



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS  
REGIONAL OFFICE  
1200 MAIN TOWER BUILDING  
DALLAS, TEXAS 75202

FEB 19 1993

Ref: 06911203

Dr. and Mrs. Harold M. Voss, Jr.

Dear Dr. and Mrs. Voss:

The Office for Civil Rights (OCR) has completed its investigation of the above referenced complaint filed against the Jenks Public Schools (JPS), Jenks, Oklahoma. The complaint was filed pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1988) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination, on the basis of handicap, by recipients of Federal financial assistance. You alleged that the JPS discriminated against your daughter and other handicapped students enrolled in Pre-Kindergarten through fifth grades by failing to provide them a free appropriate public education.

Specifically, you alleged that the JPS violated Section 504 by:

- a) failing to evaluate students to determine their needs for related aids and services;
- b) failing to implement their individualized education programs (IEPs);
- c) placing them in segregated facilities and not educating them with nonhandicapped students to the maximum extent appropriate to their needs;
- d) failing to provide equipment, resources and facilities comparable to those provided to nonhandicapped students;
- e) excluding nonambulatory students from the educable mentally handicapped and trainable mentally handicapped (EMH/TMH) first through third grade class at the Jenks East campus;
- f) excluding handicapped students' pictures from the school

yearbook; g) failing to allow handicapped students to go on field trips and attend assemblies with nonhandicapped students; and h) failing to provide for due process hearings to be held in a timely manner.

In addition, you alleged that the JPS retaliated against you for attempting to secure your handicapped daughter's rights under Section 504, by permitting the JPS's attorney to verbally intimidate you during mediation meetings, a due process hearing and preparations for the due process hearing. Further, you alleged that the JPS attempted to coerce you to withdraw your complaint filed against the JPS with OCR.

OCR has the responsibility to enforce Section 504. In pertinent part, Section 504 provides that:

No otherwise qualified individual with handicaps in the United States ... shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance...  
29 U.S.C. § 794 (amended 1988).

The regulation implementing Section 504, at 34 C.F.R. § 104.61 (incorporating by reference Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. § 107(e)) states:

(e) Intimidatory or retaliatory acts prohibited. 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 Section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

Based on OCR's investigation, it was established that the JPS is a recipient of Federal financial assistance from the United States Department of Education. Therefore, we determined that OCR had jurisdiction to investigate the alleged discrimination.

To determine the validity of the allegation, an on-site investigation was conducted September 3-6, 1991. Based on an analysis of the information obtained during the investigation, we have determined that the JPS violated Section 504 of the Rehabilitation Act of 1973 (amended 1988) and its implementing

regulation, at 34 C.F.R. §§ 104.4(a), (b)(1)(i), (iv), (vii); 104.33(a), (b); and 104.34(a) (1992), regarding the specific issues investigated.

OCR discussed its findings and appropriate action steps with members of the JPS staff on February 12, 1993. Prior to issuance of the letter of findings, the JPS submitted a voluntary corrective action plan dated February 17, 1993, to correct the violation.

As an essential part of the investigative process, it was necessary to translate the specific allegations contained in the complaint into investigative issues which have been referenced with the appropriate legal authority. Set forth below are the factual elements pertaining to the above referenced complaint together with the findings and pertinent legal bases for the issues.

#### Issue A

Whether the Jenks Public Schools (JPS) discriminated against handicapped preschool students on the basis of their handicapping condition(s) by failing to take into account their needs in determining the aids, benefits or services to be provided in the preschool program in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988), and its implementing regulation, at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(iv), and 104.38 (1992).

#### Findings

You alleged that the JPS placed preschool handicapped students in segregated facilities on the Jenks Central Elementary School campus where they could not participate with nonhandicapped students in academic and nonacademic activities.

The OCR review of the JPS's policies and procedures regarding the provision of educational and related aids/services to qualified handicapped students revealed that the school system has adopted the Oklahoma State Department of Education standards relative to the implementation of such services. In accordance with the Oklahoma State Department of Education standards, the JPS provides educational and related aids/services to school age qualified handicapped persons, including three-year-old and four-year-old developmentally disabled children.

The OCR investigation revealed that during the 1990-1991 school year, the JPS operated three elementary campuses (K-5). The campuses were Central, East and West Elementary

Schools. Our review of information and interviews with JPS staff revealed that on the Central Elementary School campus, there were two buildings which housed elementary students for the 1990-1991 school year. One was the Betsy Mayo building which the JPS utilized to house its Jenks Enriched Early Education Program (JEEEP) for qualified handicapped preschool children. Two kindergarten classes, one composed of multihandicapped and/or mixed categories, and one language enriched kindergarten (LEK) class for students with communication disorders were also housed in the Betsy Mayo building. The other building is the Sooner building which housed the regular and special education programs for students enrolled in kindergarten through the fifth grade.

The JEEEP program, located in the Betsy Mayo building on the Central campus, was designed to overcome developmental delays in children. This program initially provided two half-day classes for multihandicapped children (infants who were three and below would attend morning classes, and those who were three and four-years-old would attend afternoon classes). The curriculum was based on the individual needs of the children following developmental guidelines and heavily involved language development, self help skills, social skills, fine and gross motor movements and cognitive development. According to information provided by the JPS, 22 students were placed in the JEEEP program housed in the Betsy Mayo Building because their home schools did not offer the required special education programs to meet their specific individual needs.

The OCR review of documentation indicated that a JPS placement committee, composed of instructional staff, appraisal personnel and related aids/services providers reviewed evaluation data, drew upon information from a variety of sources, including achievement data, physical, social and cultural background prior to making a determination regarding placement of handicapped preschool students in the JPS's preschool program.

The evidence reviewed revealed that in determining the location of the preschool program, no consideration was given to the proximity of the alternate setting to the residences of the preschool students during the 1990-1991 and 1991-1992 school years. However, placement committees had determined that the placement of each of the preschool students on the Central campus was the most appropriate setting to meet their needs. Therefore, the JPS had taken into account the needs of the preschool students in determining their placement.

You alleged that the JPS would not permit handicapped preschool students enrolled in programs operated in the Betsy Mayo building located on the Central Elementary School campus to participate in assemblies and field trips with nonhandicapped students enrolled in programs operated in the Sooner building also located on the Central Elementary School campus.

OCR examined nonacademic, extracurricular and other activities provided preschool handicapped students by the JPS to determine the comparability of services and activities provided to students in the JEEEP program with nonhandicapped students. The JPS provided evidence that the preschool handicapped students enrolled in the JEEEP program participated with nonhandicapped students in extracurricular activities as deemed appropriate by placement committees. Therefore, the JPS took into account the needs of the preschool handicapped students in determining the aids, benefits and services provided.

Information reviewed revealed that the JPS did not operate a preschool program for nonhandicapped children. However, they used a nonhandicapped peer model program for purposes of meeting the requirements of educating the handicapped preschool children with nonhandicapped individuals to the maximum extent appropriate to the needs of the preschool handicapped students placed in the Betsy Mayo Building. Children of JPS's employees who were enrolled in its employee day care program and received parental consent were permitted to participate as nonhandicapped peer models (one per classroom, as available) in classrooms located in the Betsy Mayo Building.

Additionally, you alleged that the preschool handicapped students placed in the Betsy Mayo building were not provided playground equipment which was comparable to the playground equipment offered to nonhandicapped students placed in other JPS facilities during the 1990-1991 school year.

OCR's examination of playground equipment located on the Betsy Mayo building site housing the JEEEP students revealed that the playground equipment was not appropriate to meet the needs all handicapped students. JPS officials agreed with OCR's finding that the playground equipment was not considered to be appropriate to meet the needs of all handicapped preschool students; however, they informed OCR that the handicapped preschool students attended school for only one-half day, and did not have unsupervised play time requiring the use of the subject playground equipment. According to these officials, the equipment used in the physical therapy and gross motor rooms was determined to be

more appropriate for the handicapped preschool students placed in the Betsy Mayo building. OCR's examination of this equipment revealed that it was of a therapeutic nature, designed for assistance in gross motor function and was appropriate to meet the individual needs of the preschool handicapped students in the JEEEP program. Therefore, OCR has determined that the JPS took into account the needs of the preschool handicapped students in determining the aids, benefits and services required to meet their needs.

### Conclusion

OCR's investigation revealed that the JPS has policies and procedures regarding the identification, referral, evaluation, reevaluation, placement and procedural safeguards for handicapped preschool students which meet the requirements of Section 504.

Our investigation revealed that the JPS had appropriately evaluated and placed the preschool handicapped students assigned to the Central campus (Betsy Mayo building). In addition, the evidence revealed that the students had been provided with the aids, benefits and services determined to be appropriate by a group of knowledgeable persons. Furthermore, this group of knowledgeable persons had determined the extent to which these students would be educated with their nonhandicapped peers. The evidence indicated that the JPS had provided these services in accordance with Section 504 and its implementing regulations. Therefore, we conclude that the JPS is in compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988) and its implementing regulation, at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(iv), and 104.38 (1992).

### Issue B

Whether the Jenks Public Schools (JPS) discriminated against handicapped students by its failure to provide them a free appropriate public education in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988), and its implementing regulation by failing to:

1. Appropriately evaluate, reevaluate and place handicapped students. 34 C.F.R. § 104.35(a)-(d) (1992).
2. Provide regular or special education and related aids and services that are designed to meet the individual educational needs of handicapped students as adequately as the needs of nonhandicapped students are met. 34 C.F.R. § 104.33(a), (b)(1) (1992).

3. Provide qualified handicapped students the opportunity to participate with nonhandicapped students to the maximum extent appropriate to the needs of handicapped students as it relates to comparable facilities, extracurricular activities, location of an alternate setting, and the receipt of aids, benefits and services 34 C.F.R. § 104.34 (1992).
4. Establish and implement a system of procedural safeguards. 34 C.F.R. § 104.36 (1992).

Findings

1. Appropriately evaluate, reevaluate and place handicapped students. 34 C.F.R. § 104.35(a)-(d) (1992)

You alleged that the JPS failed to appropriately evaluate handicapped students to determine their individual needs and place them in its elementary schools.

Documentation provided by JPS officials revealed that the recipient has established written policies and procedures relative to the provision of a free appropriate public education (FAPE) for handicapped students. These policies meet the requirements of the regulation implementing Section 504 at 34 C.F.R. 104.35(b)(1),(2),(3). Placement decisions are made by a group of persons knowledgeable about the child and the meaning of the evaluation data in conformance with Section 504 and its implementing regulation at 34 C.F.R. § 104.35. Specifically, the recipient's policies indicate that the following persons must be invited to attend placement committee meetings: administrator, regular and special education teachers, parent, student (when appropriate), and the educational diagnostician. The functions of the placement committee are to review the assessment data (including data obtained from independent assessments), establish eligibility for special education services, ensure that alternatives are reviewed, develop an individualized education program, and provide for educational placement in the most appropriate educational setting.

Information provided by the JPS revealed that certified diagnosticians are employed by the District to administer educational evaluations of students. In addition, the JPS employs licensed speech, occupational and physical therapists to administer evaluations to students who because of handicap need or are believed to need regular or special education and related aids and services.

During the September 3-6, 1991 on-site visit, the OCR representative reviewed a sampling of 44 special education folders (including that of your child). Specifically, we noted that in each instance the evaluations were current (conducted within the last three years), and the JPS had used tests which were validated for the specific purpose for which they were used and were administered by trained personnel in conformance with the instructions provided by their producers. The tests were tailored to assess specific areas of educational need, and those selected were administered to ensure that the results accurately reflected the students' aptitude or achievement or whatever factor the tests purport to measure. In addition, three-year reevaluations had been conducted and/or scheduled for each handicapped student whose folder was reviewed by OCR.

OCR's review of the 44 special education folders revealed that in each instance, the JPS had followed the procedures established to ensure that placement decisions were based on documented information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, independent assessments, and adaptive behavior. This information was carefully considered by the placement committee. In each case, the placement committee was composed of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The evidence reviewed by OCR revealed that periodic reevaluations were conducted in accordance with Section 504.

#### Conclusion

Based on the information obtained during the investigation, OCR has determined that the JPS appropriately evaluated, reevaluated, and placed handicapped students in conformance with the regulation implementing Section 504. Therefore, we conclude that the JPS is in compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988), and its implementing regulation at 34 C.F.R. § 104.35(a)-(d) (1992).

2. Provide regular or special education and related aids and services that are designed to meet the individual educational needs of handicapped students as adequately as the needs of nonhandicapped students are met. 34 C.F.R. § 104.33(a), (b)(1) (1992)

The complainant alleged that the JPS failed to implement the individualized education programs of handicapped students. OCR does not require the development of individual education programs; however, OCR's review of documentation and

interviews with providers of educational services revealed that the related aids and services determined to be appropriate to the needs of each handicapped student had been provided in accordance with the recommendations of a group of knowledgeable persons. OCR's review of the special education folders of the 44 students (inclusive of the complainant's child) revealed that, for the 1991-1992 school year, a placement committee had developed an individualized educational program to meet the individual needs of each handicapped child and that educational program was implemented by the student's teacher.

### Conclusion

Based on an analysis of the information obtained during the investigation, OCR has determined that the JPS had provided related aids and services to handicapped students as deemed appropriate by a group of knowledgeable persons, as required by the regulation implementing Section 504. Therefore, we conclude that the JPS is in compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988), and its implementing regulation at 34 C.F.R. § 104.33(b)(1)(2) (1992).

3. Provide qualified handicapped students the opportunity to participate with nonhandicapped students to the maximum extent appropriate to the needs of handicapped students as it relates to academic and nonacademic settings, comparable facilities, extracurricular activities, location of an alternate setting, and the receipt of aids, benefits and services 34 C.F.R. § 104.34 (1992).

#### a. Academic Setting

You alleged that the JPS placed kindergarten level handicapped students in segregated facilities on the Jenks Central Elementary School campus where they could not participate with nonhandicapped students in academic activities.

The OCR review of the individualized education programs of students at the kindergarten level revealed that placement committees had provided for handicapped students assigned to each campus to participate with nonhandicapped students in regular academic classes where appropriate. However, the evidence reviewed and interviews conducted revealed that placement committees had not discussed proximity of the alternate setting to the residences of the kindergarten and elementary handicapped students placed on elementary campuses which were other than their home schools.

