economy lesson. The Principal, who inquired about whether students lost their desks, concluded, after speaking with the fifth grade teachers, that this did not occur.

Based on the foregoing, there is insufficient evidence, under a preponderance of evidence standard, to establish that the Student's math assignments were not modified or that she lost her desk.

IV. Resolution Agreement:

As previously stated, the District requested to voluntarily resolve issues 1 (c) and 3 prior to the conclusion of the investigation of this complaint. Additionally, the District simultaneously requested to voluntarily resolve an unalleged concern related to its Section 504 policies and procedures regarding the identification, evaluation, and placement of students with disabilities. Pursuant to CPM Section 302, a complaint may be resolved, before the conclusion of an investigation, when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any compliance concerns regarding the evaluation process.

On October 22, 2018, OCR received the enclosed signed Agreement that, when fully implemented, will resolve all of the allegations in the complaint as well as the unalleged "procedural" concern that arose during complaint investigation. OCR will monitor the District's compliance with this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

In keeping with OCR procedures, the District has been reminded that it 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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Ms. Demetria Mills-Obadic, at (404) 974-9353, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure