



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

January 24, 2018

Mr. Nick Hill, Superintendent
Des Arc School District
600 Main Street
Des Arc, Arkansas 72040

Ref: 06171661

Dear Mr. Hill:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, with regard to the above-referenced complaint filed against the Des Arc School District (DASD or District), Des Arc, Arkansas. The complaint, which was received in our office on May 4, 2017, was filed on behalf of a XX – phrase redacted – XX (the Student). The complainant alleged that the DASD discriminated against the Student on the basis of her disability (XXXX). Specifically, the complainant alleged that the DASD discriminated against the Student on the basis of her disability when, during the spring 2017 semester, XXXX XXXX XXXX staff failed to provide the Student related aids and services deemed necessary to meet her individual needs as stated in her Section 504 accommodation plan (XX – phrase redacted – XX).

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the U.S. Department of Education 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, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR also enforces 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities, including public preschools and elementary and secondary educational institutions.

The DASD is a recipient of Federal financial assistance from the Department, and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction to process this complaint to resolution pursuant to 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.

Issue Investigated

Based on the complaint allegation and OCR’s jurisdictional authority, OCR investigated the following legal issue:

1. Whether the DASD discriminated against the Student on the basis of her disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student’s individual educational needs (e.g., XX – phrase redacted – XX), and thereby denied the Student a free appropriate public education (FAPE) during the 2016-17 school year, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.

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 that it is more likely than not that unlawful discrimination occurred). Where 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 its investigation of this complaint, OCR carefully reviewed written documentation provided by the DASD, and interviewed the complainant and appropriate DASD staff. Based on a careful review of the information obtained, OCR has determined that the evidence is sufficient to support a finding of noncompliance with Section 504 and Title II as alleged. A discussion of the appropriate legal standard, OCR’s investigative findings, and the bases for OCR’s finding of noncompliance, is provided below.

Legal Standard

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district’s jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define an “appropriate education” as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student’s Section 504 plan, also known as an “individualized education program,” or “IEP.” When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student’s needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through

this process as necessary to meet the student's individual needs were or are being provided. If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

OCR Findings

The complainant alleged that the DASD denied the Student a FAPE during the 2016-17 school year by failing to provide the Student with the related aids and services identified as necessary to meet the Student's individual needs, as specified in XXXX 504 plan. More specifically, in an interview with OCR, the complainant alleged that DASD staff XX – phrase redacted – XX in contradiction to the Student's 504 accommodations, which the complainant stated provided XX – to end of sentence redacted – XX. Moreover, the complainant alleged that the Student was XX – phrase redacted – XX due to the XXXX's failure to follow the Student's 504 accommodations.

During the 2016-17 school year, the Student was XX – to end of sentence redacted – XX. On XXXX, the DASD convened a Section 504 committee which consisted of XX – to end of sentence redacted – XX. The committee determined that, because of the Student's disabilities, she was in need of regular education and related aids and services pursuant to Section 504. On the same date, the DASD developed a 504 plan for the Student. In the 504 plan, the DASD XX – remainder of paragraph redacted – XX.

Documentation reviewed by OCR reveals that, on XXXX, the DASD convened a Section 504 committee to re-evaluate the Student's needs. The XXXX Section 504 committee consisted of XX – to end of sentence redacted – XX. The DASD modified the Student's 504 plan on this date. XX – remainder of paragraph redacted – XX.

Moreover, the DASD developed separate discipline procedures for the Student, which are incorporated into the Student's 504 plan. The documentation indicates that the discipline procedures were developed by XXXX, XXXX, and two of the Student's classroom teachers. According to the documentation, the DASD recognized that, due to the Student's XXXX, the Student could not follow District or school policies. Therefore, the DASD determined that, when the Student violated school rules, XXXX would be XX – remainder of sentence redacted – XX.

OCR interviewed the XXXX, two of the Student's classroom teachers, and XXXX. XXXX reported to OCR that, during the 2016-17 school year, XX – to end of sentence redacted – XX. XXXX explained to OCR that the DASD determined that XX – to end of sentence redacted – XX. XXXX informed OCR that, because XXXX was not one of the Student's regular classroom teachers, XXXX did not receive a copy of the Student's 504 plan at the beginning of the 2016-17 school year. XXXX stated that XXXX received a copy of the plan shortly before the XXXX meeting, which XXXX attended. XXXX reported that XXXX received and implemented the

Students XXXX 504 plan. According to XXXX, XX – phrase redacted – XX in accordance with the Student’s 504 plan, and reported that XX – to end of sentence redacted – XX. XXXX further explained that XXXX did not assign the Student work; rather, XXXX would come to XXXX classroom with work that XXXX had received from other teachers. XX – sentences redacted – XX. XX – phrase redacted – XX, and, in this regard, she treated the Student just as she would “any other” student.

OCR also interviewed the Student’s XXXX and XXXX teachers. Both teachers reported receiving both versions of the Student’s 504 plan during the 2016-17 school year. Further, these teachers reported that they participated in the revision of the Student’s 504 plan which occurred at the XXXX Section 504 meeting. According to the Student’s XXXX teacher, XX – remainder of paragraph redacted – XX.

In her interview with OCR, the Student’s XXXX teacher explained that XX – sentences redacted – XX. When OCR inquired as to whether the teacher XX – phrase redacted – XX, the XXXX teacher responded that XX – phrase redacted – XX, and that XXXX treated the Student just like any other student should be treated.

OCR also interviewed the Student’s XXXX. XX – sentence redacted – XX. The XXXX reported that, although XXXX was aware that the Student had a 504 plan, XXXX never received a copy of the plan. XX – remainder of paragraph redacted – XX.

Legal Analysis

As stated above, the Section 504 regulations require recipients to provide a FAPE to students with disabilities, defined as the provision of related aids and services designed to meet a disabled student’s individual educational needs. Further, recipients must afford students with disabilities an equal opportunity to participate in extracurricular athletics. Accordingly, a recipient must provide the related aids and services identified as necessary for a student with a disability, if the failure to do so would result in the denial of a disabled student’s opportunity to participate in extracurricular athletics.

Here, OCR determined that the DASD evaluated the Student and determined that XXXX was in need of related aids and services as a result of her diagnosis of XXXX. More specifically, the DASD determined that the Student’s XX – to end of sentence redacted – XX. Accordingly, the DASD developed an accommodation plan which provided that the Student was to be XX – to end of sentence redacted – XX. OCR’s investigation revealed that the Student’s classroom teachers did not consistently implement these individualized accommodations. Rather, the teachers reported to OCR that they XX – phrase redacted – XX as they would “any other student.” Moreover, the Student’s XXXX reported to OCR that XXXX never received a copy of the Student’s 504 plan. Ultimately, the DASD XX – to end of sentence redacted – X. OCR has determined that the DASD’s failure to provide the Student necessary related aids and services during the 2016-17 school year resulted in a denial of FAPE to the Student, including denying the Student an equal opportunity to participate in extracurricular athletics.

Conclusion

Based on the above factual findings, OCR found sufficient evidence to support a finding of discrimination in violation of Section 504 and Title II, as alleged by the complainant. On January 23, 2018, the DASD voluntarily submitted to OCR a Resolution Agreement (Agreement) which satisfactorily resolves this complaint. A copy of the Agreement is enclosed with this letter. OCR has determined that the provisions of the Agreement are aligned with deficiencies identified by OCR during its investigation and appropriately resolve them. Further, OCR accepts the Agreement as an assurance that the DASD will fulfill its obligations under Section 504 and Title II with respect to the provision of FAPE to students with disabilities within the District. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the implementation of the Agreement.

OCR is closing the investigation stage of the above-referenced complaint as of the date of this letter. The complainant has been notified of this action. This letter is not intended, nor should it be construed, to address any other matters regarding compliance with Section 504 or Title II that may exist and are not specifically discussed herein.

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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that a recipient 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.

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.

OCR would like to thank you and your staff for your cooperation throughout OCR's investigation of this complaint. If you have any questions or concerns regarding this letter, please contact Rachel Caum, Attorney, at (214) 661-9632, or at rachel.caum@ed.gov, or Lori Howard Bringas, Supervisory Attorney/Team Leader, at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

/s/

Taylor D. August, Director

Office for Civil Rights
Dallas Office

Enclosure: Resolution Agreement

cc: XXXX (*via email only*)