



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 10, 2021

Mrs. Tammy Beckham
Superintendent
Spring Garden School District 178
14975 E. Bakerville
Mt. Vernon, IL 62864

Sent via email only to tbeckham@sgd178.org

Re: OCR Docket # 05-21-1274

Dear Superintendent Beckham:

On June 1, 2021, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against Spring Garden School District 178 (District) alleging discrimination on the basis of disability. Specifically, the complaint alleges that the District discriminated against Student A on the basis of disability XXXXX when it failed to evaluate her for a Section 504 plan in the 2020-21 academic year, resulting in her being denied a free appropriate public education.

OCR enforces 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. Section 504 prohibits 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, 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 and a public entity, the District is subject to the requirements of Section 504 and Title II. OCR therefore has jurisdiction over this complaint.

OCR investigated the complaint by reviewing documents provided by the Complainant and the District, and interviewing the Complainant, Student A, Student A's XXXXX grade teacher and the middle school principal. Prior to the completion of OCR's investigation, the District requested to resolve the complaint under Section 302 of OCR's *Case Processing Manual*. OCR determined that a 302 agreement is appropriate in this case. A summary of OCR's investigation to date and the 302 agreement follows.

Applicable Legal Standard

The regulation implementing Section 504 at 34 C.F.R. §104.33 requires that a recipient that operates a public elementary or secondary education program provide a free appropriate public education to each student with a disability. A free appropriate public education is defined as

regular or special education and related services that are designed to meet the student’s individual needs as adequately as the needs of non-disabled students are met.

The regulation implementing Section 504, at 34 C.F.R. § 104.35, requires a recipient that operates a public elementary or secondary education program or activity to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services. In addition, 34 C.F.R. §104.35(c)(3) requires that a recipient ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options.

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the allegation in this complaint do not provide greater protection than the applicable Section 504 regulations in this case and has therefore applied the relevant Section 504 standards in making its determination.

Facts

During the 2020-21 school year, Student A was XXXXX student in the District.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Complainant told OCR that she asked for a 504 plan for Student A twice during the school year, once verbally and once in writing; she did not provide documentation of the written request. The Complainant said she made the written request in fall 2020. The Complainant provided OCR a copy of emails between her and the Superintendent about a 504 plan for Student A. In a February 2, 2021, email to the Superintendent the Complainant wrote, XXXXX. The Superintendent responded by writing, “I welcome the opportunity to talk with you about this.”

The Complainant told OCR that after the email exchange the Superintendent asked her for a copy of the 504 plan for XXXXX. This plan was created by another district. A few weeks after she provided the Superintendent with Student B’s plan, the Superintendent provided the Complainant with a plan for Student A.

The District provided OCR with a copy of a 504 Plan for Student A. It indicates that a XXXXX and that the Complainant and the Superintendent were present. The 504 Plan identifies Student A as a student with a disability and identifies accommodations for her. There are no signatures on the 504 Plan nor on the cover page. Notably, the cover page contains the following sentence, “The following XXXXX have been agreed upon by school staff, parent(s) and student as being necessary ... ”

On March 16, 2021, the Superintendent emailed the Complainant a copy of the plan and wrote, XXXXX. If you see anything that needs to be changed, added or removed please let me know.”

OCR interviewed Student A’s XXXXX teacher. She told OCR that in the past she has been involved in 504 meetings for her students but did not participate in any meeting for a 504 Plan for Student A. Near the end of the year the teacher learned that the Superintendent had written a

504 Plan for Student A. The teacher said she was never provided with a copy of a 504 Plan for Student A.

OCR also interviewed the Principal. She told OCR that in XXXXX and said she wanted a 504 plan for Student A. The Principal told OCR that she responded by saying that she would “speak with the Superintendent and get back with her. XXXXX. The Principal told OCR that she never received medical documentation from the Complainant and could not remember the Complainant putting her request for a 504 Plan in writing.

The Principal also told CR that she was not involved in the creation of a 504 Plan for Student A and only learned about it “much later on.”

Conclusion and Resolution Agreement

OCR has concerns with the conflicting testimony regarding the initial request for a 504 plan, the development of Student A’s 504 plan and methodology used by the District in developing Student A’s 504 Plan. It is not clear whether the District XXXXX from the Complainant and it is not clear that the District followed its own procedures relating to the evaluation of Student A to determine her eligibility for a 504 Plan. OCR also has concerns about miscommunication between and amongst District staff about Student A’s 504 plan and the implementation of the plan. OCR determined that a resolution agreement with the District is appropriate under the circumstances presented by this case.

The attached Resolution Agreement is fully aligned with the complaint allegation. It requires the District to provide appropriate training to District teachers and administrators on the requirements of Section 504 and Title II. OCR will monitor the implementation of the Resolution Agreement.

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.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is important to understand that the laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating against you because you filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file a complaint against the District 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, 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.

OCR would like to thank the District's counsel XXXXX for her assistance in resolving this complaint. If you have any questions or need assistance, you may contact Susan Johlle at susan.johlle@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

cc: XXXXX, via email only