

August 15, 2016

XXXXX X. XXXXX
XXXXX & XXXXX
XXX XXXXXXX XXXXX
St. Louis, Missouri XXXXX

Re: Docket # 07161121

Dear XXX XXXXX:

On February 17, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against your client the Rockwood R-VI School District (District), Eureka, Missouri, alleging discrimination based upon disability (Peanut/Tree Nut Allergy and Asthma). This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the District failed to provide her daughter a free appropriate public education (FAPE) as required by 34 C.F.R §104.33 and §104.36 when it:

- 1) failed to implement her daughter's Section 504 Plan by failing to monitor a classroom party where food containing peanut allergens were distributed; and
- 2) failed to implement her daughter's Section 504 Plan when it allowed food containing peanut allergens to be distributed and eaten on the school bus after a field trip; and,
- 3) failed to provide the Complainant notice of her procedural safeguards after a 504 meeting at which her daughter was declared ineligible for a Section 504 Plan.

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>.

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

On March 11, 2016, OCR sent notification letters to the Complainant and the District, including a data request to the District. On April 4, 2016, the District provided OCR with a response to OCR’s data request. OCR also received documentation from the Complainant. The Complainant provided OCR a copy of the Student’s January 21, 2015, 504 Plan and the Student’s December 7, 2015, Individual Health Plan. The Complainant also provided information regarding tree nuts and foods containing tree nuts.

The District provided OCR a copy of its Section 504 Manual, Babler Elementary Building Log, hyperlinks to information on the District’s website; a copy of the Student’s complete Section 504 file, emails and notes between the District and the Complainant; notes from the Student’s teacher, Babler Elementary Nurses/ notes, a list of Section 504 training provided to teachers and administrators during the 2014-15 and 2015-16 school years; name, title and contact information for the District’s 504 Coordinator and the Babler Elementary 504 Coordinator and list of training they received the last two years and a copy of notes between other administrators and the Complainant.

Summary of Investigation

OCR’s investigation established that the Student is a 5th grade student at Babler Elementary school. The Student was initially found eligible for a 504 Plan during her kindergarten year due to a medical diagnosis of asthma and an allergy to peanuts/tree nuts.

The District’s 504 team met on February 3, 2016, to revise the Student’s 504 Plan because she would be transitioning to middle school at the beginning of the 2016-17 school year. Based upon information provided by the District, the only middle school representative at the 504 meeting was the Assistant Principal. The Complainant left the meeting before it concluded. The Complainant told OCR that the District failed to provide her procedural safeguards at the February 3, 2016. The District contends that it sent the Complainant an email that stated that since the February 3, 2016, meeting was not completed, copies of paperwork including procedural safeguards were not printed and the District would send copies of forms and the procedural safeguards home with the Student. The Student’s 504 meeting was reconvened on February 10, 2016. The Complainant told OCR that she signed the 504 Plan and received procedural safeguards at the February 10, 2016, 504 team meeting.

The February 10, 2016, 504 Plan contained similar services as the previous 504 Plan, however, the February 10th 504 Plan listed the Student as the person responsible for provision of some of the accommodations, whereas the previous 504 had listed the parent, teacher, nurse or school staff.

The Complainant told OCR that on February 12, 2016, Babler’s Parent Teacher Organization held a Friendship party in her daughter’s classroom. She alleged that two students had peanut butter in their lunches that the teacher did not check and that students played a game with candy

some of which contained tree nuts. The District contends that the Complainant did alert the teacher that two students had peanut butter in their lunches and the teacher told the students to wash their hands after they finished their lunch. With regard to the candy game, the District indicated that the candy used did not contain nuts but was not manufactured in a nut free facility.

The Complainant told OCR that on February 19, 2016, the Student and her class were transported by bus to a field trip to JA Biztown (JA). When the students were preparing to return to school, candy containing tree nuts and non-tree nut candy was placed on a table by JA staff for students who were told not to eat the candy on the bus. The Complainant stated that some students were eating candy on the bus and that the teacher did not wipe down the Student's seat for the return trip back to school.

The District agreed that a JA staff member did place candy containing tree nuts out for students but District staff asked that the candy be put away until the end of the field trip which the JA staff member did. The JA staff member placed the candy on a cart by the door so that students could get a candy bar as they left the building and boarded the bus. The District stated that students were told to sit in the same seat and because the busses had remained on the premises the teacher responsible for wiping down the Student's seat did not see the need to wipe down the seat again. The District indicated that the teacher believed that all students complied with her instructions not to eat the candy on the bus.

Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on August 12, 2016, that, when fully implemented, will address the allegations of this complaint.

OCR considers the allegations 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 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 XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXX@ed.gov.

Sincerely,

/s/ Maria North

Maria North
Supervisory Attorney

Enclosure