



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

January 22, 2019

Re: OCR Docket #06181526

Dr. Theodis Lamar Goree, Superintendent
Caddo Parish School Board
1961 Midway Avenue
P.O. BOX 32000
Shreveport, Louisiana 71130

Via first class mail

Dear Dr. Goree:

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 our office on April 11, 2018, and filed against the Caddo Parish School Board (Recipient or CPSB), in Shreveport, Louisiana. The Complainant alleged that the CPSB discriminated against his son (Student) on the bases of disability and race.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipient), or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704 (amended 1992), and its implementing regulations at 34 C.F.R. § Part 104, which prohibit 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. § 12132, and its implementing regulations 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. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin. The CPSB is a recipient and a public entity. Therefore, OCR has jurisdiction to process this complaint for resolution under Section 504, Title II, and Title VI.

OCR investigated the following legal issues:

1. Whether CPSB discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's alleged

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

- disabilities, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education (FAPE) during the 2017-2018 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.
2. Whether the CPSB discriminated on the basis of disability during the 2017-2018 school year when it failed to provide the Complainant notice of procedural safeguards, in violation of Section 504 and Title II, at 34 C.F.R. § 104.36, and 28 C.F.R. § 35.130, respectively.
 3. Whether the CPSB treated the Student differently on the basis of race in the context of an educational program or activity without a legitimate, nondiscriminatory reason (e.g., by failing to evaluate the Student's need for regular or special education aids and services), 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 CPSB during the 2017-2018 school year, in violation of Title VI, at 34 C.F.R. § 100.3.

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.

OCR reviewed documents provided by the CPSB and information obtained during OCR's interviews with CPSB Staff. In addition, OCR interviewed the Complainant and reviewed information provided by him. Based on our review, OCR found sufficient evidence to support a conclusion of noncompliance with respect to Issues 1 and 2. Regarding Issue 3, OCR found insufficient evidence to support a conclusion of noncompliance. OCR's review and analysis for each issue is explained below.

Issue 1:

Whether CPSB discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's alleged disabilities, the Student needed or was believed to need such aids and services, and thereby denied the Student a FAPE during the 2017-2018 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

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’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

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 recommendations, 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, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

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.

Findings of Fact:

The Complainant alleged the CPSB discriminated against the Student on the basis of disability by failing to evaluate the Student’s need for regular or special education and related aids and services despite having notice that the Student had a disability. Evidence obtained by OCR indicates the Student, who XX---phrase redacted---XX, was enrolled in the XX---phrase redacted---XX during the 2017-2018 school year. Documentation obtained by OCR indicates that in XX---phrase redacted---XX, the Student’s parents met with XX---phrase redacted---XX Section 504 Designee (504 Designee) to discuss XX---phrase redacted---XX, and request accommodations. At that meeting, the Student’s parents provided the 504 Designee a note from the Student’s physician (Physician) XX---phrase redacted to end of sentence---XX. He XX---phrase redacted to end of sentence---XX. He should be allowed to have XX---phrase redacted to end of sentence---XX. He should have XX---phrase redacted to end of sentence---XX.” Records obtained by OCR indicate, on XX---phrase redacted---XX, the 504 Designee notified the Student’s teachers via e-mail to provide the Student the following accommodations: XX---phrase redacted to end of sentence---XX. The 504 Designee indicated she would XX---phrase redacted---XX for the Student which the teachers would need to sign. Correspondence obtained by OCR indicates the Student’s parents requested additional accommodations during the 2017-2018

school year. In XX---phrase redacted---XX, the Student’s mother provided the CPSB a note from the Physician indicating the Student had XX---phrase redacted---XX and would need XX---phrase redacted---XX class assignments. Correspondence shows the 504 Designee notified the Student’s teachers that they should provide him XX---phrase redacted to end of sentence---XX. In a narrative statement, the 504 Designee also stated she received a note from the Physician requesting that the Student XX---phrase redacted---XX and forwarded the request to the Student’s teachers in XX---phrase redacted to end of sentence---XX.

