



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

November 22, 2019

Sent via email only to XXXXX

XXXXX XXXXX, XXXXX
XXXXX XXXXX XXXXX, XXXXX
XXXXX, XXXXX XXXXX

Re: Pulaski County Special School District
OCR Case Number: 06-19-1580

Dear XXXXX:

On April 30, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint against the Pulaski County Special School District (District), Little Rock, Arkansas, alleging discrimination on the basis of disability. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve this complaint.

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, prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA). Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, prohibits discrimination on the basis of disability by public entities. Under Section 504, OCR has enforcement jurisdiction over recipients of FFA from the Department. As a recipient of FFA from the Department, and a public entity, the District is subject to Section 504 and Title II, and to OCR's jurisdiction. Additional information about OCR and the laws we enforce is available on our website at <http://www.ed.gov/ocr>.

OCR notified the District in a letter dated July 9, 2019 that it would investigate whether the District denied the complainant's son (the Student) a free appropriate public education (FAPE) by failing to implement the provisions in the Student's Section 504 Plan by not informing the complainant in a timely manner when he did not turn in assignments and failing to communicate with the complainant on a weekly basis.

To protect individuals' privacy, OCR has not used the complainant's name or the names of other students or District employees in this letter. The complainant is referred to as "the Complainant" in the remainder of this letter.

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

During its investigation to date, OCR reviewed documentation the Complainant and the District submitted, including the Student's Section 504 Plans in effect during the 2018-19 school year and relevant communication between the District and the Complainant. OCR also interviewed the Complainant by telephone. OCR has not conducted any interviews with District personnel.

Background

The Student was in the XXXXX grade for the 2018-19 school year and is currently in XXXXX grade. He has been diagnosed with XXXXX and has been determined eligible by the District to receive special education and related services pursuant to Section 504. The Complainant alleged the Student's Section 504 Plan (Section 504 Plan) in effect during the 2018-19 school year included provisions requiring the Student's teachers to provide the Student with weekly updates on the Student's progress. The communications were to be by email with a copy was to the Assistant Principal. The Complainant alleged the Section 504 Plan also stated the Student's teachers were to "promptly" contact the Complainant to notify her when the Student was missing an assignment. The Complainant alleged these provisions were in the Section 504 Plan for the 2018-19 school year and are currently in place for the 2019-20 school year. The Complainant said the District failed to implement these provisions for the 2018-19 school year and continues to fail to implement them for the 2019-20 school year. The Complainant stated she has made several attempts to resolve the issue with the District, but the District continues to improperly implement these requirements of the Student's Section 504 Plan.

The Complainant said during the 2018-19 school year, she would learn the Student was failing his classes due to missing assignments only after she would receive a nine-week progress report regarding the Student. She said she was supposed to be getting updates each week from the Student's teachers. The Complainant said in May 2019, she learned the Student had a lot of missing assignments and teachers had not notified her of the missing assignments. The Complainant said the Assistant Principal worked with the Complainant to gather information on the Student's missing assignments and allow the Student to complete his missing assignments and receive a grade in his classes. Although these activities occurred late in the school year, the Student was mostly able to complete and submit the missing assignments identified by the District. The Complainant said that for the Student's Spring 2019 semester world history class, she was notified the Student had four missing assignments. The Student completed the four missing assignments for the class. However, after turning in the four missing assignments, the Student's final grade in his world history class for the Spring 2019 semester showed the Student was still missing six assignments. The Complainant said she never received notification of those six missing assignments. The Complainant said as a result of not being notified, the Student did not complete those assignments, and he received a grade of D in the course. The Complainant told OCR the Student's world history class was the only class for the 2019 Spring semester in which the Student's grade remained impacted due to the District failure to implement the Student's Section 504 Plan.

The Complainant told OCR for the 2019-20 school year, the Student's health, computer science, and African American history teachers were not providing her with weekly updates. She said those teachers have sent her approximately three updates each during the Fall 2019

semester. The Complainant said she was also having issues with teachers not contacting her when the Student has missing assignments. However, she said to date, she has worked with the Assistant Principal to resolve any missing assignments the Student had from the beginning of the Fall 2019 semester to the present.

The District provided OCR with the Student's former Section 504 Plan signed XXXXX, XXXXX, and his current Section 504 Plan signed XXXXX, XXXXX. The XXXXX, XXXXX Section 504 Plan includes a "Section 504 Review of Services" form. This form states under *Discussion of Recommendations*, "All teachers are required to communicate with parent via email about [the Student's] progress. This must be done weekly and documentation must be given to [the Assistant Principal] (cc on email is favorable)." The form is signed by the Section 504 committee who participated in the review. The XXXXX, XXXXX Section 504 Plan is typed and states the Student will receive the following accommodations:

- Seat in an appropriate area based on student need
- Reduced/minimize distractions in the room
- Provide home/school communication
- Allow additional time to complete assignments (1 day)
- Break long assignments into small, sequential steps, with daily monitoring and feedback
- Private cues to redirect attention
- Check progress and provide feedback often in the first few minutes of each assignment
- Provide parent access to Google Classroom and HAC

The XXXXX XXXXX Section 504 Plan is signed by the Complainant and the Assistant Principal.

