



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS—REGION VII

November 18, 2009

Kimberly Voss

Re: OCR Docket # 07091205

Dear Ms. Voss:

On August 13, 2009, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint alleging the Oklahoma State Department of Education, Special Education Services (OSDE), Oklahoma City, Oklahoma, discriminated against you and your daughter because of your daughter's disability and retaliated against you and your daughter. This is to inform you that we have completed our evaluation of your complaint and we have determined that your allegations against the OSDE also pertain to issues covered by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* Therefore, this letter is to inform you that, for the reasons explained below, OCR is referring your complaint to the Department's Office of Special Education Programs (OSEP), in the Office of Special Education and Rehabilitation Services (OSERS).¹

Based on your complaint allegations and supplemental information you provided OCR, as well as telephone interviews with OCR staff members, you specifically allege the following:

1. The OSDE discriminated against you and your daughter because of your daughter's disabilities (including Down Syndrome and visual impairment) by:
 - a. Failing to address in a timely and competent manner all of your complaint allegations in your state complaint filed with the OSDE on October 5, 2005, against Jenks Public Schools (LEA), including:
 - i. Limiting the scope of OSDE's on-site investigation on November 10, and 17, 2005;
 - ii. Forcing you, instead of the LEA, to prove in a court of law that a previously signed release pertaining to a settlement agreement resolving a state personal injury lawsuit (release) between you and the

¹ OSEP is responsible for ensuring states' compliance with the IDEA. Additional information about OSEP's monitoring and enforcement responsibilities may be found at <http://www.ed.gov/about/offices/list/osers/osep/index.html>.

LEA did not preclude you from filing a state complaint with OSDE, with respect to certain allegations under IDEA, before OSDE would investigate those allegations, and;

- iii. Failing to ensure the LEA complied with IDEA while OSDE forced you to seek declaratory judgment regarding the release, a state litigation process that lasted over three years in which you were forced to privately-fund the litigation, and allowing your daughter to be exited from school on November 15, 2006, without addressing all of your state complaint allegations;
- b. Failing to appropriately and adequately investigate your state complaint allegations addressed by the OSDE in 2005, by interviewing LEA instructional staff with their superiors present, which you believe prevented the interviewees from speaking candidly, based on statements made to you by the interviewees after the OSDE investigation;
- c. Allowing the LEA to exit your daughter on November 15, 2006, “with outstanding issues that questioned her receipt of FAPE under IDEA and the lack of data to substantiate grades and credits that were awarded” to your daughter;
- d. Providing information to the LEA regarding the original complaint but failing to share the LEA’s rebuttal with you, and allowing the LEA a long period of time to formulate the LEA’s rebuttal (from October, 2005, to February, 2008) while you only had days to respond;
- e. Accepting a compensatory education plan from the LEA in 2009 without providing adequate notice of the meeting to determine compensatory education, and without someone present to speak on behalf of your daughter; and
- f. Denying you the opportunity to submit additional information or new evidence in January and February, 2009, during OSDE’s review of your state complaint, yet accepting new evidence from the LEA and communicating directly with the LEA about OSDE’s review on the same day (February 5, 2009) OSDE sent correspondence to you refusing to accept new evidence from you pursuant to OSDE’s procedures for written formal complaints. You also allege OSDE did not implement the timeframes in the state complaint procedures in a consistent and neutral manner for your state complaint, and

by copying two LEA administrators and their attorney on a letter to you dated September 3, 2009, with respect to your request for a copy of the OSDE procedures for written formal complaints, the OSDE acted in a “patently discriminatory” manner, particularly if OSDE did not routinely copy you or your attorney on all correspondence to the LEA;

2. The OSDE retaliated against you and your daughter, after you asserted your rights and advocated on behalf of your daughter in court and with OSDE, by:
 - a. Failing to address a false document submitted by the LEA, which the OSDE relied on in its findings and decision, despite your notification to OSDE on multiple occasions that the document was false. You allege OSDE never responded to you about the document irregularities and refused to amend its findings and decision;
 - b. Failing to address “all areas” of your state complaint in OSDE’s findings and decision, despite reminders to do so in your request for review;
 - c. Failing to treat the parties’ requests for a review of OSDE’s decision, which were received on the same day by OSDE, in a consistent manner, and failing to send you a letter indicating OSDE was granting a review, similar to the letter that was sent to the LEA;
 - d. Closing your state complaint investigation on May 5, 2009, after accepting a compensatory education plan that was drafted by the LEA without your input and which you would have been precluded from signing given your pending federal litigation. You also allege OSDE closed your state complaint investigation without providing instructions for correcting any substantiated violations or ensuring that the corrective action was implemented by the LEA;
 - e. Closing your state complaint investigation May 5, 2009, without communicating with you from the time of OSDE’s decision on February 12, 2009, until OSDE closed your complaint investigation on May 5, 2009; and
 - f. The allegations contained in paragraph 1(d), (e), and (f).

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations

(C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). The Section 504 regulation, at 34 C.F.R. § 104.61, incorporates by reference the regulatory provision of Title VI of the Civil Rights Act of 1964 at 100 C.F.R. § 100.7(e), which prohibits retaliation, including intimidation, threats, coercion, or discrimination, for engaging in an activity that is protected under the laws OCR enforces. Protected activities include opposing discrimination or any act or practice made unlawful by these laws, or making a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under these laws.

- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The Title II regulation, at 28 C.F.R. 35.134, also prohibits retaliation for engaging in an activity that is protected under Title II.

As a recipient of FFA from the Department and a public entity, OSDE is subject to these laws. Additional information about the laws OCR enforce is available on our website at <http://www.ed.gov/ocr>.

OCR may investigate only those complaints that indicate a possible failure to comply with a law enforced by OCR. Section 504 and Title II contain similar anti-discrimination provisions prohibiting recipients of FFA and public entities, respectively, from discriminating against individuals on the basis of disability. Section 504 mandates “no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” *See*, 29 U.S.C. § 794. Title II of the ADA was expressly modeled after Section 504 and states “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *See*, 42 U.S.C. § 12132.

The Department’s Section 504 and Title II regulations do not impose a duty on a state educational agency (SEA), such as OSDE, to implement a complaint system under Section 504 to address complaints pertaining to an LEA. Allegations that a SEA failed to properly respond to a complaint alleging a LEA failed to carry out its responsibilities under IDEA are not within OCR’s subject matter jurisdiction. Rather, the Department’s OSEP office has

subject matter jurisdiction of IDEA compliance matters relating to an SEA, including SEA compliance with state complaint procedures.²

Each of your complaint allegations, listed above, allege incomplete or incorrect state complaint handling or monitoring by the SEA, which are compliance issues pursuant to IDEA. As such, OCR does not have subject matter jurisdiction of allegations involving IDEA compliance. Therefore, OCR is referring your complaint to the OSEP employee listed below along with a copy of the supporting information and documentation you provided to OCR:

Ruth Ryder, Director of Monitoring and State Improvement Planning Division
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
United States Department of Education
550 12th St SW
Washington, D.C. 20202-2600
(202) 245-7513

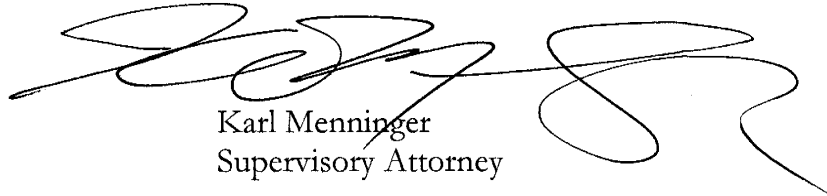
During your telephone interviews with OCR staff, you stated that while your complaint allegations involve compliance issues pursuant to IDEA, you are also alleging that the same underlying factual circumstances form the basis for your independent discrimination and retaliation allegations under Section 504 and Title II. Since each of your complaint allegations raise compliance concerns regarding the state complaint procedures and monitoring pursuant to IDEA, OCR has concluded that OSEP is the appropriate agency to initially address your allegations to determine whether the OSDE's processing of your complaint was consistent with its obligations under IDEA.

OCR has not made any determinations regarding your allegations alleging that the OSDE failed to comply with Section 504 and Title II, including the timeliness of your complaint allegations. You can re-file your complaint allegations alleging violations of Section 504 and Title II if you believe that OSEP's final determination does not address or provide a remedy for your Section 504 and Title II allegations. Please note that you must re-file your complaint with OCR within 60 days of OSEP's decision. If you re-file your complaint, OCR will use August 13, 2009, the date you filed your complaint with our office, for our case processing procedures.

² See OSEP's topic brief entitled *IDEA Regulation, State Complaint Procedures*, pertaining to SEA duties in accordance with IDEA with respect to state complaint procedures, at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C22%2C>.

If you have any questions or concerns about OCR's response to your complaint, you may contact Vernia Lewis, Equal Opportunity Specialist, at (816) 268-0575 or (877) 521-2172 (telecommunications device for the deaf), or by email at vernia.lewis@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl Menninger', is written over the typed name and title.

Karl Menninger
Supervisory Attorney

cc: Ruth Ryder, Director of Monitoring
and State Improvement Planning Division, OSEP

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS—REGION VII

November 18, 2009

Ruth Ryder, Director of Monitoring
and State Improvement Planning Division
Office of Special Education Programs
Office of Special Education and Rehabilitative Services
United States Department of Education
550 12th St SW
Washington, D.C. 20202-2600

Re: OCR Docket # 07091205.

Dear Ms. Ryder:

Enclosed please find a copy of an OCR complaint filed by Kimberly Voss on August 13, 2009, along with her supporting information and documentation. Ms. Voss is alleging numerous compliance violations under IDEA by the Oklahoma State Department of Education with respect to incomplete and incorrect state complaint handling and monitoring. These allegations are outlined in OCR's letter to Ms. Voss dated November 18, 2009, attached. Pursuant to OCR's Policy Memorandum entitled *OCR Senior Staff: Section 504 Complaints Against State Education Agencies Alleging Incomplete or Incorrect Monitoring or Complaint Handling* (10/26/1987, attached) OCR is referring Ms. Voss' complaint to the Monitoring and State Improvement Planning Division at OSEP.

Please provide me with a copy of OSEP's finding(s), decision, or response to Ms. Voss, at the conclusion of OSEP's investigation or after OSEP has addressed these complaint allegations. Thank you in advance for your assistance and please do not hesitate to contact me at (816) 268-0571 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Menninger", written over a large, stylized scribble.

Karl Menninger
Supervisory Attorney