



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 26, 2017

Ugur Demircan, Superintendent
Frontier Schools System
Frontier Schools Central Office
30 West Pershing Road, Suite 402
Kansas City, Missouri 64108

Re: Docket # 07171043

Dear Superintendent Demircan:

On November 22, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by the Frontier Schools System (School), Kansas City, Missouri. This letter is to confirm that the School has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The Complainant alleged the School discriminated against her son on the basis of disability when the School:

1. failed to provide her son a free appropriate public education (FAPE) in violation of 34 Code of Federal Regulations (C.F.R.) § 104.33(a) and b), even though the School had reason to suspect he is a student with a disability,¹ by failing to evaluate her son and provide him with appropriate regular or special education and related aids and services; and
2. dismissed her son from the School without determining whether the conduct for which he was dismissed was related to his disability in violation of 34 C.F.R. § 104.35(a).

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).

¹ The Complainant told OCR her son enrolled at the School in fall 2016 and the School was provided documentation from her son's previously attended school. The Complainant told OCR the documentation from the prior school included an "ADA Accommodation Plan" and a "Behavior Management Plan," which were developed for her son based, at least in part, on his medical diagnosis.

- 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 School 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.

Legal Standards

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 an 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, including charter schools, to provide a free appropriate public education (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.

With regard to allegation 2, pursuant to OCR policy, a disciplinary suspension of a student with a disability that exceeds ten consecutive days constitutes a significant change in placement requiring reevaluation. In the reevaluation process a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options must determine whether the student's misconduct is caused by the student's disabling condition, which is sometimes known as making a manifestation determination. The group making this determination must have information that a competent professional would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the student's current behavior. If the student's misconduct is caused by the student's disabling condition, the evaluation process continues in order to determine whether the student's current placement is appropriate. If the student's misconduct is not caused by the student's disabling condition, then the student may be excluded from school in the same manner as similarly situated nondisabled students.

Preliminary Investigative Findings

Allegation 1

Prior to the Student's August 2016 enrollment in the School, the Student received services as a student with a disability in the school district he previously attended. Upon the Student's enrollment in the School, the School received some information about the Student's disability and services from the Student's previously attended school district. Based on the documentation submitted to OCR, it is unclear if the Student's prior school records were complete. The School developed a Section 504 Plan for the Student that did not include most of the behavior interventions provided by the school the Student previously attended. According to the Complainant, the School did not convene a multi-disciplinary team to consider the Student's previous placement or to evaluate the Student before developing his Section 504 Plan, or at any time during the first semester of the 2016-17 school year. The information the School provided to OCR in response to OCR's request for information included documentation from the school district the Student previously attended. The documentation as provided to OCR, which related to the Student's attendance at the prior school district, did not appear complete.

According to the Complainant, the Student was diagnosed in 2005 with XXXXX XXXXX XXXXX XXXXX XXXXX. The Complainant also provided OCR a December 6, 2016 letter from a medical center, stating the Student is under a doctor's care for XXXXX, XXXXX XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX.

conduct for which the School dismissed the Student on XXXXX XXXXX,XXXXX; 3) provide compensatory education services to the Student and to recalculate his grades in each of his classes for the first semester of the 2016-17 school year, as appropriate; 4) modify the Student's transcript to show all recalculated grades, as appropriate; and 5) remove the XXXXX XXXXX, XXXXX dismissal from the Student's official discipline records. Additionally, the Agreement requires the School to review and revise its Section 504 policies and procedures to ensure compliance with the regulations implementing Section 504, and to provide training to all School personnel regarding the requirements of Section 504 and its revised policies and procedures. Please consult the Agreement for further details.

OCR considers the allegation 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 investigating the complaint.

The School 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.

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

Sincerely,

/s/ Kelli Douglas
Supervisory Attorney

Enclosure

cc: Dr. Margaret Vandeven,
Commissioner of Education