



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

February 25, 2022

Ms. Barbara J. Warren, Superintendent
Pine Bluff School District
1215 West Pullen Street
Pine Bluff, AK 71601
Via email only at: barbara.warren@pinebluffschoools.org

OCR Complaint No: 06-19-1260

Dear Superintendent Warren:

This is to notify you the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, filed against the Pine Bluff School District (District), in Pine Bluff, Arkansas. The Complainant alleged the District discriminated against XXXXXXXXXXXXXXXXXXXX based on their disabilities during the XXXX-XXXX school year. The Complainant also alleged that, during the XXXXX school year, the District treated students assigned to XXXXXXXXXXXXXXXXXXXX differently based on disability with regard to (a) access to Chromebooks at XXXXXXXXXXXXXXX; and (b) the opportunity to prepare for the Civics Exam at XXXXXXXXXXXXXXX.

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 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 by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District 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.

OCR opened the following issues for investigation:

1. Whether the District discriminated against XXXXXXXXXXXXXXXXXXXX on the basis of disability by failing to evaluate the student's need for regular or special education and related aids and services, before taking any action with respect to a significant change in placement (i.e., out of school suspension; unilateral decisions) and thereby denied the students a free appropriate public education (FAPE) during the XXXXXXXX school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.35, and 28 C.F.R. § 35.130, respectively;

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

2. Whether the District discriminated against XXXXXX on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet XXXXXXXX individual educational needs, and thereby denied XXXXXX a FAPE during the XXXXXX school year, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130; and
3. Whether the District treated students XXXXXXXXXXXXXXXXXXXX differently on the basis of disability in the context of an educational program or activity by (a) failing to provide students XXXXXXXXXXXX with Chromebooks, and (b) failing to provide the same opportunities for students XXXXXXXXXXXXX to prepare for the Civics Exam without a legitimate, nondiscriminatory reason, and thereby, interfered with or limited the ability of the students to participate in or benefit from the services, activities or privileges provided by the District during the XXXXXXXX school year, in violation of Section 504, at 34 C.F.R. §104.4, and Title II, at 28 C.F.R. §35.130.

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 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.

During the course of the investigation, OCR reviewed documentation from the District and the Complainant regarding the allegations at issue in this complaint. In particular, OCR reviewed students' educational records, data on the distribution of electronic devices, the District's Section 504 policies and procedures, the Student Handbook, and email correspondence between school staff. OCR also interviewed the Complainant and District staff and administrators. In addition, OCR provided the Complainant an opportunity to provide a response to the information provided by the District; however, the Complainant did not respond. Based on a review of the information gathered, OCR dismissed Issue 1 as it pertains to XXXXXXXXX, and Issue 2 pursuant to OCR's *Case Processing Manual* (CPM) at Section 108(e). OCR dismissed Issue 3(a) pursuant to CPM Section 108(k).

As to Issue 1, as it pertains to XXXXXXXXX, prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this issue pursuant to CPM Section 302 and OCR approved the District's request to resolve the issue prior to the conclusion of the investigation. Finally, as to Issue 3(b), OCR found insufficient evidence to support a conclusion of noncompliance with regard to the issue investigated. The basis for OCR's resolution is discussed below in more detail.

Issues 1 (as pertaining to XXXXXXXXXXXXXXXX) and Issue 2

Section 108(e) of OCR's CPM states that OCR will dismiss allegations where OCR determines that a signed consent form is required to proceed with a matter, and the consent form has not been provided. A complainant filing on behalf of or pertaining to another person is responsible

for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation or in monitoring. During the course of OCR’s investigation, XXXXXXXXXXXX turned 18 years of age. OCR contacted the Complainant to explain the need for a consent form completed by XXXXXXXXXXXX and to request the Complainant provide it to OCR; however, OCR did not receive a consent form from XXXXXXXXXXXX. For this reason, OCR cannot proceed with investigative and resolution activities as to Issue 1 (in so far as it pertains to XXXXXXXXXXXX), and Issue 2, and will dismiss these allegations pursuant to CPM Section 108(e).

Resolution of Issue 1 (as pertaining to XXXXXXXXXXXX)

With regard to XXXXXXXXXXXX, the Complainant alleged that the District violated Section 504 procedures when its XX--to end of phrase--XX made a unilateral decision to change XXXXXXXXXXXX placement outside of the team process following a XXXXXXXXXXXX had on about XXXXXXXXXXXX with XXXXXXXXXXXX. Specifically, the Complainant alleged that when XXXXXXXXXXXX returned to school following XXX XXXXXXXXXXXX placement after XXXXXXXXXXXX, the XX--to end of phrase --XX informed XXXXXXXXXXXX IEP team that XXX could not return to school (despite the previous decision made by XXX team) until the team met again to discuss the Student’s placement for the remainder of the school year.

Educational records show that, during the XXXXXXXXXXXX school year, XXXXXXXXXXXX was XX years old and attended XX grade at XX -- to end of phrase --XX (School). Student XX educational records reflect that XXX is a student with a disability under XX – to end of phrase --XX and receives special education services and accommodations pursuant to an individualized education program (IEP).

