



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

July 31, 2020

Lisa Gerving, Board Member  
Glen Ullin Public School  
6508 Hwy 49  
Glen Ullin, North Dakota 58631

*Sent via electronic mail only to: XXXXXXXXXXXXXXXXXXXX*

Re: OCR Complaint #05-20-1271

Dear XXXXXXXXXXXX:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), in March 2020 against the Glen Ullin School District #48 (District) alleging discrimination based on disability. The complaint alleged that the District discriminated against Student A on the basis of disability XXXXXXXXXXXXXXXXXXXXXXXXXXXX when the District failed to follow the procedural requirements of Section 504 in responding to the Complainant's XXXXXXXXXXXXXXXXXXXXXXXXXXXX, requests for an evaluation of Student A.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing 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 implementing regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

**District Policies and Procedures**

The District’s non-discrimination notice prohibits discrimination based on disability against employees and students.<sup>1</sup> The District designated the Superintendent to ensure implementation in the role of “Title IX and Nondiscrimination Coordinator.” The Policy was last amended in August 2009,<sup>2</sup> and lists a prior Superintendent’s contact information. The District has also adopted disability discrimination grievance procedures, which include the right to appeal to the School Board. The grievance procedures do not include a timeframe to complete the investigation nor state that interim measures can be granted. The grievance procedures do not identify the individual(s) designated to investigate complaints pursuant to the policy and do not

<sup>1</sup> [http://guhs.weebly.com/uploads/6/3/4/5/63450697/policy\\_manual\\_section\\_a.pdf](http://guhs.weebly.com/uploads/6/3/4/5/63450697/policy_manual_section_a.pdf)

<sup>2</sup> All policies listed in this section were last amended in August 2009.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.



OCR that the District did not allow Student A to use any of the discussed informal accommodations.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX through a different agency, which on XX. In an email to the Principal on XXXXXXXXXXXXXXX, the Complainant requested a meeting to discuss the XXXXXXXXXXXXXXX evaluation results and again requested that the District develop a Section 504 Plan for Student A. XXXXXXXXXXXXXXX, the Complainant and District employees met and, according to the Complainant, the Principal told the group that Student A’s grades were still “too good” for her to be eligible for services under Section 504. The District did not provide the Complainant with a written determination.

In an email to the Principal on XXXXXXXXXXXXXXX, the Complainant requested the District reconsider Student A’s eligibility for special education services. The District initiated the evaluation and testing process on XXXXXXXXXXXXXXX. The Complainant stated that she, her spouse, and an advocate met with five District employees and three employees of the local Morton-Sioux special education cooperative on XXXXXXXXXXXXXXX. This new group of persons determined Student A was not eligible for services under Section 504 and denied the Complainant’s renewed request for a Section 504 Plan, again without a written determination. XXXXXXXXXXXXXXX, the Complainant’s advocate emailed the Principal to request an evaluation. XXXXXXXXXXXXXXX, the Principal replied that the team had reviewed the data for a “third time” and determined that a Section 504 Plan was unnecessary.

The District’s Affirmative Action policy outlines Procedural Safeguards related to the Individuals with Disabilities Education Act (IDEA). The District did not provide OCR a copy of Procedural Safeguards for Section 504. The Complainant informed OCR that a no time during the 2019-2020 school year or following the XX Section 504 team meetings did the District provide her notice of procedural safeguards or information to explain how she could dispute the District’s determination if she wished to do so.

**Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.7(a), states that “a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.” The Section 504 implementing regulation at 34 C.F.R. § 104.7(b), states that “a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.”

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.35, a recipient must conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35(b), of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. § 104.35(b) requires that a recipient establish certain standards and procedures for the

evaluation and placement of students who, because of disability, need or are believed to need special education and/or related services. The Section 504 regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions, a recipient draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Section 504 regulation at 34 C.F.R. § 104.36 requires a recipient to “establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.”

### **Analysis and Conclusion**

The evidence establishes that the District is not in compliance with the Section 504 regulation at 34 C.F.R. § 104.7(a), because it has not designated a current employee “to coordinate its efforts to comply with” Section 504.

The evidence further establishes that the District is not in compliance with the Section 504 regulation at 34 C.F.R. § 104.36, because it has not established and implemented procedural safeguards “with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.”

Prior to the conclusion of this investigation, the District requested to resolve the complaint allegation pertaining to Student A through a voluntary resolution agreement pursuant to section 302 of the *Case Processing Manual* (CPM).

On July 30, 2020, the District submitted the enclosed, signed resolution agreement (Agreement) to OCR. When fully implemented, the Agreement will address the District’s compliance with the Section 504 regulations at 34 C.F.R. § 104.7(a) and 104.36 and will address the Complainant’s allegation regarding Student A. OCR will monitor the District’s implementation of the Agreement. When OCR concludes the District has fulfilled the terms of the Agreement, OCR will close the case. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law

enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

OCR looks forward to the District's monitoring report, which is due by August 15, 2020. OCR wishes to thank Ms. KrisAnn Norby-Jahner, Counsel for the District, for the cooperation extended to OCR in this case. If you have questions, please contact XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX.

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure  
cc: Ms. Norby-Jahner