

February 19, 2015

Dr. Stephen Schulte, Superintendent
Sisseton School District 54-2
516 8th Avenue West
Sisseton, South Dakota 57262

Re: Docket # 07131188

Dear Dr. Schulte:

On June 25, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received this complaint against the Sisseton School District #54-2 (District), Sisseton, South Dakota, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegations 1, 3, 5, 6, 7, 8, and 9 of this complaint. For the reasons set out below, we have determined there is insufficient evidence to conclude that the District discriminated against the complainant's son on the basis of disability as alleged in allegations 2, 4, 10, 11, and 12 of the complaint.

Specifically, the complainant alleged the District discriminated against her son on the basis of disability by

1. failing to conduct a timely evaluation of her son, determine his eligibility for services, and make a placement decision for him when he returned to school in the District in xxxxx 2013;
2. failing to evaluate him for each of his disabilities, including xxxxx xxxxx, xxxxx xxxxx xxxxx xxxxx, and xxxxx xxxxx, when he returned to school in the District in xxxxx 2013;
3. failing to provide the complainant with notice of the District's procedural safeguards, including her right to a due process hearing to address disputes regarding the identification, evaluation and placement of her son under Section 504;
4. disciplining her son differently than similarly situated, nondisabled students because of his disability for shooting rubber bands in class and for texting during lunch;
5. excluding her son from the educational environment by refusing to allow him to attend school in xxxxx and xxxxx 2013 because of his disability;
6. failing to implement her son's Section 504 plan by refusing to positively redirect his behavior in the classroom or send him to the counselor's office to talk through his behavior;

7. failing to implement her son’s individualized education program (IEP) by refusing to positively redirect his behavior in the classroom or send him to the counselor’s office to talk through his behavior;
8. failing to implement his IEP by transitioning him out of the xxxxx xxxxx by initially placing him in one regular education classroom;
9. failing to implement his IEP by refusing to allow him to go the special education classroom for assistance with math as required by his IEP;
10. failing to implement his IEP by requiring him to attend more summer school hours than was required by his IEP;
11. refusing to provide transportation for him to and from summer school; and
12. refusing to provide transportation and/or supervision for her son on the way to and from lunch during summer school.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance; and
- 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. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, the complainant is referred to as “the Complainant.” Her son is referred to as “the Student.” To protect individuals’ privacy, the names of employees, students, and other parties also were not used in the letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR considered information you and the District submitted, including your son’s discipline files, attendance records, Section 504 records and special education file. OCR interviewed the xxxxx xxxxx, the xxxxx xxxxx xxxxx, the xxxxx, the xxxxx xxxxx xxxxx, a xxxxx xxxxx xxxxx, and the xxxxx xxxxx. OCR also conducted interviews with the Complainant and the Student. The legal and factual bases for OCR’s determination are set forth below.

Allegation 2

The Complainant alleged the District discriminated against the Student on the basis of disability by failing to evaluate him for each of his disabilities, including xxxxx xxxxx, xxxxx, and xxxxx xxxxx, when he returned to school in the District in January 2013.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.35(a) requires school districts to evaluate any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to initial placement of the person or any subsequent significant change in placement. This regulation also states when interpreting evaluation data and making placement decisions, school districts must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and ensure that placement decisions are made by a group of persons knowledgeable about the person with disabilities, the meaning of the evaluation data, and the placement options.

Findings of Fact

According to the Complainant, she repeatedly told the xxxxx xxxxx the Student had been diagnosed with xxxxx xxxxx and provided the xxxxx xxxxx with information about xxxxx xxxxx from the Internet. The Complainant believed the Student's behavior (including blurting out comments, uncontrollable laughter and refusals to work that the District considered being disrespectful and defiant) was the result of his xxxxx xxxxx, xxxxx, and the medications he took to manage his conditions. The xxxxx xxxxx told the Complainant she needed a diagnosis of xxxxx xxxxx from a doctor before the Student could be accommodated or his behavior excused because of xxxxx xxxxx. The Complainant indicated the District would not take into account the Student's disabilities and all of the information she provided the District about xxxxx xxxxx when determining his placement. The xxxxx xxxxx insisted on having information from a doctor.

The District held two 504 meetings for the Student on March 12 and March 28, 2013, respectively, in response to the Complainant's request that the District implement a Section 504 Plan for the Student while he was being evaluated for an IEP. According to the Student's written Section 504 Plan, the basis for determining he was a student with a disability under Section 504 was his diagnoses of xxxxx xxxxx and xxxxx.

The District held IEP meetings for the Student, on April 8, April 22, and May 2, 2013, for the purpose of determining his eligibility for special education and related services and making a placement decision. On April 8, 2013, the Student's IEP team determined the Student met the criteria for xxxxx xxxxx xxxxx and for xxxxx xxxxx.

In an interview with OCR staff, the xxxxx xxxxx confirmed that he participated in both 504 meetings with the Complainant and the xxxxx xxxxx for the purpose of developing the Student's Section 504 Plan. The xxxxx xxxxx said the Complainant told them the Student had been diagnosed with xxxxx xxxxx and xxxxx. The xxxxx xxxxx said he and the xxxxx xxxxx asked the Complainant for documentation from the Student's doctor of the diagnoses. The Complainant said she had requested it, but the xxxxx xxxxx did not recall receiving any information from the doctor or what the Complainant said about how the Student's diagnoses affected him. The xxxxx xxxxx indicated he participated in the Student's April 8, 2013 IEP meeting. He said he was not sure if the IEP team had any information about the Student from a doctor, but the Complainant told the IEP team about how his conditions (xxxxx xxxxx, xxxxx, and xxxxx xxxxx) affected the Student at home. She said he had trouble following simple directions, was moody, and had difficulty completing tasks. She said at times he would shut down at home and asked if that happened at school too.

In an interview with OCR staff, the xxxxx xxxxx said there was a 504 meeting for the Student, and maybe more than one, but she did not recall much about it and whether she participated in the Student's IEP meetings. She said the Complainant had a long list of items she thought should be in a 504 plan for the Student. It looked like something she had printed off the Internet. The xxxxx xxxxx said they had hoped to communicate with the Student's doctor, but the Complainant would not agree to that. According to the xxxxx xxxxx, all they had was a xxxxx xxxxx with the Student's diagnoses written on it. The xxxxx xxxxx said they did put a 504 plan together, but she did not recall what was included in it.

The xxxxx xxxxx xxxxx confirmed that she participated in all of the Student's IEP team meetings on April 8, April 22, and May 2, 2013. According to the xxxxx xxxxx xxxxx, the Complainant initially provided a xxxxx xxxxx xxxxx with a statement from a doctor identifying three diagnoses - xxxxx xxxxx, xxxxx, and xxxxx xxxxx. The xxxxx xxxxx xxxxx said in other situations when the District requested more information; they usually receive a full report from the diagnosing doctor. They did not receive such a report from the Student's doctor, but the IEP team did consider the little bit of information provided on the xxxxx xxxxx in determining the Student's eligibility and placement.

The xxxxx xxxxx xxxxx confirmed that she participated in the April 8 and April 22, 2013 IEP meetings for the Student. According to the xxxxx xxxxx xxxxx, the Complainant provided xxxxx xxxxx from a doctor on xxxxx xxxxx xxxxx with the diagnoses of xxxxx xxxxx, xxxxx, and xxxxx xxxxx. She said the xxxxx xxxxx xxxxx xxxxx xxxxx recommended they xxxxx xxxxx xxxxx to see how to handle it. She said the Complainant did not want them to request records from the doctor, but the advocate strongly suggested they obtain records from the doctor. The Complainant said the doctor thought the school would not treat information in the records appropriately. There was a long discussion about why more information from the doctor was not provided to support the Student's diagnoses. The xxxxx xxxxx xxxxx said the xxxxx suggested if this doctor would not cooperate the District should get a second opinion. They asked the Complainant to sign a release for the doctor's records or for District staff to speak directly to the doctor, but she was not sure the