Consequently, OCR has determined that the JPS failed to ensure that the handicapped kindergarten children interacted with their nonhandicapped peers to the maximum extent appropriate to their individual educational needs.

OCR found that at the time of the on-site investigation, all of the kindergarten and elementary handicapped students had been returned to their home schools, unless otherwise determined by placement committees, for the 1991-1992 school year. The JPS had implemented a new procedure which provided for placement committees to consider proximity of the alternate setting to the residences of the handicapped students; however, it had not yet been utilized in the placement deliberations for all handicapped students.

You also alleged that the JPS excluded nonambulatory handicapped students from the educable mentally handicapped/trainable mentally handicapped (EMH/TMH) program operated on the East Elementary School campus for students enrolled in grades 1-3 for the 1991-1992 school year.

Regarding your allegations, our investigation revealed that only one nonambulatory multi-handicapped student resided within the jurisdiction of the East Elementary School campus for the 1991-1992 school year. There were no EMH/TMH classes operated on the East Elementary School campus during the 1990-1991 school year; therefore, the multi-handicapped student was placed on the West Elementary School campus by a placement committee. The parents of this student agreed with this placement. The student who was confined to a wheelchair and fed through a feeding tube was reassigned from the East Elementary School campus to the West Elementary School campus by a placement committee composed of a group of persons knowledgeable about the student.

OCR found no evidence that other nonambulatory EMH/TMH students were excluded from the special education program provided for them at their home school located on the East Elementary School campus.

OCR has determined that the JPS failed to ensure that the handicapped kindergarten children at the Betsy Mayo building interacted with their nonhandicapped peers to the maximum extent appropriate to their individual educational needs. OCR has also determined that for the placement of students at the kindergarten level and beyond, the placement committees had provided for handicapped students assigned to each of the other elementary campuses to participate with nonhandicapped students in regular academic classes where appropriate.

In addition, the evidence reviewed revealed that placement committees had not considered the proximity of the alternate setting to the residences of the elementary level handicapped students placed on campuses other than their home schools during the 1990-1991 school year. Further, OCR's investigation found that for the 1991-1992 school year, the JPS had failed to consider the proximity of the alternate setting to the residences of elementary students placed on elementary school campuses other than their home schools.

b. Nonacademic Settings

You alleged that the JPS would not permit handicapped kindergarten students enrolled in programs operated in the Betsy Mayo building located on the Central Elementary School campus to participate in assemblies and field trips with nonhandicapped kindergarten students enrolled in programs operated in the Sooner building also located on the Central Elementary School campus.

OCR's investigation found that handicapped kindergarten students, including the complainant's daughter, assigned to the Betsy Mayo Building did not participate with nonhandicapped students in nonacademic and other extracurricular activities, including assemblies and field trips. However, according to information provided by the JPS, handicapped kindergarten and elementary students assigned to other elementary campuses in the JPS had participated with nonhandicapped students in nonacademic and extracurricular activities during the 1990-1991 school year.

OCR has determined that handicapped kindergarten students who were placed in the Betsy Mayo Building, including the complainant's daughter, had not participated with nonhandicapped kindergarten students placed in the Sooner building on the Central Campus in nonacademic or extracurricular activities during the 1990-1991 school year. The evidence revealed that handicapped kindergarten and elementary students assigned to other elementary school campuses within the JPS participated with their nonhandicapped peers in nonacademic and extracurricular activities.

c. Comparable Facilities/Services and Activities

- 1) Computer Labs/Software

You alleged that handicapped students assigned to the Betsy Mayo building did not have access to computer labs/software. OCR's investigation found that the computer lab in the Sooner building contains 28 Apple computers that are networked to a file server so that all students have access to Jostens Integrated Learning System and software from the Minnesota Educational Computing Corporation. All students, grades 1-5, spend a minimum of 60 minutes per week in the lab. Kindergarten students used the lab for 30 minutes per week. Eight Apple computers were located in individual classrooms with software available for reinforcement purposes. One of these computers was located in the kindergarten rooms.

Information reviewed revealed that at the time of the on-site visit, two Apple computers were located in the Betsy Mayo building for use by handicapped students enrolled in the JEEEP Program. Both were networked to the computer lab in the Sooner building. A Touch Window, Unicorn Keyboard, Adaptive Firmware Card, Echo Speech Synthesizer, and appropriate software were also available for use by the teachers and students.

Evidence revealed that the Betsy Mayo building did not have a computer lab which was as fully equipped as the buildings housing elementary students in all other elementary schools; however, the teachers in the Betsy Mayo building determined that those available were adequate to meet the needs of the students within their class. The complainant stated that she was aware that two computers were in the Mayo Building; however, she stated that the teachers were not trained to use them. The teachers interviewed by OCR during the on-site investigation denied the complainant's allegation and stated that they did use the computers in the classroom.