The XXXXX Section 504 Plan, which is currently in place, includes a "Section 504 Review of Services" form. This form states under *Discussion of Recommendations*, "As of XXXXX XXXXX, all teachers are required to communicate with parent [the Complainant] via email about [the Student's] progress. This must be done weekly and documentation must be given to [the Assistant Principal] (cc on email is acceptable)." The form is signed by the Section 504 committee who participated in the review. The XXXXX XXXXX Section 504 Plan states the Student will receive the following accommodations:

- Seat in an appropriate area based on student need
- Reduced/minimize distractions in the room
- Provide home/school communication. Handwritten notes state, "Please contact parent promptly when student is missing assignments."
- Allow additional time to complete assignments (1 additional days/hours/minutes)
- Break long assignments into small, sequential steps, with daily monitoring and feedback
- Private cues to redirect attention
- Check progress and provide feedback often in the first few minutes of each assignment

- Provide parent access to Google Classroom and HAC (this accommodation is handwritten)
- Teachers must provide concrete due dates for assignments (this accommodation is handwritten)
- Enrichment classes-provide feedback to parent if student is not reading assignments (this accommodation is handwritten)
- Allow extra time for classroom exams: 150%
- Establish a distraction free exam space
- 150% for ACT

The Section 504 Plan provided the following health related accommodations (which were handwritten);

- Allow access to nurse (asthma)
- Allow student to contact parent if needed
- Nurse please contact parent if [the Student] comes to the office with asthma issues

OCR requested data from the District showing its compliance of the Student's Section 504 Plan provisions for all teachers providing the Complainant with weekly updates of the Student's progress and all teachers providing the Complainant with prompt notification of missed assignments. The District provided communications from the Student's English teacher during the fall 2018 semester. For the Fall 2018 semester, the Complainant had filed an internal grievance on XXXXX, against the Student's English Teacher (Teacher 1) stating Teacher 1 was not following the Section 504 Plan. The District provided the investigation file pertaining to this internal grievance and its investigative outcome, which determined Teacher 1 was following the Student's Section 504 Plan. The District provided data showing the Student was enrolled in a different English class for the remainder of the 2018-19 school year, and the new English Teacher (Teacher 2), provided weekly updates to the Complainant for the remainder of the 2018-19 school year. The District provided email communications between the Complainant and the District sent in May and June of 2019 demonstrating the District was working with the Complainant to allow the Student to makeup missed assignments from the Spring 2019 semester. OCR requested any additional data showing all the Student's teachers were implementing the home/school communications provisions as described in the Student's Section 504 Plan, and the District, through its attorney, stated it did not believe it had any additional data.

Resolution

Prior to the completion of OCR's investigation into this complaint, the District indicated its interest in entering into a voluntary resolution agreement with OCR pursuant to Section 302 of OCR's *Case Processing Manual* and¹ OCR determined that such a resolution would be appropriate. The District signed an Agreement (copy enclosed) on November 19, 2019, that resolves OCR's concerns. The Resolution Agreement requires the District to provide a

¹ The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

memorandum to all teachers responsible for providing educational services to the Student reminding staff of their obligation to implement the Student’s Section 504 Plan. The District will also proactively monitor the implementation of the home/school communications provision in the Section 504 Plan and provide OCR with copies of communications sent to the Complainant demonstrating the District is implementing this provision. The Resolution Agreement also requires the District to identify any remaining missing assignments from the Student’s Spring 2019 world history class and develop a plan to allow the Student a reasonable amount of time to complete and submit the missing assignments and modify the Student’s grade, if appropriate. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District’s implementation of the Agreement. When OCR concludes that the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation.

As a matter of technical assistance, at its earliest opportunity the District should revise its current “Notice of Parent and Student Rights – Section 504 and the Americans with Disability Act (ADA)” procedural safeguards to reflect the correct regional office and address for the OCR Region VII Office.²

Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by federal civil rights law. Complaints alleging such retaliation may be filed 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, it 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.

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

² Effective May 1, 2019, the responsibility for conducting enforcement activities regarding recipients in the state of Arkansas transferred from the Dallas regional office to the Kansas City regional office. Contact information for the Kansas City OCR Region VII is as follows: U.S. Department of Education, Office for Civil Rights, Region VII, 1010 Walnut St., Suite 320, Kansas City, Missouri 64106 (Telephone: 816.268.0550; Facsimile: 816.268.0599; Email: OCR.KansasCity@ed.gov).

If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX XXXXX.@ed.gov.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure