



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Ref: OCR #
06151323

Dr. Cade Brumley, Superintendent
DeSoto Parish School Board
201 Crosby Street,
Mansfield, Louisiana 71052

Dear Dr. Brumley:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has reached its determination in the above-referenced complaint which was received in our office on March 24, 2015 and filed against the DeSoto Parish School Board (DPSB), Mansfield, Louisiana. The complainant alleged that the DPSB discriminated against her son (hereinafter referred to as “the Student”) during the 2014-2015 school year on the basis of disability (Attention Deficit Hyperactivity Disorder [ADHD]) 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 (2015); and 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 (2015), which prohibit discrimination based on disability.

Specifically, the complainant alleged that during the 2014-2015 school year, the DPSB discriminated against the Student on the basis of his disability when the DPSB failed to implement the regular or special education and related aids and services delineated in his individualized education program (IEP).

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. OCR is also responsible for enforcing Title II. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The DPSB 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.

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

Regarding the complaint allegation, OCR investigated the issue of whether during the 2014-2015 school year, the DPSB failed to implement the regular or special education and related aids and services deemed necessary to meet the Student's educational needs and thereby denied the Student a free appropriate public education, as required by Section 504 and its implementing regulation at 34 CFR §104.35 and Title II and its implementing regulation at 28 CFR § 35.149.

OCR reviewed data provided by the DPSB, which included the DPSB's policies regarding Section 504 and Title II, the Student's IEP, attendance, discipline records, and academic grades for the 2014-2015 school year, other relevant documentation and conducted telephonic conferences with the DPSB's legal counsel.

Legal Standards

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 something is more likely to have occurred 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.

Disability Discrimination

Section 504, at 34 C.F.R. Section 104.4(a), states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination on the basis of disability under any program or activity that receives Federal financial assistance. Title II, which applies to public entities operating elementary and secondary education programs, contains similar language at 28 C.F.R. Section 35.130(a).

Additionally, at 34 C.F.R. § 104.33(a), the Section 504 regulation provides that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity shall provide a free, appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. Under 34 C.F.R. § 103.33(b), the provision of an appropriate education is the provision of "regular or special education and related services that are (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met..." OCR interprets the regulation implementing Title II at 28 C.F.R. § 35.130(b) to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

When investigating an issue of whether a school district has failed to provide an appropriate public education when it has not given a child all or some of the related services determined to be necessary to meet his/her individual educational needs, OCR's investigative approach is to determine whether: 1) a child's needs were determined on an individualized basis; 2) the evaluation and placement procedures that were applied conformed with those specified in the Section 504 regulation; and 3) the placement, aids, and services identified by the recipient through this process as necessary to meet the Student's individual needs are being provided.

In analyzing whether a school district's failure to implement any identified related aid or service denied a Student a FAPE, OCR does not automatically reach such a determination when a single aspect of a plan was not implemented. Rather, OCR looks at the totality of the circumstances to determine the effect of the failure to implement the plan in the context of the Student's overall education. This often includes a review of the Student's education plan, the Student's overall curriculum, and any efforts made by the district to compensate for its failure to implement the portion of the educational plan in question.

To establish that a Student has been discriminated against on the basis of disability under Section 504 or Title II, OCR must prove that the recipient's actions were taken against an individual "on the basis" or because of that individual's disability, rather than other legitimate considerations.

Findings of Facts and Analysis

The complainant alleged that the Student failed all of his classes and that the DPSB is not assisting the Student at all to "get on" grade level. She further advised OCR that her son is XXX old in the XXX grade, can only count to 20 and will not graduate because he cannot pass the required state standardized tests. The complainant further informed OCR that the Student should be in the 11th grade but has been XXX XXX XXX and believes that the DPSB is waiting for the Student to become of age so that the Student can decide to drop out of school as he has already expressed a desire to do so. According to the complainant, the Student has been determined to be a qualified Student with a disability; however, the DSPB has failed to provide the Student with the related aids and services as delineated in his IEP that he needs to be successful.

OCR reviewed two IEPs (IEP 1 and IEP 2) created for the Student, both dated XXX XXX, 2014., IEP 2 included a handwritten date of "amended January 11, 2015." OCR reviewed documentation from the Student's education records which revealed that the Student receives special education and related aids and services for a mild intellectual disability. Additionally, the IEPs indicated that the Student reads on a XXX XXX level and has a XXX XXX grade level. The Student's accommodations included: oral reading for math, English and language arts; modified instruction, tests and assignments; study outlines/guides; test study guides; extended time for assignments; written work and tests; small group instruction; small group testing and preferential seating. In addition, the Student's IEPs required that he attend the content mastery center for classwork and tests. Specifically, the IEPs provide that the Student attend special education class 165 minutes per day or 825 minutes a week but did not specify how often or how long the Student was to attend content mastery. OCR noted that neither of the Student's IEPs included any handwritten signatures by IEP committee members or the Student's parents. As such, OCR was unable to determine what persons made up the "group of knowledgeable persons about the Student" as required by Section 504 regulations.

OCR's review of the Student's attendance revealed that the Student was absent a total of 19 days during the 2014-2015 school year, three of those absences resulted from a three-day suspension for excessive tardies. The Student's discipline record did not contain any other disciplinary sanctions. OCR reviewed the Student's 2014-2015 progress report that

indicated the Student received F's in English, math, science, computer and social studies. The Student's special education teacher provided a narrative of the services she provided to the Student during the 2014-2015 school year. OCR reviewed the narrative which indicated that the Student was to receive 30 minutes of content mastery daily. However, documentation reviewed by OCR of the Student's content mastery log revealed that the Student only attended content mastery sporadically.

On August 28, 2015, OCR requested additional documentation from the DSPB. On the same date, the DSPB expressed a desire to voluntarily resolve this complaint. Consistent with Section 302 of OCR's *Complaint Processing Manual*, DSPB submitted the enclosed Resolution Agreement (Agreement) on September 18, 2015, which OCR has determined addresses the compliance issues raised and which when fully implemented, will resolve the allegation.

Accordingly, as of the date of this letter, OCR will cease all investigative action regarding this issue; however, OCR will actively monitor the implementation of the Agreement by the DSPB to determine whether the commitments made by the DSPB have been implemented consistently with the terms of the Agreement. If the DSPB fails to implement the Agreement, as specified, OCR will resume its investigation of the issue alleged. Based on OCR's monitoring of the implementation of the Agreement related to this issue, we are closing the investigative phase of this complaint in accordance with our case processing procedures.

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.

This letter is not intended, nor should it be construed to cover, other civil rights matters which may exist, but are not included herein.

Under OCR procedures we are obligated to advise the complainant and the institution against which a complaint is filed that intimidation or retaliation against a complainant is prohibited by the 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 an individual 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.

If you have any questions regarding this letter, please contact Treslyn Patterson, the investigator assigned to your complaint, at (214) 661-9645 or by electronic mail to treslyn.patterson@ed.gov. You may also contact me at (214) 661-9608, or by email to paul.coxe@ed.gov.

Sincerely,

Paul Coxe
Supervisory General Attorney
Dallas Office

Enclosure