



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

October 19, 2016

Via U.S. mail and email (xxxxxxxxxx@xxxxxxxxxx.xxx)

[Name and  
Contact information  
redacted]

Re: Docket # 07161091

Dear Ms. XXXXXXXXX:

On January 11, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against your client, the El Dorado Springs R-II School District (District), El Dorado Springs, Missouri, alleging discrimination on the bases of race and disability. For the reasons set out below, we have determined there is insufficient evidence to conclude the District discriminated against the Complainant's daughters on the bases of race or disability as alleged in Allegations 1, 2 and 3 of his complaint. With regard to Allegation 4 of the complaint, this letter confirms that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve that allegation.

Specifically, the Complainant alleged the District:

1. discriminated against his daughters on the basis of their race (xxxxxxx) by failing to correct their inability to access from home an online math program that was required for your daughters to complete homework, resulting in them receiving inappropriately low math grades in January 2016;
2. discriminated against his daughters on the basis of their race by failing to provide his family information about the District's gifted program;
3. discriminated against his younger daughter on the basis of disability (xxxx xxxxxxx) by [remainder of sentence redacted]; and
4. discriminated against his younger daughter on the basis of disability (xxxxxx) by [remainder of sentence redacted].

OCR is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by

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

recipients of Federal financial assistance (FFA).

- 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. Section 504 prohibits discrimination on the basis of disability by recipients of 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 these laws. 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”, his wife is referred to as “the Mother”, his older daughter is referred to as “Student 1”, and his younger daughter is referred to as “Student 2”. To protect individuals’ privacy, the names of employees, witnesses, 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 the Complainant and the District submitted, including District policies and procedures, Student 1’s and Student 2’s enrollment, health, and other student records, and communications between the Complainant and the Mother and District officials. OCR interviewed the following District personnel: the elementary principal, the elementary assistant principal, the assistant superintendent, the xxxxxx grade teacher, the xxxxx grade teacher, the xxxxxx grade Title I math teacher, the P.E. teacher, the school nurse, the gifted education teacher, and the elementary secretary. OCR also interviewed the Complainant. The legal and factual bases for OCR’s determination are set forth below.

### **Allegation 1**

The Complainant alleged that the District discriminated against Student 1 and Student 2 on the basis of their race (xxxxxxx) by failing to correct their inability to access from home an online math program that was required for the Students to complete homework, resulting in them receiving inappropriately low math grades in January 2016.

### **Legal Standards**

The Title VI regulation at 34 C.F.R. § 100.3(a) provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be

denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.” Pursuant to 34 C.F.R. § 100.3(b)(1)(ii), a recipient of FFA may not, on the ground of race, color, or national origin provide any service to an individual “which is different, or is provided in a different manner, from that provided to others under the program.”

OCR initially examines whether there is direct evidence of discriminatory bias by a recipient based on race, color or national origin. Direct evidence includes remarks, testimony, or admissions by individuals involved in the decision-making process revealing a discriminatory attitude or motive. Any direct evidence of discrimination must show that discrimination motivated the denial of a benefit, service, or other adverse action.

Absent direct evidence of intentional discrimination based on race, OCR examines the circumstantial evidence to evaluate whether discrimination has occurred. OCR typically asks the following questions to determine whether a school intentionally discriminated on the basis of race:

- (1) Did the school limit or deny educational services, benefits, or opportunities to a student or group of students of a particular race by treating them differently from a similarly situated student or group of students of another race? (As noted above, students are similarly situated when they are comparable (even if not identical) in relevant respects.) If no, then OCR would not find sufficient evidence to determine that the school has engaged in intentional discrimination. If the students *are* similarly situated and the school has treated them differently, then:
- (2) Can the school articulate a legitimate, nondiscriminatory reason for the different treatment? If not, OCR could find that the school has intentionally discriminated on the basis of race. If yes, then:
- (3) Is the reason articulated a pretext for discrimination?<sup>19</sup> Some of the circumstances where OCR may find that the school’s stated reason is a pretext – in other words, not the true reason for the school’s action – are: the asserted reason does not explain the school’s actions; witnesses contradict the school’s stated reason for the disparity, exposing such reason as false; students of other races have received different results for similar applications of policy; or the sanctions imposed do not conform to the school’s permitted discipline sanctions in its written discipline policy. If the nondiscriminatory reason offered by the school is found to be pretextual, OCR would find that the school had engaged in intentional discrimination.