The CPSB reported it did not convene a group of persons knowledgeable about the Student to determine his placement needs during the 2017-2018 school year. The CPSB did not provide any documentation showing CPSB Staff provided the Student’s parents information concerning their rights under Section 504 during the 2017-2018 school year.

In XX---phrase redacted---XX, the CPSB provided OCR documents indicating the CPSB evaluated the Student in XX---phrase redacted to end of sentence---XX. The documents indicated the Student’s mother, assistant principal (AP), teachers, the 504 Designee, the CPSB’s Section 504 Coordinator (504 Coordinator), and other CPSB Staff met to discuss the Student’s placement for the 2018-2019 school year. The documents indicate the Student was determined to be a qualified individual with a disability and was provided with a Section 504 plan for the 2018-2019 school year. The documents did not indicate that the CPSB considered whether the Student needed compensatory or remedial services based on an alleged denial of FAPE during the 2017-2018 school year. Evidence obtained by OCR indicates the Student’s mother signed a statement confirming she received a copy of the “Louisiana Educational Rights of Exceptional Children with disabilities. . .” (Procedural Safeguards) on XX---phrase redacted to end of sentence---XX.

OCR interviewed CPSB Staff. The 504 Designee stated she met with the Student’s parents in XX---phrase redacted---XX, and that they requested several accommodations and provided letters from the Physician. The 504 Designee stated she and the XX---word redacted---XX principal processed the accommodations requested by the Student’s parents by XX---phrase redacted to end of sentence---XX. The 504 Designee stated a XX---word redacted---XX is “a plan in which there is something like a broken leg. A XX---phrase redacted---XX is needed until the leg heals. Once it heals, the child is back in class as usual.” The 504 Designee added that unlike with an Individual Accommodation Plan (IAP), the XX---word redacted---XX does not “do a full Section 504 evaluation” for a XX---phrase redacted to end of sentence---XX. The 504 Designee indicated the CPSB did not convene a “School Building Level Committee” meeting, or Section 504 meeting before deciding to provide the Student XX---phrase redacted---XX because she received the request before school started. The 504 Designee indicated the decision to provide the Student XX---phrase redacted---XX rather than an IAP was based on the Physician’s letters and statements made by the Student’s parents. The 504 Designee acknowledged receiving additional accommodation requests from the Student’s mother during the 2017-2018 school year, but stated she did not believe the Student needed to be evaluated at that time because “everything implemented to that point seemed to be working for the Student.” The 504 Designee stated she did not provide the Student’s parents with Procedural Safeguards during the 2017-2018 school year because the Student’s accommodations were temporary. OCR also interviewed the AP and the 504 Coordinator who stated they were not involved in processing any accommodation requests pertaining to the Student during the 2017-2018 school year. The AP and 504

Coordinator indicated the CPSB has a process for evaluating a student's needs pursuant to Section 504. According to the AP and the 504 Coordinator, a committee, consisting of relevant school staff, and the student's parents, meets to consider the student's academic performance, test scores, medical records, and parental concerns before determining whether the student is eligible for Section 504 services. The 504 Coordinator added that the above-referenced evaluation procedure may be changed based on whether staff is available at the time the CPSB receives a request for an evaluation. Regarding the decision between an IAP and XX--phrase redacted---XX, CPSB Staff told OCR the determination is based on the medical documentation received.

OCR contacted the Complainant to provide him the opportunity to respond to the information provided by the CPSB. Regarding Issue 1, the Complainant reiterated his allegations.

Analysis:

Based on the information above, OCR found the CPSB received notice from the Student's parents and the Physician in XX--phrase redacted---XX that the Student may be suffering from a disabling condition. As noted above, the Section 504 Designee provided the Student with XX--phrase redacted---XX based on her conclusion that the Student had a temporary disabling condition. The evidence indicates that, despite receiving said notice, CPSB failed to conduct an evaluation of the Student until XX--phrase redacted to end of sentence---XX. As also noted above, the XX--phrase redacted---XX evaluation did not consider whether the Student needed compensatory or remedial services based on the CPSB's failure to conduct an evaluation during the 2017-2018 school year. Thus, a preponderance of the evidence indicates that the CPSB violated Section 504 and Title II by failing to evaluate the Student's need for regular or special education aids and services during the 2017-2018 school year.