Regarding the complainant's allegation that there was a lack of software for use with the computers, the interviews conducted revealed that some equipment had been purchased with donated funds. The teachers interviewed stated that they chose the software they considered to be appropriate for the individual educational needs of the handicapped students located in their classes.

OCR found that the computers, computer labs and software provided to the handicapped kindergarten students in the Betsy Mayo building were not comparable, in quantity and quality to that provided to nonhandicapped kindergarten students in the Sooner building during the 1990-1991 school

year; however, OCR determined that the amount of computer equipment as indicated by the student to computer ratio and its usage was appropriate to meet the needs of the students housed in this building.

2) Library Resources

You alleged that the JPS failed to provide handicapped students library resources comparable to those provided to nonhandicapped students.

The investigation disclosed that the Betsy Mayo building did not have a fully equipped library similar to the ones provided for students in regular elementary schools. Specifically, the library in the Betsy Mayo Building on the Central Elementary School campus was not comparable to the one in the Sooner building for the 1990-1991 school year. However, according to JPS staff, the library resources available in the Sooner building were appropriate to meet the needs of the handicapped students. Moreover, they stated that the students enrolled in the Betsy Mayo building had access to the library used by the K-fifth grade students assigned to the Sooner building.

OCR's investigation revealed that though the students assigned to the Betsy Mayo building during the 1990-1991 school year had access to the library used by the K-fifth grade students assigned to the Sooner building, the handicapped students did not use the library facilities. The teacher brought appropriate library resources to these students from the Sooner building library because the building was located 100 yards away. According to JPS officials, the distance presented an impediment to using the library.

OCR's investigation revealed that the library facilities in the Betsy Mayo building were not comparable in terms of quality and quantity of volumes to other regular elementary school campuses. In addition, library services were not as readily available to the handicapped students in the Betsy Mayo building as they were to nonhandicapped students in the Sooner building during the 1990-1991 school year.

OCR has determined that the JPS failed to ensure that the handicapped students assigned to the Betsy Mayo building during the 1990-1991 school year received library services comparable to those received by nonhandicapped students assigned to the Sooner building.

3) Playground Equipment

You alleged that the handicapped students placed in the Betsy Mayo building were not provided playground equipment which was comparable to the playground equipment offered to nonhandicapped students placed in other JPS facilities during the 1990-1991 school year.

The JPS had provided playground equipment (metal or a combination of wood and metal) in the play yards of Central, East and West Elementary campuses for the 1989-1990 and 1990-1991 school years. For the 1991-1992 school year, the newly opened Southeast Campus did not have playground equipment at the time of the on-site visit. The playground equipment (slides and swing sets only) for all campuses and programs with the exception of that at the JEEEP location was metal or a combination of wood and metal. Our investigation revealed that playground equipment was not placed in the fenced play yard adjacent to the Betsy Mayo building during the first year of operation; however, a wooden swing set had been donated to the JPS for the 1990-1991 school year.

JPS officials stated that the playground equipment at the other sites was not considered to be appropriate for the handicapped kindergarten students placed in the Betsy Mayo building who attended school for only one-half day, as they did not have unsupervised playground time. According to these officials, the equipment used in the physical therapy and gross motor rooms was determined to be more appropriate for the handicapped kindergarten students placed in the Betsy Mayo building. OCR's examination of this equipment revealed that it was of a therapeutic nature, designed for assistance in gross motor functions. Though appropriate for students in the JEEEP program, OCR determined that for the nonorthopedically impaired kindergarten students at the Betsy Mayo Building, the playground equipment was not comparable.

OCR found that the play equipment located in the play yard of the Betsy Mayo building was not of similar quality nor was it designed to accommodate students with physical handicaps. The play equipment located near the Betsy Mayo building had the only wooden swing set within the school system and was inferior to that provided to students located in other programs on other campuses within the JPS. OCR determined that the playground equipment for the handicapped students housed there was not comparable to that provided to nonhandicapped students located on other campuses.

Moreover, adaptations to the playground equipment to accommodate the needs of the handicapped students located at the Central campus had not been made for the playground equipment. Further, adaptations had not been made to the play equipment on any elementary school campuses to accommodate the needs of handicapped students at the time of the on-site investigation. OCR determined that at the time of the on-site investigation, the playground equipment provided to handicapped students was not comparable to that provided nonhandicapped students.

However, based on updated information obtained after the on-site investigation, the JPS provided evidence to OCR that playground equipment had been purchased and installed at the Betsy Mayo building. Additionally, accommodations were made to the playground equipment on other JPS elementary campuses to accommodate the needs of handicapped students. Therefore, the JPS is now in compliance with Section 504 as it regards playground equipment.