In evaluating claims under this analysis, OCR may also consider other circumstantial evidence to determine whether there was discriminatory intent underlying a school’s treatment of a student. Such circumstantial evidence may include, but is not limited to, whether the impact of a policy or practice weighs more heavily on students of a particular race; whether there is a history of discriminatory conduct toward members of a student’s race; the administrative history behind a

policy or decision; and whether there had been inconsistent application of policies and practices to students of different racial backgrounds.

## Findings of Fact

- [illegible]

- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].

### **Legal Analysis and Conclusion**

OCR analyzed the allegation that the District discriminated against Student 1 and Student 2 on the basis of race by failing to correct the students' access to the ConnectEd math program, which the Complainant said resulted in Student 1 and Student 2 receiving inappropriately low math grades.

To determine whether the Students were discriminated against on the basis of race, OCR examined whether the preponderance of the evidence established that: 1) the District treated similarly situated students differently on the basis of race; and 2) the District did not have a legitimate, non-pretextual reason for treating similarly situated students differently on the basis of race. In addition, OCR examined whether there was other information showing that the District treated the Students in a manner that was inconsistent with its established policies and procedures, and whether there was any other evidence of racial discrimination.

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

Accordingly, as of the date of this letter, OCR is closing Allegation 1 of the complaint.

### **Allegation 2**

- [illegible]

- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].

### **Legal Analysis and Conclusion**

OCR analyzed the allegation that the District discriminated against Student 1 and Student 2 on the basis of their race by failing to provide his family information about the District's gifted program.

To determine whether Students 1 and 2 were discriminated against on the basis of race, OCR examined whether the preponderance of the evidence established that: 1) the District treated similarly situated students differently on the basis of race; and 2) the District did not have a legitimate, non-pretextual reason for treating similarly situated students differently on the basis of race. In addition, OCR examined whether there was other information showing that the District treated the Students in a manner that was inconsistent with its established policies and procedures, and whether there was any other evidence of racial discrimination.

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

Accordingly, as of the date of this letter, OCR is closing Allegation 2 of the complaint.

### **Allegation 3**

The Complainant alleged that the District discriminated against his younger daughter on the basis of disability (xxxx xxxxxx) by [remainder of sentence redacted].

### **Legal Standards**

To be afforded protection under the regulation implementing Section 504, a person must be an individual with a disability. The Section 504 regulation at 34 C.F.R. § 104.3(j)(1) defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. The Title II regulation at 28 C.F.R. § 35.104 defines an individual with a disability as a person who has a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an

impairment, or is regarded as having such an impairment. The regulation defines a qualified individual with a disability as an individual with a disability who, with or without reasonable modification to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) requires recipients of FFA that operate a public elementary or secondary education program, such as the District, to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the individual's disability. The regulation implementing Section 504 at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as regular or special education and related aids and services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). As stated in the Section 504 regulation at 34 C.F.R. § 104.33(b)(2), a school district may satisfy its obligation to provide an appropriate education to a student with a disability by implementing an individualized education program (IEP) developed for the student in accordance with the Individuals with Disabilities Education Act (IDEA).

The process requirements of the regulation implementing Section 504 at 34 C.F.R. §§ 104.32, 104.35, and 104.36 contain specific requirements concerning identification and location, evaluation and placement, and due process procedures. The regulation at 34 C.F.R. § 104.32 requires school districts to annually identify and locate qualified students with disabilities within their jurisdiction who are not receiving a public education and provide notice to their families of the district's obligations under Section 504.