On April 22, 2013, the Student's IEP team developed an IEP for the Student. On May 2, 2013, the Student's IEP team amended the April 22 IEP. In both IEPs, the Student's primary disability category was xxxxx xxxxx. The May 2, 2013 IEP included an annual measurable goal for the Student to ask the teacher to provide a time out to recover and get himself back on track when he feels overwhelmed rather than shutting down, 80% of the time. The May 2, 2013 IEP also included the following Behavior Plan:

When [the Student] shuts down and won't work or is disruptive with blurting out or laughing incessantly, he needs to be redirected in a positive manner.

- 1. Teacher will discreetly redirect him with what is expected appropriate behavior in that situation.*
- 2. If he can't get himself redirected, he will be sent to the counselor or the special education teacher for a time out to express his situation and get himself back to the state of handling classroom expectations. When he is ready, he will return to class.***
- 3. If he cannot get himself recovered and back to a state of handling classroom expectations, [the complainant's son] will be sent to ISS for the remainder of the day and parent will be called. If behavior is inappropriate in the ISS room, he will be sent home per school policy. [A line has been drawn through the last sentence of item 3 of the Behavior Plan.]*

**When he needs a break-he could be taken out to run or exercise.*

Additionally, the May 2, 2013 IEP provided several classroom modifications for the Student including an assignment notebook, repeated review/drill, shortened assignments, note taking assistance, concrete/positive reinforcement, and oral tests.

Legal Analysis and Conclusion

The preponderance of the evidence did not establish that the Student's Section 504 and IEP teams failed to consider his diagnoses of xxxxx xxxxx, xxxxx, and xxxxx xxxxx in determining his eligibility for and placement under Section 504. The xxxxx xxxxx stated the Complainant informed the 504 team verbally of the Student's diagnoses of xxxxx xxxxx and xxxxx, but provided no documentation of the diagnoses at the time the 504 team met. Despite the lack of medical documentation of the Student's diagnoses, the Student's 504 team based his eligibility for services under Section 504 on his diagnoses of xxxxx xxxxx and xxxxx. All of the members of the Student's IEP team confirmed that the Complainant provided xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx indicating the Student had been diagnosed with xxxxx xxxxx, xxxxx, and xxxxx xxxxx. The xxxxx xxxxx did not provide information about how these conditions impacted the Student. Rather, the xxxxx recommended extra time to complete tasks, patience with symptoms, and xxxxx xxxxx

symptoms to learn more about them. The IEP team requested more information from the Student's doctor, but only received another xxxxx xxxxx indicating the Student needed in-school IEP help including time to complete work. Despite the minimal information provided by the Student's doctor, the IEP team found the Student eligible for special education services under the category of xxxxx xxxxx. Based on the above information, the preponderance of the evidence did not establish that the Student's Section 504 and IEP teams failed to consider his diagnoses of xxxxx xxxxx, xxxxx, and xxxxx xxxxx in determining his eligibility for and placement under Section 504. OCR determined there is insufficient evidence to support a finding that the District discriminated against the Student as alleged in allegation 2. Accordingly OCR is closing allegation 2 effective the date of this letter.

Allegation 4

The Complainant alleged the District discriminated against the Student on the basis of disability by disciplining him differently than similarly situated, nondisabled students because of his disability for shooting rubber bands in class and for texting during lunch.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(i)(ii)(iii)(iv) and (vii) prohibits a recipient from denying a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit or service; affording a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others; providing a qualified individual with a disability with an aid, benefit or service that is not as effective as that provided others; provide different or separate aid, benefits, or services to a qualified individual with a disability unless such action is necessary to provide that individual with aid, benefits, or services that are as effective as those provided to others; and otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege advantage, or opportunity enjoyed by others.