XX-- to end of paragraph --XX

On XX –to end of phrase --XX, the District convened a team of individuals to conduct a manifestation determination review (MDR) regarding the XXXXXXXXXXXX and determined the Student would be placed in XX – to end of sentence --XX

On XXXXXXXXXXXX the Student’s team met again for a XXXXXXXXXXXXXXXX to determine whether Student X would return to School XX – to end of sentence --XX. Notes from the meeting indicated XX –to end of sentence --XX. However, subsequent email correspondence from School staff and participating team members showed confusion amongst staff over whether XXXXXXXXXXXX was to return to School. Documentation showed that following the committee’s decision the XXXXXXXXXXXXXXXX sent an email to the team members to inform them that XXXXXX could not be at school XX –to end of sentence --XX The XXXXXX asked staff to inform XX –to end of sentence --XX

OCR reviewed a written statement from the XXXXXXXXXXXX who conceded that there were missteps by District staff that led to the confusion amongst staff and improper implementation of IDEA procedures.

Based on the investigation to date, OCR is concerned the District failed to reevaluate XXXXXXXX prior to a significant change in placement (referral to and placement at XXXXXXXXXXXX); and the lack of coordination amongst team members with regard to the status of XX –to end of sentence --XX

Prior to the conclusion of OCR’s investigation, the District expressed an interest in voluntary resolution of this issue as it pertains to XXXXXXXX, pursuant to OCR’s CPM Section 302. On February 24, 2022, the District entered into the attached Agreement, which adequately addresses these concerns. OCR has determined the provisions of the Agreement are aligned with this complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under the laws and regulations enforced by OCR with respect to these issues. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue. However, OCR will actively monitor the District’s implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

In light of the commitments the District has made in the Agreement, OCR finds that this complaint allegation is resolved, and OCR is closing its investigation of the allegation as of the date of this letter. OCR will monitor the District’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 District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issue raised.

Issue 3

(a) Chromebooks

Section 108(k) of OCR’s CPM states that OCR will dismiss allegations where OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved. Regarding the issue of whether students in the District’s XX – to end of phrase –XX classrooms received Chromebooks, OCR obtained information from the District which indicates students in XX – to end of phrase --XX have received Chromebooks. Based on this information, OCR will dismiss Issue 3(a) because OCR received documentation evidencing that students XX – to end of phrase –XX have received access to Chromebooks.

(b) Civics Exam

Legal Standard

Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130, 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 disability. In considering allegations that a recipient has discriminated on the basis of disability, 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 disability, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a prima facie case of disability 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 without the same disability. 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 disability discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings of Fact and Analysis

The Complainant alleged the District failed to provide equal opportunity for students in the XX – to end of phrase –XX classrooms to prepare for and take the state-required civics exam as compared to students in the general education program. Specifically, the Complainant alleged general education students had more materials from which to prepare and more opportunities to take and pass the Civics exam.

OCR reviewed the District's Student Handbook regarding its graduation requirements. Pursuant to the District handbook and Arkansas state education requirements, all seniors are required to take and pass the Arkansas Civics Exam in order to graduate. OCR also interviewed District staff members who are involved in the preparation for and facilitation of the Civics exam at the Pine Bluff High School. In particular, OCR interviewed XX – to end of sentence --XX. All of the teachers and staff interviewed by OCR explained that students typically take a Civics course in the 9th grade, including students in the XX – to end of sentence --XX. They also explained that, while students take Civics in the 9th grade, they do not take the Civics exam until the 12th grade pursuant to District policy. The teachers and staff also explained that all students have multiple opportunities to take the Civics Exam and that the exam is offered in both the fall and spring terms.

OCR reviewed documentation which supported the staff's account. In particular, documentation showed the Civics exam was offered on multiple dates in the fall 2021 semester to all 12th grade students in the District, including students in the XX –to end of sentence --XX. The District's XXXXXXXXXXXX informed OCR that all students in the XXXXXXXXXXXX the Civics Exam in the prior school year and all graduated without issue.

With regard to whether students in the XXXXXXXXXX at the District's High School are given equal preparation for the Civics Exam, OCR learned the students in the XXXXXXXXXXXX receive preparation materials from their teachers via study guides that mirror the Civics exam itself and are reviewed in class with each student pursuant to their IEPs. Staff told OCR and the documentation supports that some students are exempt from the Civics Exam pursuant to their IEP.

OCR also interviewed the XXXXXXXXXXXX to understand the preparation time and opportunities students receive regarding the Civics exam. In XXX interview, the XXXXXX also explained that XXX receives XXXXXXXXXXXX related to the Civics exam to supplement XXX curriculum. However, unlike the students in self-contained classrooms who appeared to receive consistent civics lessons, the XXXXXXXXXXXX explained that XXX did not know what students used to prepare for the Civics exam between the 9th grade Civics course and the 12th grade when they are required to take the Civics exam. XXXXXXXXXXXX clarified that XXX was the only XX –to end of sentence --XX.

Regarding the different treatment analysis, OCR's investigation revealed no direct or indirect evidence which showed that the District intended to discriminate against students in its special education program based on their disabilities. OCR did not review any information, which suggested that the students in the XXXXXXXXXX received less preparation time or opportunities to take the Civics Exam. Thus, a preponderance of the evidence does not indicate that the District treated students in XXXXXXXXXXXX differently based on disability with regard to the preparation of and opportunities to take the Civics exam.

OCR contacted the Complainant to provide the opportunity for a rebuttal to the information gathered. The Complainant did not respond.

Based on the above, OCR is closing its investigation as of the date of this letter. However, if the District 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 District 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.

The complainant has a right to appeal OCR's determination with regard to Issue 3(b) within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement

to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised the District 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 complainant 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

Cc: XX –to end of phrase --XX