



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620  
DALLAS, TEXAS 75201-6831

Xxxxxxxxx x, xxxx

Ref. 06151136

Dr. Ronald McGehee, Superintendent  
Madison County School District  
117 NW 4<sup>th</sup> St.  
Flora, MS 39071

Dear Dr. McGehee:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, received in our office on December 10, 2014, filed against the Madison County School District (MCSD or District), Flora, Mississippi. In the letter of complaint, the complainant alleged that the District discriminated against his daughter (Student) on the basis of disability (Xxxx X Xxxxxxxx). After reviewing the letter of complaint, as well as additional information submitted to our office by the complainant, OCR determined specifically, the complainant alleged MCSD discriminated against the Student on the basis of disability when school officials refused to follow her Section 504 Plan during the 2014-15 school year.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the U.S. Department of Education (Department) or an agency that has delegated investigative authority to the Department are in compliance with 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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. MCSD is a recipient of Federal financial assistance and is a public entity.

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

Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

As the District was notified in a notification letter, based on the information received, OCR opened the following legal issue for investigation:

Whether, during the 2014-15 school year, the District denied the Student a free appropriate public education (FAPE) when the District failed to implement the related aids and services as outlined in the Student's Section 504 Plan (i.e., allowed the Student access to xxxxxx foods throughout the school day), in violation of Section 504 and Title II, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

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 issue investigated in this complaint do not provide greater protection than the applicable Section 504 regulations and has therefore applied the relevant Section 504 standards in making our determination. In reaching a determination regarding this complaint, OCR reviewed documentation from the complainant and the District, and conducted teleconferences with the District's Special Education Director (Director)<sup>1</sup> and the complainant. For the reasons set forth below, OCR has determined there is sufficient evidence to support a conclusion of noncompliance with Section 504/Title II with regard to the issue investigated.

### **Legal Standard:**

The legal standard governing OCR's consideration of this issue is found in the regulation implementing Section 504, at 34 C.F.R. § 104.33, which requires school systems to provide students with disabilities with a free and appropriate public education (FAPE). The term "appropriate education" is defined at 34 C.F.R. § 104.33(b) as the provision of regular or special education and related aids and services that: (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of persons without disabilities are met, and (ii) are based upon adherence to the Section 504 regulation's procedural requirements. The Title II implementing regulations do not set lesser standards than those under Section 504, but have been interpreted to adopt the standards of Section 504 in areas where Title II has not adopted a different standard. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student's needs

---

<sup>1</sup> After reviewing the District's policies and procedures, OCR determined that, as asserted by the District, the Director is designated as MCSD's Section 504/Title II Coordinator, and her contact information is available on the District's website.

were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student's individual needs were or are being provided. If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.

**Analysis:**

OCR's review found that the Student (diagnosed with XXXXXXXX XXXXXXXXXXX XXXXXXXX XXXXXXXX/XXXX X XXXXXXXX (XXXXXXX)), was xx years old and enrolled in XXXXXXXX XXXXX at XXXXXXXX XXXXXXXX XXXX XXXXXXXX (School).<sup>2</sup> OCR determined that the Student was identified by the District as a qualified student with a disability. The Student had a 504 Accommodation Plan for the 2014-15 school year, which was originally developed by a 504 committee on Xxx x, xxxx, and later modified on XXXXXXXX x, xxxx. Subsequent to OCR opening this complaint, the Student qualified for special education services and also began receiving related aids and services as stipulated in an individualized education program (IEP) on XXXXX xx, xxxx. The evidence indicates, and the complainant does not dispute, that the Student was evaluated in accordance with all Section 504 regulatory requirements.

OCR's review of the Student's 504 Plan indicates that it included a number of related aids and services for the Student which were to be implemented by the Student's teachers, including, flagging the Student as a student who should not purchase anything with XXXXXXXX content from the XXXXXXXX and school staff, and preventing school staff from administering any food to the Student without parental approval, unless the parent could not be contacted. The 504 Plan was signed by a group of knowledgeable persons, including the Student's mother (complainant's wife), and the Student. As part of the 504 Plan, there was a XXXXXXXXXXXX XXXX that stated the Student would not have access to XXXXX XXXXX more than twice weekly.

At the outset of opening this complaint for investigation, the complainant stated that he believed the Student's 504 Plan was not being implemented, because she was being allowed access to XXXXXXX foods, which greatly affected her health due to an XXXXXXXXXXX in the Student's XXXXXXXX XXXXXXX. In its response, MCSD asserted that the Student's 504 Plan was being properly followed; however, the Student was obtaining access to XXXXXXX foods by having XXXXXXXX XXXXXXXX items for her in the XXXXXXXXXXX and "XXXXXXXX" XXXX from various XXXXX XXXXXXXXXXX located in the building.

As part of his evidence that the Student's 504 Plan was not being properly implemented, the complainant submitted food logs from September to October 2014. Specifically, OCR determined that the food logs were from the District's Child and Nutrition Department, and identified purchases made by the Student by her student identification (ID) number. OCR also requested food logs from the District, and it submitted them on June 1, 2015; however, the District's logs were from August 2014 to April of 2015. Looking at the logs submitted by both the complainant and the District, OCR determined that the Student purchased XXXX XXXXXXX on XXXXXXXXXXX xx, xxxx; XXXX XXXXXXX on XXXXXXXXXXX xx xxxx; and xxx XXXXXXX on XXXXXXXX xx,

---

<sup>2</sup> During the course of the investigation of the complaint, the Student turned xx years old and will be enrolled in the XXXXXXX grade for the 2015-16 school year.

xxxx, well into the 2014-15 school year, and subsequent to the start of date of the Student's 504 Plan. Moreover, the Student's 504 Plan indicated she is only to have Xxxxxx xxxxx (a xxxxxxxxxxxxxx) twice a week, and the Student was allowed to purchase xxxxx almost every week from August 2014 to April 2015, sometimes purchasing as many as xxxxx xxxxx of xxxxx at the same time. From August 2014 to 2015, there was only approximately one month (using school days only, and not calendar days) for which the Student did not purchase xxxxx in the xxxxxxxxxxxx under her student ID number.

Applying the aforementioned legal standard, including the three-part test OCR applies when evaluating whether a district has failed to provide a student with a FAPE, OCR determined prongs one and two of the test were met. However, with regard to prong three, OCR determined that the Student's services identified by the District as necessary to meet the Student's individual needs were not being provided for a period of time. It is the District's position that the Student was not "denied her rights under Section 504," and that staff have diligently worked with the Student and her parents throughout the year. However, OCR determined the District was unable to articulate a legitimate, nondiscriminatory reason for allowing the Student access to Xxxxxx xxxxx and food with xxxxxx content on multiple occasions in the xxxxxxxxxxx, by using her ID, at the outset of the 2014-15 school year, in violation of what was stipulated in her 504 Plan. Therefore, OCR determined that due to the nature of the Student's disability, allowing her consistent access to foods in the xxxxxxxxxxx that were prohibited by her 504 Plan greatly impacted the Student, who becomes ill on days her xxxxxx xxxxxxxx levels are xxxxxxxxxxx, and therefore misses educational time in the classroom, and could also ultimately result in serious health consequences for the Student. The complainant reported, and the District does not dispute, that the Student missed instructional time throughout the 2014-15 school year, some absences resulting from becoming ill due to xxxxxxxxxxxxxxxx with her Xxxxxxxx.

### **Summary of Compliance Determination:**

Based on the evidence and analysis summarized above, OCR has determined that the preponderance of evidence supports a conclusion that MCSD failed to provide the Student with a FAPE, in violation of Section 504/Title II with regard to the issue investigated.

### **Next Steps:**

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.61, which incorporates by reference 34 C.F.R. §107.(d)(1), if an investigation has shown a failure to comply, OCR informs the recipient and attempts to resolve the matter through informal means whenever possible. In September of 2015, OCR notified MCSD of its conclusions and proposed a draft resolution agreement that would resolve the identified noncompliance. OCR subsequently engaged in ongoing efforts to obtain voluntary compliance. These efforts were described in detail in the letter of impasse sent to the District on December 24, 2015, which is incorporated herein by reference.

As of the date of this letter, the District has not executed an agreement with OCR to resolve this complaint. Therefore, OCR is issuing this letter of findings. Please be advised that the issuance

of this letter of findings does not preclude the ongoing resolution discussions between the District and OCR, and OCR encourages the District to continue the negotiation with OCR to achieve voluntary compliance with the applicable laws and regulations.

We are enclosing the current draft of the proposed resolution agreement, most recently resubmitted to the District on December 21, 2015. In the event that the District does not submit an acceptable remedial plan, however, OCR will be obligated to initiate an enforcement action. Pursuant to 34 C.F.R. § 100.8(a), this proceeding may result in an administrative decision to suspend, terminate, and/or refuse to grant or to continue federal financial assistance to the District, or OCR may refer the matter to the Department of Justice for enforcement.

We must also inform you that if OCR is unable to secure voluntary compliance with Section 504 and Title II in this case, OCR may exercise its authority to impose a deferral on funding to the District pending the outcome of enforcement proceedings. Such a deferral will include new programs for which applications are pending and applications for substantial increases in continuing programs. 20 U.S.C. § 1232i; 42 U.S.C. § 2000d-5; and 28 C.F.R. § 50.3.

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. The complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under OCR procedures, we are obligated to advise both the complainant and the institution against which a complaint is filed that intimidation or retaliation against a complainant is prohibited by the regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

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, it 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.

Please contact Tonya Gentry, the attorney investigator assigned to this case, at 214-661-9615, or Adriane Martin, Supervisory Attorney/Team Leader, at 214-661-9678, at your earliest convenience regarding whether the District plans to continue working towards resolving this case voluntarily.

Sincerely,

Taylor D. August  
Regional Director  
Office for Civil Rights  
Region VI, Dallas Office

Enclosure