



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

August 31, 2017

XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX, XXXXX XXXXX
XXX XXXXX XXXXX, XXXXX XXX
XXXXX XXXXX XXXXX XXX
Pierre, South Dakota 57501-XXXX

Re: Huron #02-2 School District
OCR Case Number: 07-17-1122

Dear XXXXX XXXXX:

On March 1, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Huron #02-2 School District (District), Huron, South Dakota, alleging discrimination on the basis of disability. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

OCR investigated whether the District:

1. failed to provide the complainant a free appropriate public education (FAPE) in violation of 34 Code of Federal Regulations (C.F.R.) § 104.33(a) and (b), by failing to implement her Section 504 Plan (Section 504 Plan); and
2. failed to provide the complainant with an equal opportunity to participate on the District's interscholastic XXXXX team in violation of 34 C.F.R. § 104.37(a) and (c).

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

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

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 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 a disability 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 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. § 104.37(a) requires recipients to provide non-academic and extracurricular services and activities in the manner necessary to afford qualified individuals with a disability an equal opportunity for participation in such services and activities. The Section 504 regulation at 34 C.F.R. § 104.37(c) prohibits discrimination on the basis of disability in a recipient's physical education courses and athletics programs, requiring recipients that operate or sponsor interscholastic, club or intramural athletics to ensure that qualified individuals with a disability have an equal opportunity to participate.

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.

Allegation 1

The Student was a senior in high school in the District during the 2016-17 school year, graduating on May 28, 2017. Her disabilities include XXXXX XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX (which can cause

XXXXX and XXXXX), and XXXXX (XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX).

The Student had a Section 504 Plan since the fourth grade. Her XXXXX XXXX Section 504 Plan required the following:

- A reader for all quizzes and tests (including numerous details about how this would be accomplished);
- Preferential seating in all classes;
- No time limit for quizzes and tests;
- No Scantron tests;
- Provision of the teacher's class notes prior to each lecture;
- Access to salt and water at all times;
- Permission to lie or sit down as needed; and
- Minimal use of the ipad for daily work.

The Student alleged the District failed to implement her Section 504 Plan during the 2016-17 school year by

- not providing class notes to the Student in a timely manner;
- not providing two copies of the quiz or test, one for the Student and one for the reader;
- providing a reader who was not prepared resulting in mispronunciations and incorrect statement of math equations and formulas;
- marking the Student absent in class while she was taking a quiz or test with the reader;
- providing a reader who engaged in activities other than reading the Student's test during the Student's test;
- providing the reader the wrong test;
- requiring the Student to take a pre-test on an ipad in her personal finance class;
- assigning the Student a seat in the back of the classroom;
- failing to provide the Student notice of the dates and locations of quizzes and tests; and
- failing to notify the Student when the class was finished with a quiz or test so she could return to class.

The District disputes that it denied the Student a FAPE by failing to implement her Section 504 Plan. In its institutional response to the complaint, the District asserted that teachers and counselors went to great lengths to fully implement the Student's Section 504 Plan during the 2016-17 school year even though it was difficult for teachers and sometimes impacted other students.

Allegation 2

During the 2015 XXXXX XXXXX season, the Student's participation on the team was limited by health issues related to her disability. Prior to the 2016 season, the Student's doctor XXXXX XXXXX XXXXX approved her participation on the XXXXX team for the 2016 season with the caveat that she "take it easy" for the first two weeks, after which she could participate

fully in practices and competition. After the first week of practice, however, the coach stated he was concerned about the Student's health issues of the previous year and limited the Student's opportunities to compete XXXXX XXXXX XXXXX XXXXX, sometimes refusing to let her compete and on one occasion conditioning her competitive opportunities on whether the Student had practiced a full week XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX. The Student stated that one of the coaches commented to her on three separate occasions that XXXXX XXXXX. In addition to limiting the Student's participation based on her disability, the Student alleged the XXXXX XXXXX coaches did not provide equitable coaching to her, as they rarely watched her XXXXX XXXXX XXXXX XXXXX and provided very little individual instruction to the Student during practice. Further, the Student alleged her XXXXX XXXXX XXXXX XXXXX XXXXX on the team was arbitrary and gave undue weight to the coaches' perceptions about the Student's disability rather than criteria such as athletic ability and performance.

In its institutional response to the complaint, the District contends that the XXXXX XXXXX coaches gave the Student an equal opportunity to participate in the District's interscholastic XXXXX program during the 2016 season. According to the District, the Student participated in more XXXXX XXXXX XXXXX XXXXX during the 2016 season than alleged by the Student despite her continued physical discomfort, and was XXXXX XXXXX XXXXX on the team because the coach believed she was XXXXX XXXXX XXXXX XXXXX on the team.

Resolution

On June 26, 2017, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.¹

Prior to the completion of OCR's investigation into this complaint, the District submitted a signed Agreement (copy enclosed) on August 29, 2017, that, when fully implemented, will address the allegations of this complaint.² The Agreement requires the District to provide training for all building administrators, school nurses, school counselors, and instructional staff on the requirements of Section 504, including, but not limited to, the District's responsibility to provide a FAPE to qualified students with a disability and its obligation to provide qualified students with a disability an equal opportunity to participate in all nonacademic and extracurricular activities, including its interscholastic athletics program.³

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 investigating the complaint.

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

² The Student has graduated from the District; therefore, no individual remedies were requested by the Student or included in the Agreement.

³ OCR provided the required training on August 28, 2017, and the District has provided supporting documentation from the training. OCR will address the implementation of the Agreement in a separate letter.

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 Student 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 Student 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,

Kelli Douglas
Supervisory Attorney

Enclosure