



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS – REGION VII

May 18, 2016

XXXXX XXXXX XXXXX, In-House Counsel
Sioux Falls School District #49-5
201 East 38th Street
Sioux Falls, South Dakota 57105

Re: Docket # 07141099

Dear Ms. XXXXX XXXXX:

On March 4, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Sioux Falls School District #49-5 (District), Sioux Falls, South Dakota, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve compliance concerns identified in OCR's investigation.

Specifically, the Complainants alleged the District denied their son (the Student) a free appropriate public education by failing to promptly and appropriately evaluate, develop and implement a program of regular or special education and related aids and services designed to meet his educational needs; failed to consider all pertinent information in making a placement decision for him and based decisions regarding the appropriateness of accommodations and/or modifications on staff preference and staff availability.

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; and
- 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.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Prior to concluding the investigation, the Student turned 18 years old and, as such, OCR required the Student's written consent (signed Consent form) prior to proceeding with our investigation of the individual allegation contained in this complaint.¹ On February 12, 2016, OCR requested the Student's consent in writing. The Student declined to provide his written consent to proceed with the investigation. As such, as of the date of this letter, OCR is dismissing the Complainants' individual allegation that the District denied the Student a free appropriate public education.

During the course of the investigation, OCR identified compliance concerns specifically related to the District's notification of parent/guardian rights document and deficits in staff training related to Section 504 and Title II. Prior to the conclusion of the investigation, the District expressed an interest in resolving those issues. OCR determined it was appropriate to resolve them with an agreement pursuant to the process outlined in Section 302 of the OCR *Case Processing Manual*. Accordingly, the District submitted a signed Agreement (copy enclosed) on May 11, 2016, that, when fully implemented, will address compliance concerns identified during the investigation. The Agreement requires the District to revise its notice of parent/guardian rights document and to provide training to staff regarding Section 504 and Title II and its revised notice of parent/guardian rights document. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation.

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 Complainants may have the right to file a private suit in Federal court whether or not OCR finds a violation.

¹ Section 103 of OCR's *Case Processing Manual* states in pertinent part that when disclosure of the identity of the complainant is necessary in order to resolve the complaint, OCR will require written consent before proceeding with an investigation. A complainant filing on behalf of or pertaining to another person(s) is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18. In instances where OCR does not receive a signed written Consent Form and consent to disclose the identity of the complainant is necessary to resolve the complaint, the complaint will be dismissed. The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

OCR is committed to prompt and effective services. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Kelli Douglas

Kelli Douglas
Supervisory Attorney

Enclosure

cc: Melody Schopp
South Dakota Secretary of Education