



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
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OKLAHOMA
SOUTH DAKOTA

December 19, 2016

XXXXXXXXXXXXXXXXXXXX, XXXXXXXX
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XXXXXXXX XXXX, XXXXXXXXXXX XXXXX

Re: Docket # 07161178

Dear Ms. XXXXXXX XXXXX:

On April 28, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by your client, the Ewing Marion Kauffman School (School), Kansas City, Missouri. This letter is to confirm that the School has voluntarily entered into an agreement to resolve this complaint.

Specifically, the complaint alleged that the School:

1. denied the Complainant's son (the Student) a free and appropriate public education (FAPE) by failing to provide the related aids and services that are outlined in the Student's Section 504 plan;
2. disciplined the Student for behavior that is related to the Student's disability; and
3. retaliated against the Complainant in response to the Complainant's advocacy on behalf of the Student by making false reports to a child welfare agency, by giving the Student detention, and by administratively withdrawing the Student from the 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 (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.

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

As a recipient of FFA from the Department and a public entity, the School is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

The Complainant alleges that the Student was treated unfairly and misunderstood by teachers and staff at the school. The Complainant stated that diabetes affects the Student's ability to concentrate and to process information; and teachers not allowing the Student time to process resulted in excessive in-school detentions for the Student. The Complainant further alleged that the Student was denied lunch, and medical supplies she supplied to the School for the benefit of the Student were stolen. The Complainant stated the School nurse gave the Student unapproved snacks in violation of his Section 504 Plan. Finally, the Complainant alleged that the School retaliated against her by contacting a social services agency to falsely accuse her of not providing medicine to the Student, and by administratively withdrawing the Student. The Complainant has enrolled the Student in a different school for the 2016-17 school year, and does not wish the Student to return to the School.

On June 15, 2016, OCR sent notification letters to the Complainant and the School, including a data request to the School. On July 6, 2016, and August 12, 2016, the School provided OCR with responses to OCR's data requests. On September 15, 2016, the School expressed an interest in engaging in OCR's negotiations process pursuant to Section 302 of OCR's *Case Processing Manual*.¹

OCR reviewed the Student's educational file, including the Student's Section 504 Plan and discipline records. OCR also reviewed the School's discipline records for the entire student population during the 2015-16 school year. OCR reviewed email communications between School employees regarding reports made about the Student to the local child welfare agency. Finally, OCR reviewed the School's policies related to Section 504, discipline, and reports to outside agencies.

OCR's investigation established that the Student's Section 504 Plan stated that the Student's disability, Type I diabetes mellitus, affects his ability to concentrate, eat, work, think and stand. The Student's Section 504 provided for blood glucose level testing four times a day by the school nurse, and permitted the Student to postpone or retake tests when his glucose levels were abnormally high or low. The Student's records showed that Student's glucose levels were elevated on several occasions. The School requested a resolution agreement before OCR determined whether the Student was allowed to postpone or re-take examinations when his blood glucose levels were high.

The Complainant told OCR that the School made two reports to the local child welfare agency regarding the Student and that one of the reports was made on a day the Complainant requested a meeting to discuss her concerns about the School's provision of medical and educational services to the Student. The Complaint also told OCR there has been no further action on either report

¹ OCR's *Case Processing Manual* is online at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

since the initial investigations. OCR planned to interview School employees; however, the School requested a resolution agreement before OCR's scheduled onsite.

Prior to the completion of OCR's investigation, the School submitted a signed Agreement (copy enclosed) on December 8, 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 School's implementation of the Agreement. When OCR concludes the School has fully implemented the terms of the Agreement, OCR will close the complaint. If the School 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.

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

Sincerely,

/s/ J. Earlene Gordon

J. Earlene Gordon
Supervisory Attorney

Enclosure