



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

August 17, 2017

XXXXX XXXXX, Attorney
XXXXX
XXXXX XXXXX XXXXX, XXXXX XXXXX
XXXXX, XXXXX XXXXX

Re: Docket # 07151206

Dear XXXXX. XXXXX:

On June 23, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Independence #30 School District (District), Independence, Missouri, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the District denied her daughter (the Student) a free appropriate public education (FAPE) when it failed to evaluate her for a Section 504 Plan despite being informed of her disability and the Complainant's request for an evaluation.

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 (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. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA 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>.

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

www.ed.gov

Legal Standard

The Section 504 regulation at 34 C.F.R. § 104.3(j) defines a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The Section 504 regulation at 34 C.F.R. § 104.3(1)(2) defines a qualified person with disabilities for elementary and secondary educational services as a disabled person of an age during which nondisabled persons are provided such services. The Title II regulation at 28 C.F.R. § 35.104 contains similar definitions.

The Section 504 regulation at 34 C.F.R. § 104.33 requires recipients of FFA to provide a FAPE to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. A FAPE is defined as 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 Individual Education Program (IEP) developed pursuant to the Individuals with Disabilities Education Act (IDEA) is one means of providing a FAPE.

The Section 504 regulation at 34 C.F.R. § 104.35 requires schools 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.

The Section 504 regulation at 34 C.F.R. § 104.36 requires schools to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parent or guardian to examine relevant records, an impartial hearing with opportunity for participation and representation by counsel and a review procedure.

The Title II regulation does not set a lesser standard than the standard established under the Section 504 regulation. Accordingly, OCR interprets the Title II regulation to require public entities to provide a FAPE to persons with disabilities to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

Background

The Complainant enrolled the Student in the District at the beginning of the 2012-13 school year. In the Student’s enrollment documentation, the Complainant indicated that the Student had a “XXXXX / XXXXX XXXXX,” which prompted the District to implement a “bathroom plan” for the Student.

At the beginning of the following school year, the Complainant contacted the District’s Special Education Department by e-mail and requested an evaluation of the Student to determine eligibility for special education or related aids and services. On September 26, 2014, the District initiated its process to determine the Student’s eligibility under IDEA. The District administered preliminary assessments to the Student and convened a team of staff members to review available data for the Student to determine whether an evaluation was necessary. The assessment report stated that the Student exhibited “...problem behaviors including: XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX” The team determined that there was no reason to suspect the Student had a disability and therefore an evaluation pursuant to IDEA was not warranted. The District provided notice of this decision in writing to the Complainant along with a copy of its procedural safeguards statement.

The District’s Section 504 Coordinator told OCR that the District considered conducting an evaluation of the Student pursuant to Section 504, but determined that it was not necessary because current data available to District staff at the time did not give rise to a suspicion that the Student may have a disability. The District provided the Complainant notice of this decision along with a copy of its procedural safeguard statement.

The Complainant told OCR that she did not specifically request an evaluation pursuant to Section 504, but stated that she continued to state to District officials that she believed her daughter was a student with a disability. In June 2015, the Complainant removed the Student from the District and enrolled her in a different public school district.

Resolution

Prior to the completion of OCR’s investigation, the District submitted a signed Agreement (copy enclosed) on August 10, 2017 that, when fully implemented, will address the allegation of this complaint. OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the District’s implementation of the Agreement. Please note that Item 1.a of the Agreement omits the date because the District provided the *Section 504 Referral* form with the signed 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 investigating the complaint.

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, the Complainant 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.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX XXXXX, Attorney, at (816) 268- XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/ Anne Bradley

Anne Bradley
Acting Supervisory Attorney

Enclosure