Issue 2:

Whether the CPSB discriminated on the basis of disability during the 2017-2018 school year when it failed to provide the Complainant notice of procedural safeguards, in violation of Section 504 and Title II, at 34 C.F.R. § 104.36, and 28 C.F.R. § 35.130, respectively.

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' evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial educational placement and any subsequent significant change in that placement. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is "disabled," and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that

substantially limits a major life activity. The Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

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 recommendations, 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, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

Finally, the Section 504 regulations, at 34 C.F.R. § 104.36, provide that:

[a] recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

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.

Findings of Fact:

The Findings of Fact for Issue 2 are the same as those found under Issue 1 above. Additionally, evidence provided to OCR indicates the CPSB has established Procedural Safeguards including documents which describe the rights of parents and guardians under Section 504 including notice, an opportunity for the parents or guardians of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Evidence obtained by OCR indicates the CPSB distributes that information by posting it in the CMMS main office and counselors' office, and providing it upon request at Section 504 meetings. Evidence obtained by OCR indicates CPSB Staff did not provide a copy of the procedural safeguards documents to the Student's parents, or explained their rights under Section 504, until XX---phrase redacted to end of sentence---XX.

OCR contacted the Complainant to provide him the opportunity to respond to the information provided by the CPSB. Regarding Issue 2, the Complainant stated the CPSB "failed to educate us about Section 504. I haven't signed any paperwork and they didn't tell me anything about

Section 504.” The Complainant also stated he had never seen any Section 504 paperwork in the office area of XX---phrase redacted to end of sentence---XX.

Analysis:

Based on the information above, the evidence indicates that, as noted under Issue 1 above, the CPSB failed to evaluate the Student under Section 504 during the 2017-2018 school year. During that time, the Complainant was not provided a copy of the CPSB’s procedural safeguards. OCR notes the CPSB provided the Student’s mother with procedural safeguards during its XX---phrase redacted---XX evaluation. However regarding the 2017-2018 school year, a preponderance of the evidence indicates that the CPSB failed to provide procedural safeguards to the Student’s parents in violation of Section 504 and Title II.

Issue 3:

Whether the CPSB treated the Student differently on the basis of race in the context of an educational program or activity without a legitimate, nondiscriminatory reason (e.g., by failing to evaluate the Student’s need for regular or special education aids and services), 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 CPSB during the 2017-2018 school year, in violation of Title VI, at 34 C.F.R. § 100.3, when CPSB failed to evaluate the Student’s need for regular or special education and related aids and services.

Legal Standard:

The Title VI implementing regulations, at 34 C.F.R. § 100.3(b)(1), prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual’s race. In considering allegations that a recipient has discriminated on the basis of race, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of race, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of racial discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another race. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient’s asserted reasons for its actions are pretext for racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings of Fact:

The Findings of Fact for Issue 3 are the same as those found under Issue 1 above. Additionally, OCR obtained data concerning accommodation requests for XX---word redacted---XX students during the 2017-2018 school year. According to the data, the XX---word redacted---XX received five requests for accommodations during the 2017-2018 school year, in addition to the Student's requests. The five accommodation requests received by the XX---phrase redacted---XX pertained to Caucasian students. All five requests were processed by a committee which determined whether to approve the accommodations requested based on medical records, grades, test scores, parent and teacher input, and other assessments.

OCR interviewed CPSB Staff. CPSB Staff denied treating the Student differently because of his race. The Section 504 Designee indicated she did not convene a Section 504 meeting for the Student before processing his accommodation request because the initial request for accommodations came before the start of the school year, when most XX---word redacted---XX staff members were unavailable. Furthermore, CPSB Staff stated they do not complete Section 504 evaluations for students presenting temporary disabilities. OCR contacted the Complainant to provide him the opportunity to respond to the information provided by the CPSB. The Complainant reiterated his allegation.

Analysis:

OCR first considered whether there was direct evidence of discriminatory intent by the CPSB. OCR found that no such direct evidence existed. Specifically, there was no evidence indicating that the Complainant's race factored into in the 504 Designee's decision to provide the Student with XX---phrase redacted---XX without first conducting a Section 504 evaluation. Next, OCR considered whether the evidence gathered supported a *prima facie* case of discrimination based on race. OCR's review indicates the XX---word redacted---XX received five requests for accommodations during the relevant time period in addition to the Student's accommodation requests. As noted above, all five accommodation requests pertained to Caucasian students, and were processed by a committee which considered medical records, grades, parent and teacher input, test scores, and other assessments. The evidence indicates the Student's request was not processed by a committee before the 504 Designee decided to provide the Student with XX---phrase redacted to end of sentence---XX. Thus, a preponderance of the evidence indicates that the CPSB treated the Student differently than one or more similarly-situated persons of another race. Accordingly, OCR has determined the evidence is sufficient to support a *prima facie* case of discrimination based on race.

Because a *prima facie* case of discrimination based on race was established, OCR considered whether the CPSB offered a legitimate non-discriminatory reason for the CPSB's decision to provide the Student with XX---phrase redacted---XX without first conducting a Section 504 evaluation. As noted above, the CPSB reported the 504 Designee did not conduct an evaluation before deciding to provide the Student with XX---phrase redacted---XX because the request was made before XX---word redacted---XX Staff returned to campus for the 2017-2018 school year. Furthermore, CPSB Staff reported they believed the Student had a temporary medical condition which did not require a Section 504 evaluation. While the compliance deficiencies regarding the

CPSB's practices regarding students with disabilities are identified above, OCR found the CPSB's reasons to be legitimate and non-discriminatory based on race.

OCR then considered whether the legitimate non-discriminatory reasons identified by the CPSB were a pretext for discrimination. According to the 504 Coordinator, CPSB Staff are allowed to alter the usual evaluation process based on staff availability for a committee meeting at the time of the request. The CPSB's Section 504 procedures manual (Procedures Manual) does not speak to whether staff availability can change the evaluation process. The Procedures Manual also provides that students experiencing temporary disabling conditions expected to last for a duration of six months or less should be documented on the XX---phrase redacted to end of sentence---XX. While Section 504 requires the CPSB to evaluate students who, because of disability, may need special education or related services, regardless of whether they have XX---phrase redacted---XX, a preponderance of the evidence did not establish that the CPSB's policy was discriminatory on the basis of race. Furthermore, the evidence shows the 504 Designee did not deviate from the temporary accommodations policy in her handling of the Student's accommodation requests. Thus, OCR found no evidence of pretext behind the CPSB's legitimate non-discriminatory reasons for its conduct.

On January 18, 2019, OCR obtained a signed resolution agreement (Agreement) from the CPSB to remedy the Section 504 and Title II violations referenced above with respect to Issues 1 and 2. The Agreement requires the CPSB to revise its Section 504 policy, train all XX---word redacted---XX staff regarding the CPSB's obligations under Section 504 and Title II, and convene a Section 504 committee meeting to determine whether the Student needs compensatory and/or remedial services as a result of the CPSB's alleged failure to evaluate the Student pursuant to Section 504 during the 2017-2018 school year. OCR will monitor the CPSB's implementation of the Agreement.

This concludes OCR's investigation of the complaint. OCR's determination regarding this complaint should not be interpreted to address the CPSB's compliance with any other statutory or regulatory provision or to address any issues other than those addressed in this letter.

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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a complaint with OCR.

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.

If you have any questions about this letter, you may contact Najwa-Monique Sharpe, the attorney assigned to investigate your complaint, at (214) 661-9642, or by e-mail at najwa-monique.sharpe@ed.gov. You may also contact Timothy D. Caum, Supervisory Attorney, at 214-661-9648 or by e-mail at timothy.caum@ed.gov.

Sincerely,

/s/

Taylor D. August, Director
Office for Civil Rights
Dallas Office

CC: Fred H. Sutherland, Counsel for Caddo Parish School Board
Via e-mail only (fhs@sutherlandattorneyatlaw.com)