In order to determine whether the District discriminated against the Student by disciplining him differently than nondisabled students, OCR will determine whether the District treated the Student differently than similarly situated, nondisabled students. If OCR determines the District treated the student differently than it treated similarly situated, nondisabled students, the District must identify a legitimate nondiscriminatory reason for the different treatment. Then OCR will determine whether the stated reason is merely a pretext for unlawful discrimination and different treatment of the Student based on disability.

Findings of Fact

Rubber band incident

shooting rubber bands and who had any rubber band in the classroom. Their collective response was that no one else had any rubber bands. The xxxxx xxxxx xxxxx said the Student was sent to the office and he had to call home. She did not believe he was suspended, but he may have been sent home. No one else was sent to the office or disciplined for shooting rubber bands. The xxxxx xxxxx xxxxx said she did not meet or speak with the Complainant about the rubber band incident.

In an interview with OCR staff, the xxxxx xxxxx stated she had no recollection of disciplining the Student for shooting rubber bands in class.

In an interview with OCR staff, the Student acknowledged he was shooting rubber bands in xxxxx xxxxx xxxxx. He said he only shot rubber bands at the ceiling; other students were shooting them at each other. The xxxxx xxxxx xxxxx sent him, but none of the other students, to the office. The Student identified two students who were shooting rubber bands at each other. He did not know if the xxxxx xxxxx xxxxx saw them shooting rubber bands. He did not tell the xxxxx xxxxx xxxxx or the xxxxx xxxxx that the two students were shooting rubber bands at each other.

OCR attempted to contact the parents of the two students identified by the Student to obtain permission to interview them about the rubber bands incident. OCR called the parents of these two students on April 7 and 8, 2013, leaving detailed messages for a return call each time. Neither parent returned OCR's calls.

The Student's discipline records do not show he was disciplined on either xxxxx x or xx, 2013, in connection with shooting rubber bands in class; however, his attendance records show he was suspended from school for the seventh and eighth periods on xxxxx x, 2013. The District also provided OCR a copy of a handwritten note dated xxxxx x, 2013, from the xxxxx xxxxx xxxxx daily planner stating the Student was sent home at 2:15 p.m. on that day for shooting rubber bands across the room.

Cell phone incident

The Complainant alleged in her complaint that on xxxxx xx, 2013, the Student became depressed at school and did not want to eat lunch because he had just found out all his grades were Fs. The xxxxx xxxxx xxxxx spoke to the Student, but he did not want to talk with her because he was so depressed about his grades. The xxxxx xxxxx xxxxx told the xxxxx xxxxx the Student had an attitude, refused to talk at lunch and needed to be sent home. According to the Complainant, when the Student texted his grandparents during lunch, he was sent to the office. The Complainant indicated she met with the xxxxx xxxxx who said she was suspending the Student for being disrespectful by not eating lunch and not speaking to the xxxxx xxxxx xxxxx. When the Complainant told the xxxxx xxxxx she could not punish a child for not eating, the xxxxx xxxxx said she was suspending him for texting on his cellphone and not relinquishing his cellphone to the xxxxx xxxxx as directed. The Complainant told the xxxxx xxxxx she disagreed with the suspension because the xxxxx

xxxxx did not suspend the other students who had their cellphones sitting on top of the lunch table. Then the xxxxx xxxxx said she would suspend the Student for not working in class. When the Complainant opposed a suspension for not working in class, the xxxxx xxxxx suspended the Student for refusing to turn over his cellphone. According to the Complainant, after she contacted OCR, the District erased this suspension from the Student's records.