The Section 504 regulation at 34 C.F.R. § 104.35 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 the placement of the individual, and, 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 disabled individual, the meaning of the evaluation data, and the placement options. The Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation. In the absence a specified time frame, OCR assesses the timeliness of the evaluation required by Section 504 at 34 C.F.R. § 104.35 by applying a standard of reasonableness on a case-by-case basis. An evaluation procedure consistent with the IDEA is one means of meeting this requirement. See, 34 C.F.R. § 104.35(d).

A school district's failure to implement key aids, services or accommodations/modifications identified in the IEP or Section 504 plan of a student with a disability may deny the student a FAPE and, thus, violate Section 504 and Title II. However, not every failure to implement an aid, service or accommodation/modification in an IEP or Section 504 plan will result in a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and what impact the failure had on the student's ability to participate in or benefit



from a school district's services, programs and activities. Except in extraordinary circumstances, OCR does not review educational decisions about the appropriateness of specific aids and services identified in a student's IEP or Section 504 plan as long as a school district complied with the procedural requirements of the Section 504 regulation.

Under 28 C.F.R. § 35.103, the Title II regulation does not set a lesser standard than that under Section 504. Accordingly, OCR interprets the Title II regulation to require public entities to provide a FAPE to students 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.

To determine if discrimination on the basis of disability by failing to provide Student 2 a FAPE occurred, the preponderance of evidence must establish that 1) the District receives FFA from the Department; 2) Student 2 is a qualified individual with a disability; 3) the District's employees knew or had reason to suspect that Student 2 was an individual with a disability who needed special services or related services; 4) the District failed to provide Student 2 special education and/or related services designed to meet her individual educational needs; and 5) the District's failure to provide Student 2 special education and/or related services designed to meet her individual educational needs as adequately as the needs of nondisabled students are met denied her a FAPE.

## **Findings of Fact**

- [illegible]

- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].
- [Paragraph redacted].

### **Legal Analysis and Conclusion**

OCR analyzed the allegation that the District discriminated against Student 2 on the basis of disability (xxxx xxxxxxxx) by [remainder of sentence redacted].

To determine whether Student 2 was discriminated against on the basis of disability, OCR examines whether the preponderance of the evidence established that: 1) Student 2 is a qualified individual with a disability; 2) the District's employees knew or had reason to suspect that Student 2 was an individual with a disability who needed special services or related services; 3) the District failed to provide Student 2 special education and/or related services designed to meet her individual educational needs; and 4) the District's failure to provide Student 2 special education and/or related services designed to meet her individual educational needs as adequately as the needs of nondisabled students are met denied her a FAPE.

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

[Paragraph redacted].

Accordingly, as of the date of this letter, OCR is closing Allegation 3 of the complaint.

#### **Allegation 4**

The Complainant alleged that the District discriminated against Student 2 on the basis of disability (xxxxxx) by failing to provide her [remainder of sentence redacted].

OCR's investigation established that [remainder of sentence redacted]. [Sentence redacted.] Prior to the completion of OCR's investigation, on July 13, 2016, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's Case Processing Manual to resolve Allegation 4.

On October 19, 2016, the District submitted a signed Agreement that, when fully implemented, will address Allegation 4 and any concerns raised during the course of the investigation into this allegation.

OCR considers Allegation 4 of the 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.

Because there are no remaining allegations appropriate for further complaint resolution, OCR is closing this complaint as of the date of this letter.

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. 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 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.

OCR is committed to prompt and effective service. If you have any questions, please contact Stephanie Lovett-Bowman, Attorney, at (816) 268-0576 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at [stephanie.lovett@ed.gov](mailto:stephanie.lovett@ed.gov).

Sincerely,

J. Earlene Gordon  
Supervisory Attorney