



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
KANSAS  
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December 13, 2017

**SENT VIA EMAIL**

XXXXXXXXXXXXXXXXXXXX, XXXXXXXX

The Center for Education Law  
900 Broadway, Suite 300  
Oklahoma City, Oklahoma 73102

Re: Tuttle School District  
OCR Case Number: 07-17-1147

Dear XX. XXXXXXXXXXXX:

On April 5, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by the Tuttle Public Schools District (District), Tuttle, Oklahoma. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, the Complainant alleged the District discriminated against students with a disability at Tuttle Middle School (Middle School) on the basis of disability by failing to provide students with a disability a classroom that is comparable to classroom facilities provided to other students.

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.
- 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 Federal financial assistance 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>.

To protect individuals' privacy, OCR has not used the names of the Complainant, District employees, or other parties in this letter.

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

[www.ed.gov](http://www.ed.gov)

## **Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The regulation, at 34 C.F.R. § 104.33(b)(2), states that the implementation of an Individualized Education Program (IEP) is one means of meeting the standard set forth in 34 C.F.R. § 104.33(b)(1)(i). The implementing regulation for Title II explicitly states that it does not set a lesser standard than Section 504. Accordingly, OCR interprets Title II to impose the same FAPE obligations as those imposed by Section 504.

The regulation implementing Section 504, at 34 C.F.R. Section 104.4(a), states that no qualified person with a disability shall, on the basis of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity operated by a recipient of federal funds. Absent direct evidence of intentional discrimination based on disability, OCR examines the circumstantial evidence to evaluate whether discrimination has occurred. OCR typically asks the following questions to determine whether a school intentionally discriminated on the basis of disability:

1. Did the school limit or deny educational services, benefits, or opportunities to a student or group of students with a disability by treating them differently from a similarly situated student or group of students without a disability? If no, then OCR would not find sufficient evidence to determine that the school has engaged in intentional discrimination. If the students *are* similarly situated and the school has treated them differently, then:
2. Can the school articulate a legitimate, nondiscriminatory reason for the different treatment? If not, OCR could find that the school has intentionally discriminated on the basis of disability. If yes, then:
3. Is the reason articulated a pretext for discrimination? If the nondiscriminatory reason offered by the school is found to be pretextual, OCR would find that the school had engaged in intentional discrimination.

## **Preliminary Investigation and Resolution**

The Complainant alleged the District's Middle School special education classroom was not comparable to the regular education classrooms and that because of the special education classroom's smaller size, students were unable to access aids or other devices approved as part of the students' special education plans. The Complainant stated the lack of access to approved aids and other devices, smaller classroom size, air quality, and the lack of a window resulted in a

denial of a FAPE for the students with disabilities assigned to the Middle School special education classroom during the 2016-17 school year.

As part of its investigation, OCR requested copies of District's and the Middle School's policies for assigning classrooms for regular and special education students; a copy of the Middle School's floorplan for the 2016-17 school year; and an explanation of how the special education classroom used for students with a disability during the 2016-17 school year. OCR also requested information about the special education classroom as compared to other classrooms in the Middle School building in regard to the room's square footage, intercom or public address system, blackboards, windows, desks (teacher and students), technology, equipment that may be stored in the room, student capacity, supplies that may be stored in the room, privacy, safety, restroom access, and means of egress. The District informed OCR that during the 2016-17 school year, the special education class in question was approximately 321 square feet and there were 13 students assigned to the classroom but at most only nine students used the classroom at the same time. The District also stated the largest general education class in use in the Middle School building during the 2016-17 school year was 693 square feet and held 30 students. The District stated that during the 2016-17 school year, the special education classroom used by students with disabilities was smaller than some of the regular education classrooms in the building but denied that any students assigned to the special education classroom in question were denied a FAPE.

The Complainant and the District agreed that commencing with the 2017-18 school year, Middle School students would attend school in a different building as the District was building a new high school and the Middle School program was moving into the former high school building.

Prior to the completion of OCR's investigation, the District expressed an interest in engaging in resolution negotiations pursuant to section 302 of OCR's *Case Processing Manual*.<sup>1</sup> On December 11, 2017, the District signed an Agreement (copy enclosed) that, when fully implemented, will address the above-referenced complaint. The Agreement requires the District to: 1) assess whether the special education rooms at the Middle School currently in use are comparable to the regular education classrooms; and 2) review and assess whether Middle School students in the previously used special education classroom at the former Middle School building were denied a FAPE during the 2016-17 school year as a result of any differences between the special education classroom and regular education classroom or because the limited size or resources available in the special education classroom.<sup>2</sup> As part of its assessment, for any student with a disability denied a FAPE, the District will determine if compensatory education is appropriate, and, if so, will develop a plan to provide compensatory services. Please consult the Agreement for further details.

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

<sup>2</sup> The Complainant's son was a student assigned to the special education classroom in the former Middle School building last year. The Complainant filed a separate complaint with OCR (Case Number 07-17-1166) on April 21, 2017 alleging her son was denied a FAPE during the 2016-17 school year because his special education classroom was not comparable to the regular education classroom and that because of the smaller size, some of his devices and sensory aids were not kept in the room. OCR is investigating whether the Complainant's son was denied a FAPE as part of its investigation and resolution of Case Number 07-17-1166.

OCR considers 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.

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 individuals 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, Equal Opportunity Specialist, 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