



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WISCONSIN

September 25, 2015

Mr. Sherwin Wade
Superintendent
Rolette Public School District #29
901 Third Avenue NE
Post Office Box 97
Rolette, North Dakota 58366

Re: OCR Docket #05-15-1251

Dear Mr. Wade:

This is to notify you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on April 28, 2015 against the Rolette Public School District #29 (District) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the District breached an Early Complaint Resolution (ECR) agreement that resolved a previous complaint filed by the Complainant with OCR against the District (OCR Docket # 05-14-1025). OCR determined that the District did not fully implement the terms of the agreement, therefore, OCR opened for investigation the underlying allegation of discrimination raised in OCR complaint #05-14-1025, namely, that the District discriminated against the Complainant's Student A, on XXX the basis of disability (XXXXXXXXXXXXXXXXXXXX), during the XXXXXXXXXXXXXXXXXXXX school year when School staff failed to implement Student A's Section 504 Plan.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in educational programs or activities that receive Federal financial assistance and by public entities. As recipient of Federal financial assistance and a public entity, the District is subject to these laws.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. Prior to the conclusion of OCR's investigation, the District requested to resolve the complaint. Subsequent discussions with the District resulted in the District signing the enclosed agreement (Agreement), which, when fully implemented, will resolve the issues raised in the

complaint. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR’s investigation and are consistent with the applicable regulations.

Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Discrimination Generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of 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 public entity.

FAPE

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of an individualized education plan (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of providing FAPE.

Facts

During the XXXXX school year, Student A was XXXXXXXXXXXXXXX at the District’s XXXXXX (School). Student A has XXXXXXXXXXXXXXXXXXXX. The District created a plan for Student A that was in effect during the XXXXXX school year.

On September 8, 2015, OCR spoke with the Superintendent and the Principal of the XXXXXXXXXXXXXXX and they explained that during the XXXXXX school year, Student A had a Section 504 plan developed on non-District forms by the former Principal of the

XXXXX. The Principal and Student A worked closely with School staff to implement the plan. The District acknowledged that Student A’s Section 504 Plan contained a provision that allowed him to resubmit any assignments for which he earned a grade of C or lower.

In April 2013, the Principal of the XXXXXXXX was “relieved of his duties” and the current Principal assumed her position. At that time, she met with the Complainant who allegedly stated that since the former Principal was no longer with the District, Student A and his family were “done with the 504 Plan.” According to the Superintendent, he participated in a subsequent meeting with the Complainant during which she reiterated that her family was “done with the 504 Plan” and allegedly removed District documentation regarding the Plan from a District binder.

The Complainant, who stated that she might not recall all the events at issue as they occurred over two years ago, disputes the Superintendent’s assertion that she stated that since the former Principal was no longer with the District, Student A and his family were “done with the 504 Plan.” According to the Complainant, when the former Principal was employed by the District, School staff fully implemented her son’s 504 Plan. According to the Complainant, after the new Principal assumed her position, the Complainant met with the Superintendent at which time she requested that Staff continue to implement her son’s 504 Plan that was developed by the former Principal.

The Superintendent and the Principal confirmed that thereafter, consistent with what they viewed as the Complainant’s request, the District no longer implemented the terms of Student A’s Section 504 Plan.

On XXXXXXXXXXXX, the Complainant filed her first OCR complaint (#05-14-1025), in which she alleged that the District discriminated against Student A by failing to implement his Section 504 plan. The parties quickly requested to participate in the Early Complaint Resolution process, and resolved the allegation with an ECR agreement on XXXXXXXXXXXX.

The Complainant informed OCR that after the ECR agreement was signed, she and the School viewed the Agreement as Student A’s Section 504 plan. The Principal confirmed that after the ECR agreement was reached in March 2014, she distributed the signed ECR agreement to all of Student A’s teachers in the XXXXXXXXX and instructed them to implement it as though it were Student A’s Section 504 Plan. According to the Principal, since the ECR agreement was signed, School staff has done their best to comply with its provisions.

Analysis

Prior to the conclusion of OCR’s investigation of this complaint, the District requested to resolve this complaint. On September 25, 2015, the District voluntarily executed the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in the complaint. Under the terms of the Agreement, the District will:

- Provide training to all School teachers, administrators, and school aides, and any other District personnel charged with supervising District students, on the Section 504 regulation at 34 C.F.R. §§ 104.4(a) and 104.33, which prohibit disability discrimination and require the District to provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the District's jurisdiction, regardless of the nature or severity of the person's disability. In addition, the District shall evaluate its staff's understanding of the training information and materials with a formal assessment. Thereafter, the District shall provide annual training to all District teachers, administrators, school aides, and any other District personnel charged with supervising District students on the Section 504 prohibition against discrimination and requirement to provide a FAPE.
- Convene a group of knowledgeable persons, including the Complainant, to determine whether Student A was denied a FAPE during the 2013-14 school year as the result of any failure to implement Student A's Section 504 plan. If the group determines that Student A was denied a FAPE during the 2013-14 school year, it shall determine whether Student A is in need of compensatory and/or remedial services as a result of the District's denial of FAPE, including any changes to or modification of Student A's grades and/or transcripts. In addition, the District will provide the Complainant with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

OCR will monitor the District implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in this case. OCR looks forward to receiving the first monitoring report from the District and the School, which is due on November 15, 2015.

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 complainant may file another complaint alleging such treatment. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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.

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.

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We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. If you have any questions, please contact Robette Parks at 312.730.1599 or by email at Robette.Parks@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure