



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Reference: 06141394

Dr. Debra Dace, Superintendent
Sunflower County Consolidated School District
P.O. Box 70
Indianola, MS 38751

Dear Dr. Dace:

On May 6, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, received a complaint against Sunflower County Consolidated School District (SCCSD or District), Indianola, Mississippi. The complainant alleged that SCCSD discriminated against XXXX (the Student) on the basis of disability. Specifically, the complainant alleged that SCCSD failed to implement the special education and related aids and services in the Student's special education plan.

This agency is responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability.

OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations, at 28 C.F.R. Part 35, which also prohibit discrimination on the basis of disability. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

SCCSD is both a recipient of Federal financial assistance from the Department and a public elementary and secondary education system. Therefore, OCR had jurisdiction to investigate this complaint pursuant to Section 504 and Title II.

Based upon the complainant's allegation, OCR investigated the following legal issue:

Whether SCCSD discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (i.e., X---phrase redacted---X), and thereby

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denied the Student a free appropriate public education during the 2013-14 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

In the course of this investigation, OCR interviewed the complainant and SCCSD staff, and reviewed documents provided by the complainant and SCCSD.

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define an "appropriate education" as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student's Section 504 plan, also known as an "individualized education program," or "IEP." When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student's needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student's individual needs were or are being provided. If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

OCR's investigation showed that SCCSD evaluated the Student and devised an Individualized Education Program (IEP) for her pursuant to Section 504 and Title II on XXXX, 2013. The documents indicate that the evaluation committee consisted of people, including the complainant, four of the Student's teachers, the Student's Case Manager, the XXXX Counselor, an Agency Representative, and the District XXXX XXXX Director. The committee determined that the Student should receive related aids and services in all classes for XXXX XXXX. The IEP notes that the Student was to receive "X---phrase redacted---X" from XXXX, 2013, through XXXX, 2014. The evidence indicates that SCCSD evaluated the Student and determined her needs on an individualized basis in accordance with all applicable Section 504 regulatory requirements.

OCR interviewed SCCSD's XXXX XXXX Director (XXXX), who stated that SCCSD contracted with X---phrase redacted---X Evaluation completed for the Student on XXXX,

2013. She stated that the XXXX, 2013, evaluation report concluded that the most beneficial X---phrase redacted---X. She explained that the District interpreted the “XXXX XXXX” provision in the Student’s IEP to require XXXX. She stated that XXXX was provided to the Student XXXX XXXX on XXXX, 2014, and X---phrase redacted---X on XXXX, 2014. The complainant confirmed that these were the approximate dates on which the XXXX were provided.

With respect to the “XXXX XXXX” provision in the Student’s IEP, the XXXX informed OCR that teachers X---phrase redacted---X. SCCSD provided OCR with documentation from the Teacher of XXXX XXXX (XXXX), who instructed the Student. The documentation indicated that XXXX XXXX XXXX were not ordered for the Student because X---phrase redacted---X. The documentation from the XXXX further indicated that the Student would have been unable to X---phrase redacted---X.

OCR determined through its investigation that the Student was without the use of XXXX from XXXX, 2013—the date that it was determined necessary for her to receive a FAPE, until XXXX, 2014, when the XXXX XXXX XXXX was provided to her, and that SCCSD failed to implement her IEP in this respect. OCR also found that SCCSD did not provide the Student XXXX XXXX XXXX during the 2013-2014 school year, and that this also represents a failure to implement her IEP. SCCSD noted that the Student was XXXX XXXX during the spring semester of the 2013-2014 school year, and that X---phrase redacted---X. SCCSD also provided OCR with a copy of the Student’s report card, which indicates that she received XXXX’s and XXXX’s during the time period at issue, as evidence that it provided the Student a FAPE. OCR acknowledges that while a student’s grades may in some circumstances indicate the extent to which the student was adversely impacted by a denial of FAPE, even the highest grades do not necessarily reflect whether or to what extent the student struggled academically as a result of the district’s failure to provide the aids and services that it deemed necessary for that student to receive a FAPE. OCR notes that during an interview with the complainant, the complainant stated that the Student was unable to X---phrase redacted---X, and that the complainant provided the Student X---phrase redacted---X at home.

Based on the foregoing, OCR has determined by a preponderance of the evidence that SCCSD failed to provide the related aids and services deemed necessary to meet the Student’s individual educational needs during the 2013-2014 school year; these needs were identified as part of SCCSD’s own assessment of the Student’s educational needs and SCCSD’s plan for meeting these needs was documented in the Student’s IEP. Therefore, OCR concluded that SCCSD denied the Student a FAPE during the 2013-2014 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33, and 28 C.F.R. § 35.130, respectively.

SCCSD committed to a written resolution agreement (copy enclosed) on December 1, 2014, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. OCR will monitor SCCSD’s progress in the implementation of the agreement.

Failure to implement the agreement, as scheduled, will result in OCR immediately resuming its investigation.

This concludes OCR's investigation of the complaint and should not be interpreted to address SCCSD'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 SCCSD 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 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.

Thank you for the courtesy provided to our office by your counsel and your staff during the investigation of this complaint. If you have any questions about this matter, please contact Eve Shatteen Bell, the OCR attorney assigned to this complaint, at (214) 661-9682.

Sincerely,

Taylor D. August
Director, Dallas Office
Office for Civil Rights

cc: Mr. XXXX, Counsel
Ms. XXXX, SCCSD