



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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LOUISIANA
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TEXAS

June 27, 2015

Ref: 06141567

Mr. Jack Treloar, Superintendent
Webster County School District
95 Clark Avenue
Eupora, Mississippi 39744

Dear Superintendent Treloar:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint alleging disability discrimination, which was filed against the Webster County School District (WCSD), Eupora, Mississippi, and was received by OCR on August 13, 2014. The complainant alleged that the WCSD discriminated against her son (hereinafter, "the Student") on the basis of his disability (diabetes), 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), as well as Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 (2014), which prohibit discrimination on the basis of disability.

This agency 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 the Department, are in compliance with Section 504, which prohibits discrimination on the basis of disability, and Title II, which gives OCR jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The WCSD is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR had jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

Regarding the complainant's allegations, OCR investigated the following issue:

Whether the WCSD discriminated against the Student, on the basis of his disability, by failing to provide him an appropriate education by not providing him with related aids and services determined to be necessary to meet his individual educational needs during the spring 2014 school term (i.e., teacher reminders to test blood sugar, as included in his Section 504 plan), in violation of Section 504 and its implementing regulation at 34 C.F.R. §104.4 and §104.33; and Title II and its implementing regulation found at 28 C.F.R. §35.130.

OCR opened this complaint for investigation because it determined that the issue raised in this complaint, if proven true, would constitute disability discrimination, in violation of Section 504 and Title II.

As a preliminary matter, a finding that a recipient has violated one of the laws that 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, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In the course of this investigation, OCR obtained copies of the WCSD's policies and procedures regarding the provision of a free, appropriate public education to students with disabilities, as required by Section 504. In addition, OCR reviewed copies of the Student's academic and Section 504 records submitted by the WCSD as well as documentation provided by the complainant. Furthermore, OCR conducted interviews with the complainant, the Student, district and school administrators, the school counselor, and the Student's teachers. With respect to the issue investigated, OCR determined that the evidence supports a conclusion of noncompliance with Section 504 and Title II. Provided below is an explanation of how the above determination was reached.

Legal Standard:

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a) provides 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 subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Department. The implementing regulation at 34 C.F.R. § 104.33(a) provides that a recipient that operates a public elementary or secondary program must provide a "free appropriate public education" (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The implementing regulation at 34 C.F.R. § 104.33(b) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of persons without disabilities are met and are based upon adherence to the Section 504 regulation's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. Although the Title II regulation does not contain provisions specifically pertaining to FAPE, as in the case of the Section 504 regulation, OCR interprets the Title II regulation's general prohibition against discrimination (at 28 C.F.R. § 35.130) to incorporate the FAPE provisions of the Section 504 regulation.

It is noted that neither Section 504, nor Title II strictly require the development of any document. Thus, OCR's analytical approach to allegations based on the denial of a FAPE does not track a recipient's alleged failure to have or to implement correctly any document. Rather, OCR determines (1) whether a child's needs were determined on an individualized basis; (2) whether

the evaluation and placement procedures that were applied conformed with those specified in the Section 504 regulation; and (3) whether the placement, aids, and services identified by the recipient through this process as necessary to meet the student's individual needs are or were being provided. If they have not been provided, OCR will examine the district's reason for failing to do so and the impact of the failure.

Findings:

OCR determined that the WCSD had written policies and procedures regarding the provision of a FAPE under Section 504. However, OCR's review of the above policies and procedures showed that the District's evaluation procedures did not specifically include the following provisions required at 34 C.F.R. §104.35(b):

A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons, because of disability, need or are believed to need special education or related services which ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
- (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

In addition, OCR's review revealed that the District's written placement procedures did not include the specific following provisions required at 34 C.F.R. §104.35(c):

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendation, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

Documentation provided by the WCSD showed that on August 4, 2011, a Section 504 committee (a group of knowledgeable persons as defined by Section 504) evaluated the Student, and determined that he was a qualified individual with a disability (Type I Diabetes). OCR determined that the Student received an individualized evaluation and placement decision on the above date. In addition, although not specifically required by the District's written placement

procedures, OCR further determined that in making the above evaluation and placement decision, the group drew upon information from a variety of sources (including medical reports and parental input), which was documented and carefully considered. Documentation revealed that during the 2013-2014 school year, the Student was enrolled in 8th grade at the WCSD's Eupora High School (EHS). Based on the above documentation, on August 6, 2013, OCR determined that a group of knowledgeable persons (a Section 504 committee including the complainant, the EHS principal, and the Student's teachers) re-evaluated the Student's educational needs on an individualized basis and placed him in regular education with comprehensive related aids and services for his disability. All Section 504 committee members, including all of the Student's teachers signed the documentation indicating that they approved and had received the Student's service plan. OCR determined that the above re-evaluation and placement decision complied with the requirements of Section 504.

