



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

September 30, 2015

Mr. Jon Collins, Superintendent
West Memphis School District
301 South Avalon Drive
West Memphis, AR 72301

RE: OCR Case No. 06141573
West Memphis School District

Dear Superintendent Collins:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has reached a resolution of the above-referenced complaint, which was received in this office on August 20, 2014. In this complaint, the complainant alleged that the West Memphis School District (WMSD), West Memphis, Arkansas, discriminated against a student (the Student) and other students on the basis of disability.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, 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, (amended 1992), and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12132, 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. The implementing regulations for Section 504, 34 C.F.R. §104.61, and Title II, at 28 C.F.R. §35.134, also prohibit retaliation. The WMSD, being a recipient of Federal financial assistance and a public education entity, is subject to our jurisdiction under Section 504 and Title II.

OCR opened the complaint to investigate the following issues:

1. Whether the WMSD discriminated against the Student on the basis of disability by denying him a free appropriate public education (FAPE) during the 2013-2014 school year and during the 2014 fall semester when it failed to provide him the related aids and services determined necessary to meet the Student's individual educational needs, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.

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 WMSD discriminates against special education students at the ALE on the basis of disability by not providing them textbooks to take home, but providing regular education students at the ALE textbooks to take home, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

OCR reviewed written statements signed by WMSD employees and the Student's educational record, including his individualized education plan, class schedule, and disciplinary file. OCR interviewed the Student, and was in the process of scheduling interviews of WMSD employees when, on April 2, 2015, the WMSD expressed interest in resolving this complaint via resolution agreement under Section 207 of OCR's Case Processing Manual (CPM).

Legal Standards

The relevant portion of the regulations implementing Section 504, located at 34 C.F.R. § 104.33, requires a recipient to provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction. The term "appropriate public education" is defined in pertinent part as, "... the provision of regular or special education and related aids and services that (1) are designed to meet individual educational needs of handicapped persons." When investigating an issue of whether a district has failed to provide an appropriate public education when it has not given a student all or some of the modifications determined to be necessary to meet individual educational needs, OCR's investigative approach is whether a recipient failed to provide the services that it identified, through the appropriate process, as necessary to meet individual educational needs and whether the placement, aids, and services identified by the district through this process as necessary to meet individual needs were provided. If the evidence is sufficient to conclude that a school district has not provided all or some of the related aids and services deemed necessary, OCR must then determine whether the failure to provide certain accommodations or services constituted a denial of FAPE.

Section 504's implementing regulation at 34.C.F.R. §104.4 provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

When investigating an issue of whether a recipient discriminated against a group of students on the basis of disability, OCR examines whether there is any direct evidence of discriminatory intent. Absent direct proof of discriminatory intent, OCR looks to whether the group of students was treated differently than a group of similarly situated individuals without a disability with regard to a service, benefit, privilege, etc. from the recipient. If OCR cannot establish different treatment of the similarly situated students, the different treatment analysis will end and no violation will be found. If such different treatment is established, OCR must then determine whether the recipient had a legitimate nondiscriminatory reason for its action. Finally, if one or more legitimate non-discriminatory reasons for the different treatment are identified, OCR must determine whether the recipient's asserted reasons for its actions are a mere pretext for discrimination. OCR also examines whether any evidence suggests that the recipient treated the

individual in a manner inconsistent with its established policies and procedures, or whether any other evidence of discrimination exists.

Investigative Summary

With regard to whether the WMSD failed to provide the Student the related aids and services determined necessary to meet his individual educational needs, OCR obtained testimony from the Student alleging that he was required to XXX to end of sentence. The Student stated that a XXX to end of sentence. The Student also corroborated the allegations that, while at the ALE during the 2013-2014 school year, the XXX to end of sentence. The Student stated to OCR that, while at WMHS during the 2014-2015 school year, some of his teachers provided him interventions for positive reinforcements (e.g., allowed him to go to his counselor's office when he needed to cool off), but some teachers did not provide him any such interventions.

OCR found that the Student had IEPs dated XXX and XXX, and BIPs dated XXX and XXX (altogether "Student's Plans"), which were in place during the time of the alleged discrimination. OCR's review revealed that a group of persons knowledgeable about the Student and the meaning of evaluation data and placement options identified the Student as a student with a disability (XXX) and made placement decisions for him as documented in the Student's Plans. The Student's Plans contained the complainant's signature indicating that she attended and participated in the IEP team meetings that resulted in the Student's Plans. OCR verified that the Student's Plans contained several agreed-upon related aides and services, including positive reinforcements/rewards for good attendance and good behavior and the provision of a cooling off area for when the Student became angry or upset. OCR found that the BIP stated that XXX to end of sentence.

WMSD provided OCR signed statements from teachers who worked with the Student during the 2013-2014 and 2014-2015 school years; the statements attested to providing the Student services required by his IEP. However, the signed statements lacked specificity regarding facts of some the allegations. Also, other teachers and administrators identified by OCR as having been involved in the education and discipline of the Student during the relevant period did not provide OCR signed statements. OCR determined that interviews of teachers, administrators and, possibly, other witnesses were necessary to make a determination regarding Issue 1. Before OCR conducted interviews, WMSD expressed interest in resolving this issue via voluntary resolution.

With regard to whether the WMSD discriminates against special education students at the ALE on the basis of disability by not providing them textbooks to take home, the WMSD informed OCR that all ALE students have textbooks in the classroom to use but textbooks are not assigned to regular education students nor to special education ALE students for taking home because students at the ALE do not have homework (instruction is set up so that books are not needed to take home). However, the WMSD stated that ALE students may take books home if they choose to do so. The WMSD informed OCR that parents and students are notified of this policy at the time of enrollment.

At the time that the WMSD requested to resolve this complaint, OCR had not received physical evidence (written policy, parent notice forms, etc.) that substantiates the existence of the textbook policy and practice. OCR also had not conducted interviews of any ALE staff to attest to the textbook policy and practice.

Prior to OCR conducting interviews of the WMSD's employees and prior to obtaining additional data from the WMSD, the WMSD expressed interest in resolving the complaint via a voluntary resolution agreement. Consistent with OCR's Case Processing Manual (CPM) Section 207(b), the District submitted the attached Resolution Agreement (Agreement) on September 30, 2015, which OCR has determined addresses the allegations in this complaint and which, when fully implemented, will resolve the complaint.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the WMSD to determine whether the commitments made by the WMSD have been implemented consistently with the terms of the Agreement. If the WMSD fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the WMSD determines a need to modify any portion of the Agreement, the WMSD may submit, for consideration, proposed revisions to OCR. Effective the date of this letter, OCR is closing the investigation portion as related to this complaint. This letter is not intended nor should it be construed to cover any matters not specifically addressed 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Under OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

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 regarding this letter, please contact Tiffany Gray, the attorney assigned to this matter, at 214-661-9611, Tiffany.Gray@ed.gov, or me at 214-661-9608, Paul.Coxe@ed.gov.

Sincerely,

Paul Edward Coxe
Supervisory Attorney-Team Leader
Office for Civil Rights
Dallas Office