The District provided OCR a copy of the 2012-13 Sisseton Middle School Handbook (Handbook). According to the provision on personal items in the Handbook, students are allowed to bring cell phones to school, but cell phones must remain turned off and in the students' lockers during school hours. Students are not allowed to have a cell phone in their possession during the school day. The middle school's discipline matrix, which was also in the Handbook, identified cell phone possession as a disciplinary offense. The consequences for a first, second, or third offense was to lock the cell phone in the office until a parent came to pick it up.

The xxxxx xxxxx xxxxx confirmed the school's cellphone policy required students to put their cell phones in their lockers in the morning; they were not supposed to have them with them during the school day. If a student was caught with their cell phone, the cell phone was taken and put in a safe in the office until a parent came to get it. The xxxxx xxxxx xxxxx told OCR that on xxxxx xx, 2013, she was standing beside the lunch table and saw the Student eating lunch and texting. She asked him why he had his cell phone and he just smiled. She told the xxxxx xxxxx the Student had his cell phone and the xxxxx xxxxx handled the situation from there. She did not meet or speak with the Complainant about the texting incident. Neither the Complainant nor the Student identified other students who had been texting at lunch. The xxxxx xxxxx xxxxx said she knew the Student was supposed to turn in his cell phone, but she did not know if he refused to turn in his phone.

In an interview with OCR staff, the xxxxx xxxxx stated that she had no recollection of disciplining the Student for texting on his cell phone during lunch.

In an interview with OCR staff, the Student told OCR he did not recall being disciplined for texting on his cell phone during lunch during the second semester of the 2012-13 school year. He also said he did not recall any other students having their cell phones out at school, either in the classroom or at lunch.

OCR reviewed the Student's discipline records for the 2012-13 school year. The Student has no discipline record indicating he was disciplined on xxxxx xx, 2013, in connection with shooting rubber bands in class. His attendance records reflect that he attended school all day on xxxxx xx, 2013.

Legal Analysis and Conclusion

Rubber band incident

As noted above, in order to determine whether the District violated Section 504 by disciplining the Student, OCR first determined whether the District treated the Student differently than similarly situated, nondisabled students. Regarding the rubber band shooting incident, the preponderance of the evidence did not establish the District disciplined the Student differently than similarly situated students. Although the Student's discipline records do not indicate the District disciplined him for shooting rubber bands in class on either xxxxx x or xxxxx xx, 2013, a note in the xxxxx xxxxx xxxxx daily planner stated that on xxxxx x, 2013, the Student was sent home from school at 2:15 p.m. for shooting rubber bands in class. The Student acknowledged he had shot rubber bands at the ceiling in class. He identified two other students who he claimed also shot rubber bands in class, but he admitted he did not tell the xxxxx xxxxx xxxxx or the xxxxx xxxxx the other students' names. He acknowledged he did not know whether the xxxxx xxxxx xxxxx had seen other students shooting rubber bands in class. The xxxxx xxxxx xxxxx told OCR she did not see any students other than the Student shooting rubber bands in class. OCR attempted to interview the two students the Student said were also shooting rubber bands in class, but was unable to reach their parents to arrange interviews.

OCR has concluded that the preponderance of the evidence did not establish that either the xxxxx xxxxx xxxxx or the xxxxx xxxxx were aware of any students other than the Student who were shooting rubber bands in class. Based on the above information, OCR determined there is insufficient evidence to support a finding that the District discriminated against the Student on the basis of disability as alleged.

Cell phone incident

As noted above, in order to determine whether the District violated Section 504 by disciplining the Student, OCR first determined whether the District treated the Student differently than similarly situated, nondisabled students. Regarding the cellphone incident, the preponderance of the evidence did not establish the District disciplined the Student differently than similarly situated students. The Student's discipline records do not indicate the District disciplined the Student for texting on his cell phone during lunch on xxxxx xx, 2013. Although the xxxxx xxxxx xxxxx recalled reporting the Student to the xxxxx xxxxx for having his cell phone and texting during lunch, she did not know what happened from there because the xxxxx xxxxx handled the situation. Neither the xxxxx xxxxx nor the Student could recall an occasion when the District disciplined the Student for using his cell phone at school during lunch and the Student's discipline records do not show he was disciplined on xxxxx xx, 2013, in connection with shooting rubber bands in class. Based on the above information, OCR determined there is insufficient evidence to support a finding that the District discriminated against the Student on the basis of disability as alleged. Accordingly, OCR is closing allegation 4 effective the date of this letter.