#### 4) Other Services and Activities

You alleged that for the 1990-1991 school year, the JPS did not include the pictures of the handicapped kindergarten students, placed in programs operated in the Betsy Mayo building, in the same student yearbook with nonhandicapped students placed in the Sooner building (both of which are located on the Central campus).

The OCR review found that the 1990-1991 school yearbook published for the Central Elementary School included only those students placed in the Sooner building. The pictures of kindergarten students comprised five pages; however, they did not contain the pictures of the handicapped kindergarten students placed in the Betsy Mayo building. As previously stated, the kindergarten classes in the Betsy Mayo building consisted of the LEK class and the multi-handicapped class. A separate paper-back booklet was prepared by the JPS which contained copies of pictures of student activities in which the handicapped students had participated during the 1990-91 school year.

Further, OCR found that the names of the handicapped students placed in the Betsy Mayo building for the 1990-1991 school year had not been included in the student directory published for the Central Elementary School campus. In addition, separate open house activities were held at different times for the handicapped students in the Betsy Mayo building located on the Central Elementary School campus.

OCR has determined that during the 1990-1991 school year, the JPS failed to ensure that the services and activities (yearbook, student directory and open house activities) provided to the handicapped students enrolled in the Betsy Mayo Building were comparable to those provided to nonhandicapped kindergarten students enrolled in other JPS elementary facilities.

#### Conclusion

Based on information provided by you and school officials, we conclude that JPS is in noncompliance with the regulation implementing Section 504 regarding its failure to ensure that handicapped students assigned to the Betsy Mayo building had participated with nonhandicapped students to the maximum extent appropriate to the needs of the handicapped students. In addition, we have determined that JPS placement committees failed to demonstrate that handicapped kindergarten students could not be educated in the schools they would attend if they were not handicapped.

Further, OCR concludes that the JPS assigned its handicapped students on the Central Elementary School campus to segregated facilities. Though a separate facility in and of itself is not violative of Section 504, a violation can occur when the facility and the services and activities provided therein are not comparable to other facilities, services, and activities of the recipient. OCR's investigation found that the facilities, services and activities provided to handicapped students assigned to the Mayo building were not comparable to those provided to nonhandicapped students in other buildings.

OCR concludes that handicapped students enrolled in the JEEEP Program were provided different and separate aids, benefits and services from those provided to nonhandicapped kindergarten students placed in the Sooner building with regard to library services, playground equipment and computer services. Furthermore, OCR found that the students in the segregated facility (Mayo building) were excluded from the Central Elementary School campus yearbook, the student directory, and open house activities as provided to students assigned to the Sooner building.

Although OCR found that the playground equipment for handicapped students was not adequate to meet their needs, subsequent to the on-site investigation, the JPS purchased additional playground equipment for the Betsy Mayo building and made adaptations to accommodate handicapped students on its elementary campuses and is in now in compliance with

Section 504 as it relates to the playground equipment only. Therefore, OCR concludes that for all other issues cited, the JPS is in noncompliance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. §§ 104.33(a), (b); and 104.34(a)-(c) (1992), regarding this issue.

4. Failing to establish and implement a system of procedural safeguards.

You alleged that the JPS failed to provide for due process hearings to be held in a timely manner. The OCR investigation revealed that the JPS has adopted the Oklahoma State Department of Education's (OSDE) procedures for due process as its means to comply with the requirements of Section 504 regarding its system of procedural safeguards. The procedures include: notice, an opportunity to examine relevant educational records, an impartial hearing and a review procedure. OCR's review of a sampling of 44 special education folders of handicapped students (including that of the complainant's child) revealed that in each instance, parents of handicapped students had acknowledged their receipt of the JPS's system of procedural safeguards.

Our review revealed that during the 1990-1991 school year, only two requests for due process hearings for elementary students were made (including one by you). In each instance, the issues were resolved through mediation and the requests for due process hearings were withdrawn. OCR found that the timeliness observed by the JPS in due process proceedings was consistent with OSDE policies and procedures. OCR found that due process hearings were set within the 45 day limit set forth under the OSDE's timeliness for such hearings. OCR further determined that on occasion, the hearing dates were delayed due to requests filed by the parents and JPS officials for continuances and/or mediation attempts. However, OCR identified no instance where the aforementioned requests resulted in unreasonable delays to the conduct of the impartial hearing process.

#### Conclusion

Based on the evidence obtained during the investigation, OCR determined that the JPS had adopted procedures established by the OSDE for due process as its means to comply with the requirements of Section 504. Of the 44 handicapped students' folders sampled, OCR found that their parents had acknowledged receipt of the JPS system of procedural safeguards. Only you and one other set of parents had requested a due process hearing in which to address their

differences with the JPS regarding the provision of services to their handicapped children. OCR found that due process procedures were afforded to both sets of parents requesting it; however their concerns were subsequently resolved in a mediation meeting. Therefore, OCR determined that the JPS was in compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (amended 1988) and its implementing regulation, at 34 C.F.R. § 104.36 (1992).

### Issue C

Whether the Jenks Public Schools (JPS) retaliated against you and your handicapped daughter because you undertook activities to secure your rights under Section 504, and its implementing regulation at 34 C.F.R. § 104.61 (which incorporates by reference 34 C.F.R. § 100.7(e)) (1992).

### Findings

You alleged that the JPS retaliated against your family by subjecting you to verbal intimidation when you attempted to secure the rights of your children protected under Section 504 by: 1) permitting the school system's attorney to verbally intimidate you during mediation meetings as a result of requesting a Due Process hearing; and 2) attempting to coerce you to withdraw your complaint filed against the JPS with OCR.

The OCR investigation revealed that you had participated in placement committee meetings related to the educational programs proposed for your handicapped daughter by the JPS during the 1989-1990 school year. On November 8, 1989, an individualized education program for the complainant's daughter was drafted by a placement committee. You did not agree to the placement committee's determination that your daughter should be classified as multihandicapped and stated that they wanted to study the draft proposal. On December 13, 1989, you notified school officials that they were unwilling to place your daughter in a class with other multihandicapped students. You also informed the JPS that they had chosen to consult an attorney regarding your daughter's educational program. A placement committee was reconvened to review the individualized education program of the complainant's daughter on December 19, 1989. At that time, you requested that the JPS provide related services of sign language, occupational and physical therapy for your daughter. After follow-up conferences on January 5, 1990, January 19, 1990, and March 5, 1990, in which the

classroom progress and program of your daughter were discussed, you agreed with the placement committee's determination of the appropriate placement for your daughter.

On May 22, 1990, a placement committee was convened to review the educational program for your daughter for the 1990-1991 school year. The placement committee determined that the appropriate placement for your handicapped daughter was a multihandicapped classroom with other five-year-old children with the same type of related services of speech/language and occupational and physical therapy. Subsequent placement committee meetings were convened on October 31, 1990, and November 7, 1990, at which time you agreed to the educational program prepared for your daughter.

However, on February 5, 1991, you requested a due process hearing to address the issues of least restrictive environment and mainstreaming within academic and nonacademic settings, segregated building and no contact with nonhandicapped students with a continuum of placements, and assessment for assistive aids and services. You later requested your attorney to narrow the focus of the due process hearing to the specific concerns of assisted technology (computers in the classroom) and an augmentative communicative hearing device.

Additionally, the investigation revealed that on May 13, 1991, you filed a complaint with OCR against the JPS. The complaint alleged that the JPS discriminated against students, on the basis of handicapping condition, by failing to provide them an appropriate public education. Information reviewed revealed that on May 28, 1991, OCR notified the JPS that the complaint had been filed.

Therefore, based on this information, OCR has determined that you were engaged in a protected activity to pursue the rights of your daughter under Section 504. The JPS was also aware of your involvement in this protected activity. In addition, the JPS was aware of the filing of the complaint with OCR, which was a protected activity.

According to you, the JPS retaliated against you by permitting its attorney to make unreasonable requests for information related to your daughter. OCR's investigation found that prior to the scheduled Due Process Hearing, the JPS had requested to review all medical records pertaining to your daughter. You had not cooperated with a request for information from the JPS's attorney. The OCR review of the transcript of your deposition taken subsequent to your

request for a Due Process Hearing on April 8, 1991, revealed that you had been issued a subpoena by the appointed hearing officer with a request for specific medical documents related to your daughter. You did not provide the requested documents nor had you provided authorization to allow the JPS to obtain copies of the medical records.

OCR's investigation revealed that under the OSDE's Due Process Procedures in Special Education Guidelines for Parents and School Administrators (1991), the JPS through its attorney had requested that you appear for a deposition and that a subpoena deuces tecum be issued to compel you to provide the requested documents at the time of the deposition. OCR concluded that the actions taken by the JPS were consistent with OSDE's rules and regulations. OCR determined that the securing of deposition testimony and documents to adequately prepare for the pending due process hearing, was a legitimate, nondiscriminatory reason.

According to you, the JPS retaliated against you by subjecting you to verbal intimidation for filing this complaint with OCR. Our investigation confirmed that you had been questioned about the OCR complaint by a JPS official. The JPS administrative assistant (former Director of Special Education) informed OCR that she had inquired of you as to whether you had filed a complaint with OCR. She stated that it was not her intention to subject you to verbal intimidation because you had filed a complaint to secure the rights of your child under Section 504. Rather, she stated that because your concerns related to your daughter's educational program had been addressed in mediation meetings as a result of your filing for a Due Process Hearing, she did not believe that further investigation was required by any agency. She related this to you. Although you felt that the actions of the JPS's Administrative Assistant were threatening and intimidating when she suggested that you "drop" the complaint you filed with OCR, there was no evidence that you or your daughter suffered any adverse action as a result of the JPS's knowledge of your complaint activity. Further, OCR did not determine these actions to be intimidating.

#### Conclusion

Based on the evidence presented, we conclude that you were engaged in protected activities to obtain an appropriate education for your handicapped child and by filing a complaint with OCR. The evidence revealed that the recipient was aware of these protected activities. We further conclude that the alleged adverse actions occurred coincident in time with your participation in the protected

activity; however, OCR determined that you suffered no adverse action as it relates to the alleged retaliation. OCR concludes that the JPS articulated legitimate nondiscriminatory reasons for its actions. OCR further concludes that the request that the JPS made to you to withdraw your complaint was not intimidating. Therefore, we conclude that the JPS is in compliance with Section 504 of the Rehabilitation Act of 1973 (amended 1988), at 34 C.F.R. § 104.61 (incorporating by reference 34 C.F.R. § 100.7(e)) (1992).

### Corrective Action

Prior to OCR's issuance of this letter of findings, the JPS agreed to voluntarily comply with Section 504. In a letter dated February 17, 1993, the JPS assured OCR that the following steps have been or will be taken:

1. By April 30, 1993, the JPS will reconvene placement committee meetings for all elementary (K-5) students assigned to schools other than their home schools to consider the proximity of the students' homes to any educational setting recommended to meet the students' individualized educational needs. The students will be returned to their home schools, if appropriate, at the beginning of the 1993-1994 school year. If placement committees determine that students' individualized educational needs cannot be met on the campus they would normally attend if not handicapped, educational justification will be provided for the students' placement consistent with 34 C.F.R. § 104.34(a). In any event, administrative convenience will not serve as the basis for such a placement.
2. By April 15, 1993, the JPS will provide an assurance of compliance with Section 504 regarding its practices and procedures related to the provision of different or separate aid, benefits or services for handicapped children. The JPS will ensure that all handicapped students' pictures, addresses and telephone numbers are included in the same yearbook and directories as those of nonhandicapped students upon publication of the directories for that school year. In addition, the open house for handicapped students will be held during the same time as those for nonhandicapped students.
3. By March 1, 1993, the JPS will ensure that handicapped students, regardless of age or grade level, will participate with nonhandicapped students to the maximum

extent appropriate to their individual needs in the receipt of library services, computer training, nonacademic, and extracurricular activities.

4. By March 1, 1993, the JPS shall ensure that all library resources provided to handicapped students are comparable to those provided to nonhandicapped students.
5. The JPS will provide a progress report to OCR by June 1, 1993, regarding the completion of the corrective action steps identified above. The report will include evidence that proximity of the student's home to the educational placement proposed was considered. In addition, the report will include the specific educational justification for the removal of the student from the school he would normally attend if not handicapped. In addition, the report shall include evidence that corrective action steps two, three and four above have been completed.

We have determined that the corrective action steps set forth in the JPS's voluntary plan are adequate to correct the areas of noncompliance cited above. Based on the JPS's written assurances that these corrective actions have been or will be implemented, as set forth above, we consider the JPS to be in compliance with Section 504 and its implementing regulation relative to the issues in this case. Continued compliance is contingent upon the implementation of the voluntary actions agreed upon by the JPS which will be monitored by OCR. Failure of the JPS to perform the voluntary actions may result in a finding of a violation.

This Letter of Findings is not intended, nor should it be construed to cover any other issues regarding the district's compliance with applicable statutes that may exist and are not specifically discussed. Based on our determination, we are closing the above case as of the date of this letter.

The findings presented by OCR in this Letter of Findings have undergone a multilevel review for legal sufficiency and adherence to OCR policy. The manner in which OCR determined compliance and the facts to support that determination are set forth in the letter. If, after review of this letter, you believe that you have evidence that refutes the facts presented and that such evidence would alter the findings, you may request reconsideration of this determination. Requests for reconsideration must be submitted to this Office postmarked within 30 days of the date of this letter.

Your request for reconsideration of OCR's determination applies only to those findings that are adverse to you. This Office will not review findings that are not adverse to you, nor the specific remedies negotiated to bring the recipient into compliance with the law. In your request for reconsideration of OCR's determination you must:

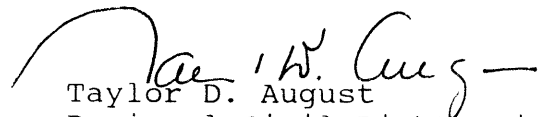
- (1) Specify which findings were based on incorrect information
- (2) Specify which relevant facts were not included in the finding; and
- (3) Provide any evidence that will support the above.

Your request for reconsideration cannot merely express general disagreement with our findings.

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, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions concerning this matter, please contact Mr. George D. Cole of my staff at 214/767-4005.

Sincerely,



Taylor D. August  
Regional Civil Rights Director  
Region VI