

Ms. Tess Smith, Interim Superintendent
Lamar County School District
424 Martin Luther King Dr.
Purvis, MS 39475

OCR Ref.: 06-14-1465

Dear Ms. Smith:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has made a determination in the complaint filed against the Lamar County School District (LCSD), Purvis, Mississippi, on June 4, 2014. The complainant alleged that the LCSD discriminated against her daughter, the Student, based on her disability, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (2014); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35 (2014). The complaint alleged that the Student did not receive an appropriate education, as evidenced by her failure to graduate from high school at the end of the 2013-2014 school year and the fact that the Student failed the state standardized test eight times.

Based on a review of the complaint and information received from the complainant during evaluation, OCR processed the following issue for investigation to whether during the 2013-2014 school year, the LCSD denied the Student an appropriate public education when it failed to implement the related aids and services deemed necessary by a group of knowledgeable people, in order for the Student to participate in and benefit from the program, in violation of 34 C.F.R. §104.33 and 28 C.F.R. §35.130.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 and Title II. Section 504 prohibits discrimination on the basis of disability and under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The LCSD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process allegations of disability discrimination and retaliation filed against the LCSD under Section 504 and Title II.

During OCR's investigation, we reviewed information provided by the complainant and the LCSD, which included the Student's educational records, email correspondence and LCSD policies and procedures. OCR also conducted interviews with the complainant, the LCSD's Interim Superintendent and the LCSD's Section 504/ Title II Coordinator. During the course of the investigation and prior to its completion, the LCSD requested to voluntarily resolve this complaint. The basis for this determination is set forth below.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

As stated above, after the investigation began, but before OCR reached an investigative compliance determination, on September 2, 2014, the interim Superintendent for the LCSD requested to voluntarily resolve this complaint pursuant to Section 302 of OCR's CPM.

The complainant alleged that during the 2013-2014 school year the Student, a senior enrolled at Purvis High School (PHS), repeatedly failed different sections of the state standardized tests. The complainant alleged that she had requested that her daughter be evaluated every year she attended PHS, to no avail. The complainant informed OCR that she submitted a request for an evaluation in November 2013 and an evaluation was not completed until March 2014. The evaluation showed that the Student was eligible to receive services pursuant to Section 504. However, the complainant believed that the LCSD "dropped the ball" with her daughter because the Student still did not pass the outstanding sections on the state tests that she had previously failed and did not graduate with her class in May 2014.

OCR received the data submission from the LCSD on August 4, 2014. The data submission revealed that the Student has since graduated from another high school not in the LCSD. The complainant confirmed for OCR that her daughter has graduated from high school, is enrolling in dental hygienist school and was getting married last summer.

Additionally, a review of the LCSD data submission and documentation submitted by the complainant showed that the complainant made requests for evaluations for her daughter since 2012. Although the data response showed that the LCSD eventually responded to the complainant's request to evaluate her daughter in the Spring of 2014; the review of the data did not reveal that the complainant was previously provided her procedural safeguards in the preceding years. Further, although not implicated by the complaint, a review of the data revealed that the LCSD's published Section 504 grievance procedures are not consistent with the requirements of the Federal regulations. The Section 504 grievance procedures are comingled with its procedures to identify, evaluate and place students for Section 504 services. OCR determined that these grievance procedures need to be revised.

Consistent with Section 302 of OCR's Complaint Processing Manual, the LCSD submitted the attached Voluntary Resolution Agreement (Agreement) on October 24, 2014, which OCR has determined addresses the compliance issues raised in the complaint and which when fully

implemented, will resolve this complaint. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue; however, OCR will actively monitor the implementation of the Agreement by the LCSD to determine whether the commitments made by the LCSD have been implemented consistently with the terms of the Agreement. If the LCSD fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the LCSD determines a need to modify any portion of the Agreement, the LCSD may submit, for consideration, proposed revisions to OCR.

In conclusion, the LCSD has agreed to voluntarily resolve this complaint. OCR will monitor the implementation of the attached resolution agreement. As such, OCR is closing this complaint as of the date of this letter and will take no further action relative to 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and other related correspondence and records upon request. In the event 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 privacy.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact Ms. Melissa Malonson, at 214.661.9637 or at Melissa.malonson@ed.gov. or John Stephens, at 214.661.9600.

Sincerely,

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

CC: Rick Norton, LCSD Attorney
Enclosure