The above comprehensive Section 504 plan provided that training would be received by at least four (4) trained staff members (Trained Diabetes Personnel, or TDP) and that either a school nurse or TDP would be available at the site where the Student is at all times. The plan also identified previously trained TDPs. According to the Student's plan, the Student was able to perform the following diabetes care tasks without help or supervision: checking his blood sugar and giving himself insulin via his pump. However, the plan stated that "he does need reminding." Furthermore, it provided that the student also needed assistance or supervision with checking his blood glucose levels and making sure he eats properly regarding lunch and snacks. The plan stated that "as the year progresses (the Student) will need less supervision as the teachers, staff, and (the Student) get accommodated with the new school year." The plan also included, but was not limited to, the following additional related aids and services:

- Student permitted to carry juice box, water, snack and monitor with him at all times;
- Diabetes supplies kept in the office (e.g., snacks provided by the complainant);
- Immediate access to water by keeping a water bottle and permitted use of the drinking fountain and restroom without restriction;
- Blood glucose monitoring done at the times designated in the Student's Diabetes Medical Management Plan (DMMP) and when Student feels his blood glucose level may be high or low, or when symptoms of high or low blood glucose is observed;
- Privacy for blood glucose monitoring and insulin administration if the Student desires;
- Provisions for when the Student asks for assistance or any staff members believe the student is showing signs of high or low blood glucose and for emergencies such as unconsciousness.

The documentation provided by WCSD included a sheet with symptoms of low and high blood sugar and specific procedures in case of the above symptoms. However, OCR did not find any attached DMMP including times designated for blood glucose monitoring. The complainant reported to OCR that her copy of the Section 504 plan included the designated monitoring times.

The complainant submitted a copy of the above Section 504 plan that included an attachment that was substantially the same as the one provided by the WCSD except that the attachment provided by the complainant included the following additional language (OCR has omitted the teachers' names from the document):

Scheduled Snack Times and Testing Times

- Breakfast—Test Blood Glucose (BG) before breakfast (Teacher's Name 1ST period should ask him).
- Morning Snack –Test BG before snack (Teacher's Name before PE 2nd period).
- Lunch---Test BG before lunch (Teacher's Name 5th period).
- Afternoon Snack—Test BG before snack (if a snack is needed) (Teacher's Name 6th period).
- Bus—Test BG before (the Student's name) gets on bus to leave school (Teacher's Name 7th period).
- Test anytime (the Student's name) shows symptoms of low or high blood sugar.

According to the complainant, the Student's teachers were to remind him to test his blood sugar after he arrived at school, before lunch, before any activity such as P.E., before snack time around 2 pm., and before he got on the bus to go home. She also related that he needed reminding of testing if he felt "odd" or like his blood sugar was low. OCR obtained signed written statements from the EHS principal and each of the Student's teachers regarding which attachment to the Section 504 attachment they received at the August 2013 Section 504 meeting. All of the statements indicated that the attachment they received was the copy that WCSD provided to OCR. On March 26, 2015, OCR contacted the complainant to provide her with an opportunity to rebut the above information, and the complainant maintained that the copy of the Section 504 plan attachment she provided to OCR was the same copy that she disseminated to each teacher during the above Section 504 meeting.

Based on interviews with the principal and the Student's teachers, the Student's Section 504 plan provided that the Student was able to check his own blood sugar and give himself insulin. The above interviews confirmed that the Student was allowed to get use a water bottle or get water upon request, go to the restroom upon request, and go to the office to get a snack or juice from a box in the office if he felt this was needed. In addition, the interviews established that the Student's plan included information regarding symptoms of low or high blood sugar and how to handle the above symptoms and medical emergencies. The Student's teachers reported that in accordance with the Section 504 plan, as needed or requested, they provided him access to water, (use water bottle or water fountain), allowed him to go to restroom, and permitted him to go to the office to obtain a snack or juice or eat a snack in class.

Regarding whether the Student's Section 504 plan provided that teachers were to remind the Student to test his blood sugar, the principal stated that she thought the plan said that sometimes the Student needed reminding to test his blood sugar. She reported that at the Section 504 meeting, she remembered that the complainant said that if the Student was not feeling good in class or "looked blank," that the Student may need to be told to check his blood sugar. However, she related that the plan indicated that the Student was able to perform tasks and check his blood sugar and that the complainant said that he could do "everything" himself.