Allegation 10

The Complainant alleged the District discriminated against the Student on the basis of disability by failing to implement the Student's IEP by requiring him to attend more summer school hours than was required by his IEP.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.33 requires a recipient to provide a free appropriate public education to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. A free appropriate public education is regular or special education and related aids and services that: (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements pertaining to educational setting, evaluation and placement, and procedural safeguards at 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementing an IEP pursuant to the Individuals with Disabilities in Education Act is one means of providing a free appropriate public education under Section 504.

Findings of Fact

In her complaint, the Complainant stated the Student's IEP team agreed not to require the Student to make up the work he missed during his absence from school from xxxxx xx to xxxxx xx, 2013. As a result, she believes the Student should have only been required to complete the hours of extended school year (ESY) hours in his IEP, rather than the 90 hours of summer school the District required of him.

According to the Handbook, middle school students are required to attend summer school for three weeks or 45 hours if they have failed one semester of a core class (math, language arts, social studies, or science). Students failing more than one semester of a core class must attend a total of 90 hours of summer school.

The District provided OCR a copy of the Student's May 2, 2013 IEP which required ESY services. According to his IEP, the Student would attend summer school on June 4, 6, 11, 13, 18, 20, 25, and 27 and July 9, 11, 16, and 18, 2013, from 9:00 to 11:30 a.m. to work on the following measurable annual goals:

Create equations and inequalities in one variable and use them to solve problems. Include equations arising from linear and quadratic functions, and simple rational and exponential functions.

When given 10 word problems with inequalities in one variable, [he] will orally state how to set up the equation, write down the appropriate equation and correctly solve it earning 80-100% accuracy in 4 out of 5 trials.

When given a topic to write about, [he] will write a grammatically correct paragraph with a topic sentence, 3 supporting evidence sentences, and a conclusion statement earning 80-100% in 4 out of 5 trials.

OCR has reviewed the Student's May 2, 2013 IEP. The Student's IEP did not exempt him from the District's policy requiring attendance in summer school for students failing one or more semesters of a core class. Similarly, his IEP did not exempt him from completing the school work he missed during his absence from xxxxx xx to xxxxx xx, 2013.

In an interview with OCR staff, the xxxxx xxxxx xxxxx said she sent the Student's school work home during his absence from xxxxx xx to xxxxx xx, 2013, with written directions for the assignments, but the Student did not do any of the assignments during his absence. When the Student returned to school, she provided a list of assignments for him to complete. She told OCR she eliminated several assignments so getting caught up would be manageable for the Student but he did not make a good effort to get caught up; he just sat in class, not doing anything, for much of the time. His failing grades were the result of him not completing the assigned school work.

At the end of the second semester of the 2012-13 school year, the xxxxx xxxxx xxxxx sent the Complainant an undated letter with the following information about summer school:

[The Student] was scheduled to attend ESY as we discussed at our last IEP meeting. After the completion of the 2nd semester, he had two failing grades for which he has to attend summer school. We will provide one-on-one services and extend his ESY sessions to complete the 90 hours required so that he will pass the 8th grade and be a freshman at the start of the 2013-14 school year.

I have enclosed a calendar to show when he needs to attend. . . . he will be working on his IEP goals by completing Language Arts activities and working on his math skills on Academy of Math. He will also complete a science fair project during this time. . . .

According to the calendar enclosed with the above letter, during June the District required the Student to attend summer school from 8:30 a.m. to 12:30 p.m. on Mondays and Wednesdays, and from 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 3:00 p.m. on Tuesdays and Thursdays. During July the District required the Student to attend summer school from 8:30 a.m. to 12:30 p.m. on July 9, 11, 16, and 18.

