



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VI
ARKANSAS
LOUISIANA
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TEXAS

June 25, 2015

Mr. Richard Strong, Superintendent
West Carroll Parish School Board
314 East Main Street
Oak Grove, LA 71263

RE: OCR Case No. 06151095
West Carroll Parish School Board

Dear Superintendent Strong:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received in this office on November 14, 2014. OCR investigated allegations that the West Carroll Parish School Board (WCPSB), Oak Grove, Louisiana, discriminated against the complainant's children on the basis of disability. Specifically, the complainant alleged:

1. During the first 9 weeks of the 2014-2015 school year, the complainant's daughter's (Student A) teachers made her sit outside of the classroom to finish her assignment when she did not complete the assignment on time.
2. During the first 9 weeks of the 2014-2015 school year, Student A's Social Studies teacher read tests aloud to Student A in the classroom, although her individual education plan (IEP) required that she have tests read aloud to her in a small group setting.
3. During the first 9 weeks of the 2014-2015 school year, the WCPSB informed the complainant that it could not accommodate her son (Student B), and when Student B had XXX to end of sentence.

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 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, (amended 1992), and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits 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 regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. As a recipient of Federal financial assistance and a public education entity, the WCPSB is subject to OCR's jurisdiction under Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In a letter dated February 12, 2015, OCR notified the WCPSB and the complainant that it was opening for investigation the following issues:

1. Whether the WCPSB discriminated against Student A on the basis of disability by failing to educate her with students without disabilities to the maximum extent appropriate to the needs of Student A, in violation of Section 504 at 34 C.F.R. § 104.34 and Title II at 28 C.F.R. § 35.130.
2. Whether the WCPSB discriminated against Student A on the basis of disability by denying her a FAPE during the 2014-2015 school year by failing to provide her the related aids and services determined necessary to meet her individual educational needs, in violation of Section 504 at 34 C.F.R. § 104.33 and Title II at 28 C.F.R. § 35.130.
3. Whether the WCPSB discriminated against Student B on the basis of disability by denying him a FAPE during the 2014-2015 school year by failing to provide him the related aids and services determined necessary to meet his individual educational needs, in violation of Section 504 at 34 C.F.R. § 104.33 and Title II at 28 C.F.R. § 35.130.

During the course of this investigation, OCR reviewed pertinent WCPSB policies and procedures; the *Louisiana Educational Assessment Program Guidelines for Selecting Test Accommodations for Students with Disabilities*; Student A's Individualized Accommodation Plan (IAP) and other documents from Student A's educational file; Student B's Individualized Education Plan (IEP) and other documents from Student B's educational file; Student B's discipline reports; and WCPSB teachers' signed statements.

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 or retaliation 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. Based on OCR's careful review and analysis of the information obtained, we have determined that there is insufficient evidence to establish that the WCPSB violated Section 504 or Title II with regard to allegations 1 and 3, and there is sufficient evidence to establish a violation of Section 504 and Title II with regard to allegation 2. The bases for these determinations are set forth below.

Legal Standards

The Section 504 regulation at 34 C.F.R. Section 104.34 states that a recipient shall educate each qualified individual with a disability in its jurisdiction with persons who are not disabled to the maximum extent appropriate to the needs of the individual with a disability. Thus, a recipient must place a disabled person in the regular educational environment, unless it is demonstrated by the recipient that such a placement cannot be achieved satisfactorily with the use of supplementary aids and services. 34 C.F.R. Section 104.34(a). The regulation, at 34 C.F.R.

Section 104.34(b), states that in providing for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities, the recipient shall ensure that each disabled person participates with non-disabled persons in such activities and services to the maximum extent appropriate to the needs of the disabled person in question.

The Section 504 regulation found at 34 C.F.R. § 104.33(a) and (b) requires that recipients of Federal funds from the Department provide a free appropriate public education (FAPE) to each qualified student with a disability within its jurisdiction. A district may satisfy this obligation by developing an individualized education program (IEP) of regular or special education and any related aids and services, which are specifically designed to meet the individual needs of each student with a disability. The regulation implementing Title II at 28 C.F.R. Section 35.130(a) and (b) (1)(iii) states that no qualified individual with a disability shall on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any public entity. A public entity shall not provide a qualified individual with a disability with an aid or benefit that is not as effective in affording equal opportunity to reach the same level of achievement.

When investigating an issue of whether a district has failed to provide an appropriate public education when it has not given a student all or some of the modifications determined to be necessary to meet individual educational needs, OCR's investigative approach is whether a recipient failed to provide the services that it identified, through the appropriate process, as necessary to meet individual educational needs and whether the placement, aids, and services identified by the district through this process as necessary to meet individual needs were provided. If the evidence is sufficient to conclude that a school district has not provided all or some of the related aids and services deemed necessary, OCR must then determine whether the failure to provide certain accommodations or services constituted a denial of FAPE.

The Section 504 regulation found at 34 C.F.R. § 104.35 provides that 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 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.

Issue 1

OCR opened for investigation whether the WCPSB discriminated against Student A (an 8th grade student) on the basis of disability by failing to educate her with students without disabilities to the maximum extent appropriate to the needs of Student A, when Student A's teachers made her sit outside of the classroom to finish her assignment when she did not complete the assignment on time.

OCR found that Student A had an IAP dated XXX, which was in place during the time of the alleged discrimination. OCR's review of the IAP revealed that a group of persons

knowledgeable about the Student and the meaning of evaluation data and placement options identified Student A as a student with a disability (XXX) and made placement decisions for her as documented in the IAP. OCR found that Student A's IAP indicated that Student A received her education in a regular education setting with the following accommodations relevant to the issues investigated:

Setting:

- Small group testing

Presentation/Response:

- Tests read aloud

Time Demands:

- Increase time allowed for class-work and/or tests

Tests/Quizzes:

- Increased time for written projects
- Increased time for completion
- Tests read aloud

Standardized Testing:

- Extended time (due to depressed reading skills)
- Small group administration (TRA)
- Tests read aloud (*Exception: Reading and Responding*) due to depressed reading skills

The complainant alleged that apparently it was a practice of teachers at Kilburne High School to sit students in the hallway outside the classroom to complete assignments because on multiple occasions while visiting the school, the complainant observed students seated in the hallway outside classrooms. The complainant alleged that while she never observed Student A seated in the hallway outside a classroom, Student A informed the complainant that her teachers made her sit outside the classroom to complete her assignment. OCR attempted to get additional details about this allegation from the complainant, but the complainant was unable to identify which teacher(s) did the alleged act. OCR attempted to ascertain which teacher(s) were involved by obtaining other information about the allegation, but the complainant was also unable to provide OCR the approximate date(s) when the alleged act(s) occurred and was unable to identify the class assignment(s) for which Student A was allegedly sat outside to complete. Further, the complainant informed OCR that, due to Student A's XXX to end of sentence.

When OCR questioned the WCPSB about whether Student A's teachers made Student A sit in the hallway outside their classroom to complete an assignment, two of Student A's teachers stated that they did not place Student A outside to complete an assignment and two other teachers stated that occasionally students completed make-up assignments in the hallway outside the classroom to avoid distractions within the classroom but that they had no recollection of Student A being among those who sat outside to complete an assignment. Another teacher stated that he never required Student A to sit in the hallway to complete an assignment, but that he did allow all of his students (with and without a disability) the option to make up missed tests by either sitting at a desk in the hallway or in the classroom.

In addition to whether the WCPSB failed to educate Student A with students without disabilities to the maximum extent appropriate, OCR recognized that this allegation could also be looked at under whether the WCPSB failed to provide Student A related aids and services determined necessary to meet her individual educational needs. However, based on the foregoing, OCR was unable to establish that Student A's teacher(s) made her sit outside of the classroom to finish her assignment when she did not complete the assignment on time, and therefore, OCR found insufficient evidence to show that the WCPSB failed to comply with the requirements of Section 504 with regard to this allegation.

Issue 2

The complainant alleged that Student A's Social Studies teacher did not provide Student A the accommodation of tests read aloud in a small group setting, rather the teacher would merely stand next to Student A's desk and read the test aloud to her in the classroom. The complainant alleged that Student A XXX to end of sentence.

OCR confirmed that Student A was entitled to receive "tests read aloud" and testing in a "small group" setting, as stated in Student A's IAP. When OCR asked the WCPSB about this allegation, the Social Studies teacher informed OCR that he would sit at a desk at the front of the classroom facing the class, and any student whose test was to be read aloud would be placed at a desk near the teacher at the front of the room while he read the test aloud to them. The teacher further stated that approximately at the midpoint of the first 9-week grading period, Student A XXX to end of sentence. The teacher stated that he continued to offer to read her tests to her but she continued XXX to end of sentence.

Because of the provision of small group setting for testing along with the provision of tests read aloud is commonly provided in a location that is separate from the location in which the rest of class takes the test, OCR looked for evidence to show that the Social Studies teacher's unique way of providing these accommodations was actually understood and agreed upon by Student A's Section 504 Committee. The WCPSB informed OCR that there are different ways that small group testing may be accomplished, including: (1) having a table in the classroom where small group testers are accommodated with the teacher while the rest of the class tests; (2) using corrals or "offices" to separate students from distractions; (3) using computer labs; and (4) administering small group testing during teacher's planning periods. However, the WCPSB provided no evidence that Student A's Section 504 committee decided that Student A's small group testing/tests read aloud accommodations would be provided in the manner that the Social Studies teacher provided it. The WCPSB also failed to provide to OCR any written policy or guidance upon which it relied to determine that Student A would receive her small group testing/tests read aloud accommodations in this manner. As such, OCR determined that the WCPSB failed to provide Student A the accommodations of small group testing and tests read aloud, when the teacher read tests aloud to her at the front of the classroom.

Issue 3

The complainant alleged that the WCPSB discriminated against Student B (XXX) by failing to provide him the services required by his disability. Specifically, the complainant alleged that, in late XXX to end of paragraph.

OCR found that Student B had an IEP dated XXX, which was in place during the time of the alleged discrimination. OCR's review of the IEP revealed that a group of persons knowledgeable about the Student and the meaning of evaluation data and placement options identified Student B as a student with a disability (XXX) and made placement decisions for him as documented in the IEP. OCR found that Student B's IEP provided that Student B was to receive his education in, both, the regular education and special education settings, and provided that Student B's needs were in the areas of academic/cognitive, communication, and social. Consistent with what the complainant told OCR, OCR found that the IEP contained no behavior specific accommodations and the IEP indicated that Behavior was not an area in which he was in need to receive accommodations. Accordingly, Student B was subject to the same disciplinary code as students without a disability, subject to discipline that constitutes a significant change in placement.

Under OCR policy, a removal from or change in a student's educational setting for more than ten consecutive days, or a total of ten cumulative days in a school year under circumstances constituting a pattern of exclusion, constitutes a significant change in placement. The regulation implementing Section 504 at 34 C.F.R. Section 104.35(a) and (b) requires covered entities to conduct an evaluation prior to a significant change in placement for a student on an education plan. The evaluation must be made by a group of persons, including individuals familiar with the student and knowledgeable about his/her disability and disability-related needs.

OCR found that on XXX, Student B engaged in behavior that resulted in Student B XXX to end of sentence. On two more occasions, in XXX, Student B engaged in behavior that resulted in the complainant being contacted to retrieve Student B from school. However, on the third occasion, both the complainant and XXX to end of paragraph.

The WCPSB's explanation for sending Student B home on three occasions was that Student B's behavior was disruptive to the educational environment and "state law and parish policy allow the school system to remove a student from the classroom/school, regardless of age, [when a student is disruptive. Students are normally formally suspended from school for habitual violations of school/parish rules; however, Student B – a preschool child was never formally suspended; instead, he was taken home and allowed to return to school the following day." OCR determined that Student B was sent home a total of three days; this did not constitute a significant change in placement.

With regard to the alleged statement about the inability to accommodate Student B, the principal informed OCR that XXX to end of sentences. OCR determined that the alleged statement by the principal could not be corroborated. 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 a particular proposition is more likely than not). 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. Based on the foregoing, OCR determined that the evidence is insufficient to find the WCPSB failed to provide Student B the related aids and services determined necessary to meet his individual educational needs.

Conclusion

Consistent with Section 303 of OCR's Complaint Processing Manual, the WCPSB submitted a Resolution Agreement (Agreement) on XXX, which OCR has determined addresses the compliance concern identified during OCR's investigation. A copy of the Resolution Agreement is enclosed. The dates for specific actions are detailed in the Resolution Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the WCPSB to determine whether the commitments made by the WCPSB have been implemented consistently with the terms of the Agreement. If the WCPSB fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the WCPSB determines a need to modify any portion of the Agreement, the WCPSB may submit, for consideration, proposed revisions to OCR.

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 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 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 the regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

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.

OCR appreciates the cooperation and assistance of the WCPSB in coordinating the complaint resolution activities. If you have questions or concerns, please contact Tiffany Gray, the attorney

Page 8 – Mr. Richard Strong, Superintendent

assigned to this matter, at 214-661-9611, Tiffany.Gray@ed.gov, or me at 214-661-9608, Paul.Coxe@ed.gov.

Sincerely,

Paul Edward Coxe
Supervisory Attorney-Team Leader
Office for Civil Rights
Dallas Office