



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

November 16, 2017

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XXXXX, XXXXX XXXXX

Re: Docket # 07161220

Dear Mr. XXXXX:

On June 13, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Lawrence Unified School District #497 (District), Lawrence, Kansas, alleging discrimination on the basis of disability and retaliation. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The Complainant alleged the District:

- 1) discriminated against her son on the basis of disability by reporting him as truant after a series of disability-related absences in violation of 34 C.F.R. §104.4; and
- 2) retaliated against her son in violation of 34 C.F.R. §104.61, after she advocated on his behalf, by putting overly burdensome restrictions on an outside therapist coming to school to assist her son.

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 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>.

For the remainder of this letter the Complainant's son will be referred to as the Student. To protect individuals' privacy, the names of employees and other parties also were not used in the letter.

On September 12, 2016, OCR sent notification letters to the Complainant and the District, including a data request to the District. On October 12, 2016, October 13, 2016 and October 27 2016, the District provided OCR data. On November 18, 2016, OCR interviewed the District's XXXXX school principal, two District XXXXX - XXXXX, a District XXXXX XXXXX, a XXXXX XXXXX teacher and a XXXXX XXXXX teacher. On November 23, 2016, the District provided additional requested information to OCR.

The information the Complainant and the District provided established that the Student enrolled in XXXXX XXXXX XXXXX XXXXX School in August of 2014. He was identified as a student with a disability and had an Individualized Education Plan (IEP) while enrolled in the District. The Student had both XXXXX conditions and a diagnosis of XXXXX. Following multiple excused and unexcused absences, many which were related to the Student's disability, the Student was reported as truant. The District placed restrictions on the Student's outside therapist coming to school and the extent of the services the therapist could provide while on campus.

After the therapist stopped providing services to the Student, the Student withdrew from the District on December 18, 2015, and is being home-schooled. The Complainant told OCR that she would like her son to return to the District for the 2017-18 school year but has concerns regarding whether he will receive an education free from discrimination or retaliation.

Prior to the conclusion of the investigation, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual*.<sup>1</sup> On November 15, 2017, the District submitted a signed Agreement (copy enclosed) that, when fully implemented, will address the allegations of this complaint.

Under the Agreement, the District will, after consultation with the Complainant, schedule time for the student's therapist to observe the Student in the school setting. If the Student is absent from school to attend counseling sessions, Student will be provided an excused absence and not an absence that would count toward truancy. The District will also provide to the Complainant a written invitation to meet with one or more District administrators to discuss and, if applicable, set dates for reenrolling the Student in the District, reevaluating him for services appropriate for his disability, and convening a team at the school the Student will attend (if the Student reenrolls in the District) to review and revise his Individualized Education Plan (IEP).

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<sup>1</sup> The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

If the Student does reenroll, the District will convene a team to review the Student's IEP to assess any new or additional information the complainant provides, determine whether a re-evaluation is required and revise the Student's IEP to include clear language that states that the Student's disability-related absences, which Complainant has documented with medical verification pursuant to item 3., will not be counted against him and not considered unexcused absences for truancy purposes. The District will also take all steps necessary to ensure the full implementation of the provisions of the Student's IEP pursuant to 34 C.F.R. § 104.35 and will provide written notice to all administrators, teachers, nurses, and staff responsible for providing services to him of the requirements of his IEP and their obligation to fully comply with the provisions of his IEP.

Please consult the Agreement for additional details.

OCR considers 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.

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.

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, please be advised 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 XXXX XXXXX, Attorney, at (816) 268- XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXXX@ed.gov.

Sincerely,

Anne Bradley  
Acting Supervisory Attorney

Enclosure