During the first week of summer school, the Complainant met with the xxxxx xxxxx xxxxx xxxxx and the Student's xxxxx xxxxx xxxxx. The Complainant requested the District to change the time of services to 9:00 a.m. to 1:00 p.m. and to extend services from four weeks to six weeks. The District changed the Student's summer school schedule as requested by the Complainant.

The District's summer school attendance records showed the following attendance for the Student:

June 3 – overslept, arrived at 9:45 and left at 12:00 p.m.
June 4 – arrived at 10:00 a.m. and left at 12:00 p.m.
June 5 – did not attend at all due to a doctor's appointment and driver's education
June 6 – arrived at 9:00 a.m. and left at 12:00 p.m.

June 10 – arrived at 9:00 a.m. and left at 12:00 p.m.
June 11 – overslept, arrived at 10:00 a.m. and left at 12:30 p.m.
June 12 – arrived 9:30 a.m. and left at 12:30 p.m.
June 13 – overslept, arrived at 9:45 a.m. and left at 1:00 p.m.

June 17 – arrived at 9:00 a.m. and left at 12:30 p.m.
June 18, 19 – arrived at 9:00 a.m. and left at 1:00 p.m.
June 20 - did not attend at all due to driver's education

June 24, 25, 26, 27 – arrived at 9:00 a.m. and left at 1:00 p.m.

July 1 – arrived at 9:00 a.m. and left at 1:00 p.m.
July 2 – arrived at 9:00 a.m. and left at 12:30 p.m.

July 8 – arrived at 9:00 a.m. and left at 1:00 p.m.
July 9, 10, 11 – arrived at 9:00 a.m. and left at 2:00 p.m.
July 12 – arrived at 9:00 a.m. and left at 1:00 p.m.

July 15 – arrived at 9:00 a.m. and left at 2:00 p.m.
July 16 – arrived at 9:00 a.m. and left at 1:00 p.m.

The District accepted the Student's completion of 86 hours of summer school as outlined above and promoted him to the ninth grade for the 2013-14 school year.

Legal Analysis and Conclusion

As noted above, the regulations implementing Section 504 require school districts to provide a free appropriate public education (FAPE) to qualified students with a disability. Implementing an IEP is one way to provide a FAPE. The Student's May 2, 2013, IEP did not exempt him from completing assignments he missed during his absence from school on xxxxx xx to xxxxx xx, 2013, or the District's policy requiring attendance in summer school for students failing one or more semesters of a core class. During summer school, the District extended the Student's ESY services in order to provide one-on-one instruction by a special education teacher to the Student throughout his 90 hours of summer school while the Student worked on his IEP goals and completed the assignments required to pass both core classes he had failed. Requiring the Student to complete 90 hours of summer school

pursuant to District policy because of his failing grades, rather than just the 30 hours of ESY required by his IEP, did not constitute a failure to provide the Student a FAPE. Based on the above, OCR has concluded there is insufficient evidence to support a finding that the District violated Section 504 as alleged by requiring the Student to complete 90 hours of summer school, rather than just the 30 hours of ESY required by his IEP. Accordingly, as of the date of this letter, OCR is closing allegation 10 of this complaint.

Allegations 11 and 12

The Complainant alleged the District discriminated against the Student on the basis of disability by refusing to provide transportation for the Student to and from summer school, and by refusing to provide transportation and/or supervision for the Student on the way to and from lunch during summer school.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.33 requires a recipient to provide a free appropriate public education to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. A free appropriate public education is regular or special education and related aids and services that: (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements pertaining to educational setting, evaluation and placement, and procedural safeguards at 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementing an IEP pursuant to the Individuals with Disabilities in Education Act is one means of providing a free appropriate public education under Section 504.

