



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

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August XX, 2023

Dr. Todd Leden
Superintendent
Kaneland Community Unit School District #302

Sent via email only to: 11613@kaneland.org

Re: OCR Docket #05-23-1411

Dear Dr. Leden:

This letter is to inform you of the disposition of the complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the Kaneland Community Unit School District #302 (District) alleging discrimination based on disability.

Specifically, the complaint alleged that, in the 2022-2023 school year, the District discriminated against a [redacted content] student at [redacted content] (School) with multiple disabilities (Student A) based on disability when:

1. it failed to provide her a free appropriate public education (FAPE) in Spring 2023;
and
2. it failed to timely re-evaluate Student A.

OCR enforces 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, and 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, which prohibit discrimination on the basis of disability in a program or activity operated by a recipient of federal financial assistance from the Department and by public entities, respectively.

OCR investigated the complaint by reviewing information submitted by the complainant and the District and interviewing the complainant. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint under Section 302 of OCR's Case Processing Manual. OCR determined that a 302 agreement is appropriate in this case because OCR has identified issues that can be addressed through a resolution agreement. Below is a summary of the applicable legal standards and OCR's investigation to date.

Applicable Legal Standards

The Section 504 regulation 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

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

benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of federal financial assistance.¹

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a FAPE to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. The development and implementation of an Individualized Educational Program (IEP) created in accordance with the Individuals with Disabilities Education Improvement Act (IDEA) is one means of providing FAPE.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district shall conduct an evaluation of any person 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 person in regular or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. § 104.35(b) provides that a district shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(c), states that, in interpreting evaluation data and making placement decisions, the recipient must 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, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(d), requires recipients to establish procedures for periodic reevaluation of students who have been provided special education and related services. The Section 504 implementing regulation, at 34 C.F.R. § 104.36, sets forth procedural safeguards the District is required to have in place in connection with the development of educational plans, including the opportunity for an impartial hearing. A reevaluation and due process procedure consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the Section 504 requirements related to evaluation and procedural safeguards.

Facts

In the 2022-2023 school year, Student A was a [redacted content] student at [redacted content] (School). Student A has multiple disabilities, including [redacted content]. [redacted content],

¹ 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 issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has therefore applied the relevant Section 504 standards in resolving the allegations.

Student A has had a Section 504 plan. On [redacted content], the Section 504 team had a conference to review Student A's services and issue a new Section 504 plan. [redacted content]. On [redacted content], the Parent requested a special education evaluation. Student A returned to School on [redacted content] but missed several more days of school afterward due to anxiety.

On [redacted content], OCR spoke to the Parent regarding her allegations. The Parent said that, during [redacted content], there was a time allotment for education purposes, but it was minimal; only two hours per day to assist with [redacted content]. The Parent indicated to OCR two hours was not enough time because School personnel did not excuse Student A from any of her work and she was falling behind. The Parent also told OCR that she believed the School failed to timely re-evaluate Student A to determine if she was a student in need of special educational services because they did not begin the process until after she requested an evaluation.

On [redacted content], the District convened an IEP meeting and determined that Student A was eligible for an IEP. The Parent said that, except for [redacted content], Student A passed all her second semester courses. The Parent told OCR said she is no longer alleging that the District did not provide Student A a FAPE when [redacted content], but that, even though Student A now has an IEP, the School should have initiated the IEP evaluation earlier because [redacted content] had concerns with Student A at the beginning of January 2023. The Parent contends therefore that Student A did not receive a FAPE [redacted content].

The District denies it failed to provide Student A a FAPE or that it failed to timely evaluate Student A. However, in the interest of resolving the complaint allegations and, prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint under Section 302 of OCR's CPM. OCR has not yet interviewed District personnel, including the Social Worker.

Conclusion and Resolution Agreement

OCR determined that it is appropriate to resolve the allegations in this case prior to making a finding to address potential compliance concerns. The evidence is not clear whether the District timely re-evaluated Student A and, thereby, provided her a FAPE in the spring 2023 semester. The enclosed Resolution Agreement is fully aligned with the complaint allegations and the evidence obtained to date. It requires the District to convene Student A's IEP team to discuss whether Student A is entitled to compensatory services to address any educational or other deficits that the team determines exist as a result of any alleged failure by the District to provide Student A a FAPE and/or timely re-evaluate her in Spring 2023. The Resolution Agreement also requires the District to provide training to relevant School staff and administrators on the duty to provide a FAPE; specifically, the duty to timely re-evaluate students pursuant to Section 504.

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. This letter sets forth OCR's determination in one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as

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

OCR would like to thank the District for the courtesy and cooperation extended to OCR during the investigation. In particular, OCR would like to thank Ms. Maureen Lemon, Counsel for the District. OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions, please contact Sunita Kini-Tandon, Senior Attorney, at 3120730-1452, or by email at Sunita.Kini-Tandon@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: Ms. Maureen Lemon (mlemon@ottosenlaw.com)