



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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June 1, 2018

Dr. Shelley Redinger  
Superintendent  
Spokane School District No. 81  
200 N. Bernard Street  
Spokane, Washington 99201

Re: Spokane School District No. 81  
OCR Reference No. 10171210

Dear Dr. Redinger:

This letter is to inform you of the disposition of the above-referenced complaint filed against Spokane School District No. 81 with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district discriminated against students with disabilities at XXXXXXXXXX (the school), on the basis of disability. Specifically, it was alleged that:

1. the district denied a student a free appropriate public education by failing to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) concerning the identification, evaluation, and placement of the student; and
2. the district discriminated against the student and other students with disabilities in his class when his teacher (the teacher) excluded them from special classroom activities (including free time) because of their disability-related behaviors.

OCR enforces Section 504 and Title II of the Americans with Disabilities Act of 1990 (Title II). These laws prohibit disability discrimination in programs and activities receiving federal financial assistance and by public entities, respectively. The district is a recipient of federal financial assistance from this Department and is a public entity, and is therefore subject to these regulations.

Prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint. OCR determined that a voluntary resolution of

allegation No. 1 was appropriate in this case. The district signed the enclosed Voluntary Resolution Agreement (agreement) to address allegation No. 1. As explained below, OCR completed an investigation of allegation No. 2, and made findings and a legal determination regarding the issue raised by allegation No. 2.

### **Allegation No. 1**

OCR's investigation to date indicates that in fall 2016, the student was diagnosed with Attention Deficit Hyperactivity Disorder, and in early February 2017, the parent requested that the school evaluate him for a Section 504 plan. In March 2017, the school met to develop a Section 504 plan for the student, which a teacher refused to sign. In late March 2017, the parent removed the student from the school, then transferred him to another school in the district where he currently attends with a Section 504 plan. In order to make a determination of compliance or noncompliance with respect to allegation No. 1, OCR would need to conduct additional investigation, including conducting additional interviews and gathering additional records.

In accordance with Section 302 of the OCR Case Processing Manual, a complaint may be resolved at any time when, prior to the point OCR issues a final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve them with an agreement. Prior to OCR completing its investigation, the district requested to resolve the complaint with a voluntary resolution agreement and OCR determined that a voluntary resolution agreement was appropriate for allegation No. 1. Subsequent discussions with the district resulted in the district signing the agreement, which when fully implemented, will resolve allegation No. 1. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by June 1, 2018.

### **Allegation No. 2**

Regarding allegation No. 2, OCR completed its investigation and determined that the evidence did not support a conclusion that the district failed to comply with Section 504 or Title II with regard to the issue investigated. OCR's findings of fact and conclusion set forth below are based upon information and documents provided by the district and the parent.

#### **Findings of Fact**

The student attended first grade at the school during the 2016-2017 school year from the beginning of the school year until late March 2017.

During the 2016-2017 school year, the teacher's class had a regularly-scheduled, class-wide free time for about 20 minutes almost every day, usually in the afternoon. The teacher described free time as a chance for students to choose fun activities from the special activity stations around the room, including various arts, crafts, computer, and reading activities.

The teacher created an incentive system for some of the students in her class during the 2016-2017 school year, which used free time as a reward. Students on the incentive system were able to earn free time through the accumulation of earned "beads" during the course of the school day. The teacher told OCR that she awarded a bead to a student on the incentive system when she observed him/her doing something she wished to encourage, either academically (e.g., staying focused on work) or with respect to class citizenship (e.g., complimenting another student or helping clean up).

The teacher told OCR that when a student earned ten beads from the teacher, he/she had earned ten minutes of free time, and the student could use the time immediately or could save it for later. The parent provided OCR a copy of a document entitled "[the student's name] Daily Check In," and dated March 8, 2017, which states "10 Beads = 5 minutes of 'bonus' free choice time. Beads continue to be turned until he reaches 10 beads and receives a 'bonus free time'." The document contains the teacher's notes about the student's day, and a record of the "beads" he had earned that day.

The parent's position is that participation in the incentive system was based on students' disability-related behaviors. It is also the parent's position that the teacher's free time practices, including the incentive program, put the burden on students with attention-related disabilities to earn their access to fun activities ("free time"), which all other students in the class did not need to earn in order to enjoy.

The parent initially told OCR that the incentive system was used for the students in the class with attention-related disabilities, including her son. The parent later informed OCR that although she had observed that the students on the incentive system had attention-related issues, and that the parents of another student on the incentive system told her their child had an attention-related medical diagnosis, she had subsequently learned that not all students on the incentive system had been identified by the district as having a disability.

The parent told OCR that her son and other students who were on the incentive system told their families that they had to earn their free time, and that they were often deprived of regularly-scheduled class-wide free time.

The teacher told OCR that each student was placed on the incentive system based on her assessment that the student could use assistance with skills such as staying focused on classroom activities, staying in their seat, or limiting talking to neighbors.

According to the teacher, at least four students were on the incentive system in the teacher's class during the 2016-2017 school year, including the student, and each of these students was placed on the incentive system after a month or more of observation by the teacher. The student was placed on the incentive system during the fall of 2016.

According to the teacher, at least one student on the incentive system during the 2016-2017 school year had an Individualized Education Program (IEP), and there were other students on the incentive system who were not identified by the district as students with disabilities and did not have an IEP or a Section 504 plan. At least one other student in the class was identified as a student with a disability and was not on the incentive system.

The teacher's position is that all students in her class participated in the regularly-scheduled free time irrespective of a student's participation in the incentive system, and that free time earned by students on the incentive system was in addition to regularly-scheduled class-wide free time.

The teacher told OCR that any student's participation in class-wide free time could be delayed by up to 10 minutes on any given day when that student had a need to work one-on-one or in a small group with the teacher on an assignment or to complete a test. The teacher would work with that student during the first few minutes of class-wide free time, then the student would join their peers in free time. The teacher's position is that such a need was identified on a daily basis, without any relation to a student's participation in the incentive program, or a student's IEP or Section 504 plan.

### Analysis and Conclusion

The issue OCR investigated was whether the district discriminated against the student and other students with disabilities in his class when the student's teacher (the teacher) excluded them from special classroom activities (including free time) because of their disability-related behaviors.

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the district's programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR determines whether the district limited or denied educational services, benefits, or opportunities to students with disabilities by treating them differently from similarly-situated, nondisabled students. If so, OCR then determines whether the district had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the district is a pretext for unlawful discrimination.

The evidence established that the teacher implemented an incentive system for students who exhibited behaviors such as not staying focused, frequently getting out of their seat, or talking with a neighbor too often. The teacher's position is that she selected students for the incentive system without regard to whether a student had been identified as an individual with a disability.

OCR found that students both with and without disabilities were selected for the incentive program. Students in the incentive program earned free time that other students in the class were not able to earn. All students in the teacher's class were subject to the same classroom practice of receiving additional one-on-one or small group help completing work at the beginning of the daily 20-minute class-wide free time, which could reduce a student's participation in class-wide free time by up to 10 minutes. Because of this, OCR determined that the district did not treat students with disabilities differently than similar-situated students without disabilities.

Therefore, OCR has determined that the evidence does not support a conclusion that the district failed to comply with Section 504 or Title II with respect to the issue investigated regarding allegation No. 2.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the district's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that 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 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, 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.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Emily Hazen, Equal Opportunity Specialist, by telephone at (206) 607-1615 or by e-mail at [emily.hazen@ed.gov](mailto:emily.hazen@ed.gov).

Sincerely,

Kelli Lydon Medak  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Chris Reykdal, State Superintendent of Public Instruction  
Paul Clay, Counsel