Findings of Fact

The District provided OCR a copy of a May 15, 2013, letter from the xxxxx xxxxx to parents of students attending summer school informing them that transportation for summer school was the responsibility of the parent. She also advised parents that lunch was not provided at the middle school during summer school and suggested students bring a sack lunch. The xxxxx xxxxx enclosed a copy of the summer school guidelines with the May 15 letter. Item 10 in the guidelines stated that "Transportation and lunch [are] the responsibility of the parent. The school does not provide transportation or lunch for summer school."

The Student's May 2, 2013, IEP did not require the District to provide the Student transportation to summer school or to lunch during summer school.

According to the District, during the first week of summer school, the Complainant met with the xxxxx xxxxx xxxxx xxxxx. The Complainant requested that the District adjust the Student's summer school schedule to work around his driver's education schedule, change the time of services to 9:00 a.m. to 1:00 p.m., extend services from four weeks to six weeks,

and provide the Student transportation to and from lunch. The District changed the Student's summer school schedule as requested. Additionally, the Student's xxxxx xxxxx xxxxx escorted him to lunch at the elementary school; lunch time was counted toward his required summer school hours.

On June 13, 2013, the xxxxx xxxxx xxxxx xxxxx sent the Complainant a letter informing her the District would begin providing transportation to summer school for the Student on Monday, June 17, 2013. A school vehicle would be at the Complainant's house between 8:55 a.m. and 9:00 a.m. to pick up the Student. According to the letter, transportation was being provided because the Student was having difficulty getting to summer school on time. The District continued providing transportation to summer school for the Student until early July when the Student began driving himself to summer school. According to the District, the school vehicle arrived at the Complainant's home for three consecutive days to pick up the Student for summer school, but he had already driven himself to school. After those three days, the District discontinued the Student's transportation to summer school and agreed the Complainant's son could drive himself to summer school as long as he arrived on time.

In a March 27, 2014 interview with OCR staff, the Complainant confirmed that, after she met with the District during the first week of summer school, the District provided transportation for the Student to and from summer school and that the xxxxx walked the Student to and from lunch each day. She also acknowledged that, once the Student obtained his driver's license, she and the District agreed the Student could drive himself to summer school which he did beginning in early July.

Legal Analysis and Conclusion

As noted above, the regulations implementing Section 504 require school districts to provide a FAPE to qualified students with a disability. Implementing an IEP is one way to provide a FAPE. The Student's IEP did not require the District to provide the Student transportation to and from summer school or to and from lunch during summer school. Although there may have been a few days at the beginning of summer school when the District did not provide transportation for the Student to summer school or to lunch during summer school, not providing transportation for these few days did not constitute a failure to provide a FAPE under Section 504 because such transportation was not required by the Student's IEP. Moreover, even if not providing transportation for the Student to and from summer school and to and from lunch during summer school constituted a failure to provide a FAPE, the Complainant's concern about transportation was resolved promptly by the District when she requested that transportation be provided for the Student. Based on the above, OCR concluded there is insufficient evidence to support a finding that the District violated Section 504 as alleged by failing to provide the Student transportation to and from summer school as well as to and from lunch during summer school. Accordingly, as of the date of this letter, OCR is closing allegations 11 and 12 of this complaint.

As noted above, prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on February 19, 2015, that, when fully implemented, will address allegations 1, 3, 5, 6, 7, 8, and 9 of this complaint. The Agreement requires the District to consider whether the Student requires compensatory education services, and if so to provide them. In addition, under the Agreement the District will revise its Section 504 policies and procedures, and provide Section 504 training to staff. Please consult the Agreement for further details.

OCR considers allegations 1, 3, 5, 6, 7, 8, and 9 of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes 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 the investigation.

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

Please be advised that the District 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, you may file another 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.

OCR is committed to prompt and effective service. 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 Linda.White@ed.gov.

Sincerely,

/s/ Maria North

Maria L. North
Supervisory Attorney

Enclosure