



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

August 19, 2020

Jeff Bisek  
Superintendent  
Mahnomen ISD #432  
209 1<sup>st</sup> Street  
Mahnomen, Minnesota 56557

RE: OCR Complaint No. 05-20-1226  
Student A: [REDACTED]

Dear Superintendent Bisek:

The U.S. Department of Education (Department) Office for Civil Rights (OCR) has completed its investigation of the referenced complaint filed against Mahnomen ISD #432 (District). The complaint alleges discrimination on the basis of disability. Specifically, the complaint alleges the District discriminated against the Complainant's son (Student A) based on disability ([REDACTED]) when it engaged in the following conduct:

1. Failed to provide Student A with a Free Appropriate Public Education (FAPE) by initially refusing to evaluate Student A for eligibility for a Section 504 Plan or an Individualized Education Plan during the fall of 2019 and subsequently failed to implement Student A's Section 504 plan; and,
2. Failed to respond to the Complainant's reports that teachers singled out Student A in classes during the fall of 2019.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 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 these laws.

During the course of OCR's investigation, OCR interviewed the Complainant, queried District representatives, and reviewed documents provided by the Complainant and the District. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint

in accordance with Section 302 of OCR's *Case Processing Manual* (CPM).<sup>1</sup> The District executed the enclosed Resolution Agreement (Agreement).

### Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states 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 or benefits from Federal financial assistance. The Title II implementing regulation provides, at 28 C.F.R. § 35.130(a), that no qualified individual with a disability may, 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 subjected to discrimination by any public entity.

The regulation implementing Section 504 provides, at 34 C.F.R. § 104.33(a), that a recipient that operates a public elementary education program or activity shall provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability. The Section 504 implementing regulation further states, at 34 C.F.R. § 104.33(b), that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met, and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 - 104.36. The implementation of a Section 504 Plan is one means by which FAPE may be provided.

Both the Section 504 regulations, at 34 C.F.R. § 104.7(b), and the Title II regulations, at 28 C.F.R. § 35.107(b), require a recipient such as the District to adopt and publish grievance procedures that include appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. OCR examines a number of factors in evaluating whether a school district's grievance procedures are prompt and equitable, including whether the procedures provide for notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

### Allegation 1

The Complainant alleged that the District discriminated against Student A based on disability when it failed to provide him with a FAPE by initially refusing to evaluate him for eligibility for

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<sup>1</sup> OCR's Case Processing Manual can be found at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

a Section 504 Plan or an Individualized Education Plan during the fall of 2019 and subsequently failed to implement his Section 504 plan.

### Allegation 1 - Conclusion

In accordance with Section 302 of the *Case Processing Manual*, an allegation may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. OCR has compliance concerns regarding the District's process to determine a student's eligibility to receive special education or related services and the District's response to assess Student A for such services. The District expressed interest in resolving Allegation 1.

On August 19, 2020, the District executed the enclosed Agreement, which when fully implemented, will address the compliance concerns. The provisions of the Agreement are aligned with Allegation 1 and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

### Allegation 2 - Facts

The Complainant alleged that the District discriminated against Student A based on disability when it failed to respond to her reports that teachers singled out Student A in classes during the fall of 2019.

At the request of the Complainant, in September 2019, the Counselor emailed Student A's teachers informing them of Student A's issues with [REDACTED] and requesting that teachers talk with Student A privately instead of calling him out in class. Although the Complainant stated that teachers continued to call out Student A in class subsequent to this email, she provided only one example of this occurring during the 2019-2020 school year. She reported that on or about January 13, 2020, Student A's [REDACTED] teacher made disparaging comments about Student A. The District and the Complainant confirmed that Student A was absent from school on January 13, 2020. The Complainant informed OCR that Student A's classmates notified Student A by text that the [REDACTED] teacher had made disparaging comments about Student A and his attendance record.

The Complainant reported the incident to the Principal. The Principal spoke with the [REDACTED] teacher about the comments and informed him that the comments were inappropriate. On January 24, 2020, the Principal sent an email to the Complainant informing her that he had addressed the issue. Although the Complainant demanded additional information regarding disciplinary measures taken against [REDACTED], the Principal refused to disclose more information due to privacy concerns.

Allegation 2 – Analysis and Conclusion

OCR's investigation revealed that Principal investigated the incident and spoke with the [REDACTED] teacher. The Principal stated that the [REDACTED] teacher acknowledged that the comments were inappropriate and agreed to not make similar comments in the future. At this point, the Principal considered the matter resolved. The Complainant provided no additional evidence to support her allegation of singling out Student A. In conclusion, OCR has determined that the facts are insufficient to establish that the District failed to properly respond to the Complainant's reports of teachers singling out Student A, as alleged in Allegation 2.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The 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.

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 individual may file another complaint alleging such treatment.

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 privacy. The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

If you have any questions or concerns about this letter, you may contact Lauren Skerrett, OCR Attorney, by phone at (312) 730-1603 or by email at [lauren.skerrett@ed.gov](mailto:lauren.skerrett@ed.gov).

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

Enclosure