The Student's first period/homeroom teacher stated that she kept a copy of the Student's Section 504 on her bulletin board behind her desk but did not remember it stating teachers needed to tell him to test his blood sugar. The Student's second period teacher and his sixth and seventh period teachers stated that they could not remember whether the Student's Section 504 plan provided that teachers were to remind the Student to test his blood sugar. The Student's third period teacher reported that he thought the plan said that teachers should remind the Student to check his blood sugar. According to the Student's fourth period teacher, it was her recollection from the Section 504 meeting that the complainant said that the Student basically knew himself if he needed anything and the teachers just needed to keep an eye on him to make sure that his blood sugar levels did not get too low or high. Finally, the Student's fifth period teacher related that teachers were not instructed to remind the Student to test his blood sugar at the Section 504 meeting or in the document disseminated after the meeting.

With respect to whether the Student was to test his blood sugar in her class, the Student's first period teacher said she was never told that the Student was to test his blood sugar in her class. The above teacher reported that she never reminded the Student to check his blood sugar and that she did not recall the Student ever checking his blood sugar in her class. The Student's second period teacher stated that he did not remind the Student to test his blood sugar. However, he said that the Student would test his blood sugar when he came to class although he could not remember how often he checked it. The third period teacher related that to his knowledge, the Student was not scheduled to test his blood sugar in his class. This teacher said that he reminded the Student to check his blood sugar "just a few times" when the Student looked sick and that he thought the Student left the room to test his blood sugar "maybe two times" maximum.

According to the Student's fourth period teacher, the Student was to check his blood sugar in her class "if he had a need." Concerning whether she had ever reminded the Student to test his blood sugar, the above teacher stated that she might have walked over to him if was "sluggish" and ask if everything was okay and if he needed to check his blood sugar. She also said that she thought that he had checked his blood sugar in her class but reported that she could not remember how often. The Student's fifth period teacher indicated that he did not know if the Student was to test his blood sugar in his class. The above teacher said that he did not remind the Student to test his blood sugar and did not remember the Student bringing it up.

Regarding whether the Student was to test his blood sugar in his class, the sixth period teacher responded not to his knowledge and said that he did not remember whether or not he reminded the Student to check his blood sugar. He further stated that he never saw the Student test his blood sugar in class. However, he added that the Student was allowed to go to the office twice when he asked although the Student did not provide a reason. Finally, the Student's seventh

period teacher said that he was not aware of whether the Student was supposed to test his blood sugar before he got on the bus. He stated he did not remind the Student to check his blood sugar unless he saw the Student felt bad or had a headache, and then he said he might have asked the Student if he had tested his blood sugar. This teacher reported that he estimated that about once every two to the three weeks, the Student checked his blood sugar as he would go ask to call if his blood sugar was low or “something.” However, the above teacher added that he was not sure if the Student checked it every day because the Student did not tell him if his blood sugar was okay. OCR determined that there was no documentation showing that the Student’s teachers reminded him to check his blood sugar in class.

The complainant provided OCR with copies of letters to six (6) of the Student’s seven (7) teachers that she reportedly delivered to the school office for placement in the teachers’ mailboxes at school (the Student’s teachers for first period, second period, third period, fourth period, fifth period, and sixth period). The complainant stated she sent each letter to each teacher. The above copies of the letters were dated August 29, 2013, October 22, 2013, November 15, 2013, January 27, 2014, March 28, 2013, and May 1, 2014. OCR’s review of the above letters showed that in addition to discussing the Student’s grades, attention in class, and/or homework, the letters all included a request from the complainant to remind the Student to test his blood glucose level. Four (4) of the letters also specifically stated that the Student needed to test himself before breakfast, lunch, snacks, P.E., and before he got on the bus (to return home). In interviews with OCR, the Student’s teachers reported either that they did not remember receiving any letters or notes from the complainant about reminding the Student to test his blood sugar, remembered a letter but not the subject of the letter, or remembered receiving letters about grades and/or homework but not about reminding the Student to test his blood sugar.

The complainant informed OCR that at the beginning of the school year in August 2013 and also in approximately January 2014, she met with the counselor about teachers reminding the Student to test his blood sugar but indicated that she received no assistance from the counselor. Also, according to the complainant, in about April 2014, she met with the principal, the assistant principal and the superintendent mostly regarding the Student’s grades but also about his blood sugar.

The investigation revealed that on about February 3, 2014, the assistant principal, a “tier” interventionist, the Student’s teachers, and the complainant met regarding the Student not doing his work or homework. Based on interview information, OCR determined that the above individuals developed a homework planner sheet for the Student. In addition, in about March or April 2014, OCR determined that the assistant principal, the superintendent, and the complainant met regarding the Student receiving or making up work. However, the assistant principal reported that at the first meeting, the complainant did not bring up a concern about teachers not reminding the Student to test his blood sugar and that he did not remember her raising this concern at the second meeting. The Superintendent related that the complainant never complained that teachers were not following the Student’s Section 504 plan regarding reminding him to test his blood sugar. The Student’s teachers informed OCR that they either did not remember the complainant raising the above concern at the above meetings, did not remember these meetings, or remembered only discussing grades at the meetings. According to the principal, the complainant never brought up the Student’s Section 504 plan or teachers reminding

the Student to test his blood sugar with her. In addition, the counselor stated that she never talked to the complainant about checking the Student's blood sugar. On March 26, 2015, OCR contacted the complainant to provide her with an opportunity to rebut the above information. The complainant reported that she brought up the issue of teacher reminders with one or two individuals attending the meetings but not during the meetings which were about grades and planning.

OCR investigated regarding whether the Student may have suffered any educational impact due to not receiving the related service of reminders to test his blood glucose. Interview information did not indicate that the Student experienced any disability-related medical emergencies at school during the 2013-2014 school year. However, the complainant reported that if the Student has high or low blood sugar, it could affect his ability to concentrate. She further related that there was an issue mainly of the Student having high blood sugar in the above school year. She alleged that as a result of not receiving the above related service, the Student failed his math and science classes. The investigation revealed that per the complainant's request, the Student received some non-disability related assistance with tracking homework and the completion of assignments. However, a review of the Student's transcript showed that he received final grades of 42 in 8th grade Pre-Algebra and 55 in Science.

Based on its investigation, OCR determined that on August 6, 2013, a group of knowledgeable persons provided the Student with an individualized re-evaluation and placement decision in accordance with the requirements of Section 504. Documentation and interviews revealed that the above group determined that multiple related aids and services were necessary due to his disability such as access to water, snacks or juice, and the restroom, provisions for glucose monitoring, and assistance with low or high blood glucose and emergencies. OCR determined that the Student's teachers provided him with the majority of the related services in his Section 504 plan, as applicable.

OCR received conflicting interview information from the complainant and WCSD personnel regarding whether the Student's Section 504 plan provided that he be reminded to test his blood sugar, including requirements for reminders at specific times during the school day. Copies of the Student's plan and attachment received from the complainant and the District also conflicted concerning written requirements for testing reminders at specific times. However, OCR determined that both copies of the plan included a stipulation stating that "he does need reminding" regarding testing his blood glucose. Therefore, the Student's Section 504 plan did require at least some reminders for testing as a necessary related service. Interviews with the Student's teachers revealed that the majority of his teachers did not remind him to test his blood glucose levels during the spring 2014 term. Thus, OCR determined that the Student was not provided the related services of reminders for blood glucose testing determined to be necessary. Furthermore, the Student's failing final grades in math, science, and social studies evidenced that he may have suffered an educational harm due to the above related service not being provided during the above period. Therefore, based on the above information, OCR determined that the preponderance of the evidence supports a conclusion that the WCSD failed to comply with

Section 504 and Title II regarding the issue investigated. In addition, OCR determined that the WCSD's Section 504 evaluation and placement procedures failed to comply with the requirements of Section 504 at 34 C.F.R. §104.35 (b) and (c).

Sections 303 and 304 of OCR's *Case Processing Manual* (CPM) provide for the negotiation of a resolution agreement when OCR determines that a preponderance of the evidence supports a conclusion that the recipient failed to comply with the applicable regulations. The provisions of the agreement must be aligned with the allegations and issues investigated and be consistent with applicable law and regulation(s). The complaint will be considered resolved and the recipient deemed compliant when the recipient, after negotiating with OCR and reaching agreement on its terms, enters into an agreement that, when fully and effectively implemented, will address all of OCR's compliance concerns and/or the identified violations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statute(s) and regulations at issue in the case.

The WCSD voluntarily submitted the enclosed Resolution Agreement (Agreement) to remedy the identified violations regarding this complaint; the Agreement was signed by the WCSD Superintendent on July 20, 2015. OCR has determined that the provisions of the Agreement are aligned with the issue investigated and the identified violations and will appropriately resolve them. Furthermore, OCR accepts the Agreement as an assurance that the WCSD will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the Agreement.

Under OCR procedures we are obligated to advise the complainant and the institution against which a complaint has been filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this office. 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. If this happens, the complainant may file another complaint alleging such treatment.

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 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, it 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.

Page 10 – Mr. Jack Treloar, Superintendent

OCR appreciates the cooperation and assistance of the HPS in coordinating the complaint resolution activities. If you have any questions or concerns, please contact Ms. Page Baird, the assigned investigator, at (214) 661-9604 or page.baird@ed.gov, or you may contact Mr. Rey De La Garza, Senior Attorney, at (214) 661-9609 or rey.delagarza@ed.gov.

Sincerely,

Taylor D. August
Director
Dallas Office

Enclosure

cc: Ms. Gina Sanderson, Director
WCSD Department of Special Education