



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6831

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

XXXX XXXX, XXXX

Dennis Penton, Superintendent  
North Pike School District  
Email: dpenton@npsd.k12.ms.us

OCR Ref # 06-20-1320  
North Pike School District

Dear Superintendent Penton:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the North Pike School District (District), XXXX XXXX XXXX School (School). The complaint alleged that the District discriminated against a student (the Student) based on disability.

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, which prohibit discrimination by recipients of Federal financial assistance (recipients) on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a recipient and a public entity. Thus, OCR has jurisdiction to resolve this complaint pursuant to Section 504 and Title II.

OCR opened the following legal issues for investigation:

1. Whether the District discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's changing disability-related needs, the Student needed or was believed to need new aids and services, and thereby denied the Student a free appropriate public education during the XXXX - XXXX school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.
2. Whether the District discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (*e.g.*, failed to implement accommodations XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX) and thereby denied the Student a free appropriate public education during the XXXX XXXX school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

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

### *Legal Standards*

Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” if the student has a physical or mental impairment that substantially limits a major life activity. Pursuant to the Americans with Disabilities Amendments Act of 2008 (ADAAA), the definition of “disability” shall be construed broadly, and should not demand an extensive analysis under Section 504 or Title II. The ADAAA specifies that “a physical or mental impairment” need not prevent or significantly restrict a “major life activity” to be considered “substantially limiting;” and states that the term “substantially limits” shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses, such as medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that may eliminate or reduce the effects of an impairment. The ADAAA also expanded the scope of “major life activities” by incorporating a non-exhaustive list of general activities and major bodily functions.

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a recipient must provide a free appropriate public education (FAPE) to each qualified student with a disability in the district’s jurisdiction. Section 504, at 34 C.F.R. § 104.33(b), defines an “appropriate education” as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student’s Section 504 plan, also known as an “individualized education program,” or “IEP.” 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 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.

The Section 504 regulations’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations. Finally, Section 504, at 34 C.F.R. § 104.35(c), provides that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that

information obtained from all such sources is documented and carefully considered, (3) 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 . . . .

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

During the investigation to date, OCR reviewed information provided by the Complainants and the District, including communications between the parties, the Student's records, and the District's policies and procedures pertaining to Section 504 and District's obligation to provide a FAPE to all students with disabilities within its jurisdiction.

[illegible]

The District reported that the Student did not have a Section 504 plan. Nor did staff evaluate the Student's need for disability-related aids and services pursuant to Section 504 or the Individuals with Disabilities Education Act (IDEA).

[illegible]

OCR’s review of the District’s Section 504 and FAPE-related policies revealed that the District’s identification and evaluation procedures fail to comply with the ADA’s mandate to construe the definition of “disability” in favor of broad coverage of individuals. The procedures do not include the ADA’s expanded, non-exhaustive list of “major life activities” and incorrectly state that an impairment can only be considered “substantially limiting” if it “renders a student unable to perform a major life activity that the average student in the general population can perform.” The procedures also include language that could be interpreted to indicate that the District’s

determination as to whether a student's impairment substantially limits a major life activity should involve consideration of the ameliorative effects of mitigating measures such as modifications or accommodations. OCR is concerned that the District's restrictive definitions of "disability" and "substantially limits," and its restrictive list of potential "major life activities" could lead District staff to incorrectly conclude that a student does not have a disability and is therefore not eligible for necessary related aids and services.

The evaluation procedures also state that, with the exception of students with long term/chronic health impairments,<sup>1</sup> students suspected of having an "academic or behavioral" disability should first be provided regular education interventions pursuant to a three-tier intervention process before being evaluated for regular or special education and related aids and services. If the three-tier process reveals that the student should be evaluated for disability-related aids and services, the procedures state the District must first conduct a comprehensive evaluation pursuant to IDEA and conclude the student does not qualify for special education before evaluating the student's need for disability-related aids and services pursuant to Section 504. The District's evaluation procedures, as written, raise concerns that the decision to refer a student to be evaluated for disability-related aids and services may be unduly protracted for some students and could result in the denial of a FAPE to such students.

Based on OCR's investigation to date, the evidence raises a concern that the Student was not timely evaluated to determine, whether as an individual with a disability, she required regular or special education services despite receiving notice that the Student struggled to stay awake due to her disability-related medical needs. The evidence also raises concerns that the District's Section 504 and FAPE related policies and procedures could restrict or unduly delay the provision of necessary related aids and services to qualified student with disabilities.

Prior to the conclusion of OCR's investigation, the District informed OCR that it was interested in resolving the complaint. Section 302 of OCR's *Case Processing Manual* provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved District's request to resolve this complaint prior to conclusion of the investigation.

The District voluntarily signed the enclosed resolution agreement (Agreement) on XXXX XXXX, XXXX. OCR determined the Agreement addresses and resolves the issues under investigation, upon implementation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor implementation of the Agreement to ensure the District satisfies its obligations under the 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

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<sup>1</sup> The policy identifies cancer, food allergies, epilepsy, heart disease and diabetes as examples of long term/chronic health impairments.

public. 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 a recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the 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. 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 personal privacy.

If you have any questions about this letter, please contact Ms. Tanya Oliveira, the attorney assigned to investigate this complaint, by telephone at (214) 661-9679 or by email at [tanya.oliveira@ed.gov](mailto:tanya.oliveira@ed.gov). You may also contact me by telephone at (214) 661-9638 or by email at [lori.bringas@ed.gov](mailto:lori.bringas@ed.gov).

Sincerely,

Lori Howard Bringas  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Cc: XXXX XXXX Special Education Director  
North Pike School District  
Email: XXXX @npsd.k12.ms.us