



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

September 17, 2019

David Alexander, Superintendent
1100 Webster Street
Donaldsonville, Louisiana 70346

OCR Complaint No. 06-17-1002

Dear Superintendent Alexander:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint that was filed against the Ascension Parish School Board (APSB), in Donaldsonville, Louisiana. The Complainant alleged that the APSB discriminated against her son (Student) on the basis of disability XXXXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability and retaliation in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities and retaliation by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the APSB receives Federal financial assistance from the Department and is a public education system, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Based on the allegations, OCR opened for investigation the following legal issues:

1. Whether between XX---to end of phrase---XX, the APSB discriminated against the Student on the basis of his disability by failing to provide the Student with an equal opportunity to participate in nonacademic services XXXXXXXXXXXX, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.37, and Title II and its implementing regulation at 28 C.F.R. § 35.130;
2. Whether the APSB discriminated against the Student on the basis of disability by failing to properly evaluate his need for regular or special education and related aids and services, and thereby denied the Student a free appropriate public education (FAPE) during the XX---to end of phrase---XX, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33, 104.34, and 104.35, and 28 C.F.R. § 35.130, respectively;
3. Whether the APSB discriminated against the Student on the basis of disability by treating the Student differently than one or more students without disabilities in its use of physical

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restraint or seclusion, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by the APSB during the XX---to end of phrase---XX, in violation of, 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130;

4. Whether the APSB's use of physical restraint or seclusion denied the Student an opportunity to receive a FAPE during the XX---to end of phrase---XX, in violation of, 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130(a)-(b); and
5. Whether the APSB 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 XX---to end of phrase---XX, and thereby denied the Student a FAPE during the XX---to end of phrase---XX, 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.

During the processing of this complaint, OCR interviewed the Complainant and the XX---to end of sentence---XX. OCR also reviewed pertinent documentation regarding the allegations at issue in this complaint, including, the Student's educational and special education files, relevant APSB policies and procedures, and written correspondence between APSB officials, and correspondence between the Complainant and APSB officials.

To date, OCR's investigation found that, during XX---to end of phrase---XX, the Student was in the XX---to end of phrase---XX. OCR determined that since XXXX, the Student received services pursuant to the Individuals with Disabilities Education Act (IDEA) for his identified disability XXXXXXXX. OCR reviewed documentation provided by the APSB, which shows that on XX---to end of phrase---XX, and pursuant to Section 504, the APSB conducted a re-evaluation of the Student. Notes from the evaluation indicate that the Student's XX---to end of phrase---XX such that the Student's IEP team determined the Student would be best served in the special education setting – specifically, XX---to end of sentence---XX. The Louisiana Alternate Assessment Level 1 (LAA 1) is an assessment instrument used to evaluate the academic progress of students with significant cognitive disabilities.

OCR also determined that the Student completed the XXXXXXXXXX in the XX---to end of phrase---XX and advanced to the XXXXXXXXXX for the XX---to end of sentence---XX. However, the Student only attended APSB for approximately XX---to end of phrase---XX during the XX---to end of phrase---XX, until the Complainant withdrew him on XX---to end of sentence---XX.

During the relevant school years, the Student was placed in the XXXXX classroom apart from the general education environment. In particular, during the XX---to end of phrase---XX, the Student's XX---to end of sentence---XX. Student records indicate that the Student required a behavior intervention plan (BIP) XX---to end of phrase---XX due to persistent and significant behavioral difficulties observed by APSB staff¹.

Documentation from the APSB demonstrates the Student's persistent behavioral difficulties beginning in the XX---to end of phrase---XX which, according to APSB records, continued to XX---to end of phrase---XX to manage his behavior. Records indicate that the Student's behavioral

¹ A review of these documents suggests that the BIP was used for more day-to-day behavioral management while the XX---to end of sentence---XX.

outbursts were XX---to end of sentence---XX. Further, documentation indicates that the Student's outbursts caused XX---to end of phrase---XX with him. The Complainant alleged, and OCR's investigation thus far supports that, the Student was repeatedly secluded for XX---to end of sentence---XX. While documentation indicates that individual staff members met and discussed proposals regarding the Student's behavior, OCR found no evidence that any IEP meetings or re-evaluations occurred throughout the year to determine whether further evaluation or a different placement was necessary, except for one IEP meeting that occurred near the end of the XX---to end of sentence---XX.

As to the Complainant's allegation regarding the exclusion of the Student from field trips, OCR's investigation thus far found that the Student was excluded from XX---to end of sentence---XX. Specifically, the evidence indicates that, XX---to end of sentence---XX. The Student attended the first XX---to end of sentence---XX. However, documentation indicates that issues arose XX---to end of sentence---XX. The APSB does not deny that it asked the Complainant to accompany the Student on later field trips but asserted that the requirement was necessary for XX---to end of sentence---XX.

OCR found that despite repeated seclusion of the Student and XX---to end of sentence---XX. For XX---to end of phrase---XX, the Complainant alleged that the APSB failed to provide any of the services in the Student's IEP during the time he attended. The Complainant told OCR that she learned of this information from XX---to end of phrase---XX. OCR interviewed XX---to end of sentence---XX. The XXXXXXXXXXXXXXX told OCR, as the Complainant alleged, that staff failed to implement any of the services/accommodations in the Student's IEP XX---to end of sentence---XX.

Prior to the completion of OCR's investigation, the APSB expressed interest in resolving the complaint allegation through a voluntary resolution agreement. Section 302 of OCR's *Case Processing Manual* provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegations. The provisions of the resulting voluntary resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. On September 13, 2019, the APSB submitted the enclosed signed Resolution Agreement (Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the APSB has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the APSB's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the APSB has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

This concludes OCR's investigation of this complaint. However, if the APSB fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the APSB written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

Please be advised the APSB 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 individual may file another complaint alleging such treatment. The Complainant may have a 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, 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 Linda Floyd, the attorney assigned to this complaint, at (214) 661-9657, or linda.floyd@ed.gov. You may also contact me at (214) 661-9600.

Sincerely,

/s/

Melissa Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure