



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KANSAS
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October 25, 2017

XXXXXX XXXXXX, General Counsel
XXXXXX XXXXXX XXXXXX XXX XXXXXX XXXXXX
XXXX XXXXXX XXXX XXXXXX
Kansas City, Missouri XXXXXX

Re: North Kansas City #74 School District
OCR Case Number: 07-17-1177

Dear Mr. XXXXXX:

On May 4, 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 North Kansas City #74 School District (District), Kansas City, Missouri. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

The Complainant alleged that the District discriminated against her daughter (Student) on the basis of disability by failing to provide Student an Individualized Education Program (IEP) or Section 504 plan when it knew, or had reason to suspect, that she would qualify for such a plan. OCR notified the District in a letter dated June 15, 2017, that it would be investigating the following legal issue: whether the District discriminated against Student on the basis of disability by failing to provide her a free appropriate public education in violation of 34 Code of Federal Regulations (CFR) § 104.33.¹

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 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).

¹ OCR's June 15 letter also stated that OCR has implemented a rapid resolution process for complaints of discrimination or retaliation based on disability that meet certain criteria established by OCR, and that OCR determined this complaint met OCR's criteria for the rapid resolution process.

- 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.

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.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R §104.33(a) requires recipients of FFA that operate a public elementary or secondary education program, such as the District, to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation implementing Section 504 at 34 C.F.R. §104.33(b)(1) defines an appropriate education as regular or special education and related aids and services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards).

Under the Section 504 regulation at 34 C.F.R. § 104.3(j), a student with a mental or physical impairment that substantially limits one or more of the student's major life activities, such as breathing, walking, seeing, hearing, speaking, learning, or caring for one's self, constitutes a qualified individual with a disability entitled to receive a FAPE. A student may qualify as having a disability even if his or her impairment does not substantially limit the student's learning.

The Section 504 regulation at 34 C.F.R. §104.35(b) requires recipients to establish standards and procedures for the evaluation and placement of individuals who, because of disability, need or are believed to need special education or related services. The regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions for students with disabilities, a recipient must: 1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; 2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; 3) ensure that the placement decision is made by a group of persons knowledgeable about the individual, the meaning of evaluation data, and placement options (504 team); and 4) ensure that the placement decision is made in conformance with the education setting requirements at 34 C.F.R. § 104.35(d). Through this process, recipients must determine whether a student qualifies as an individual with a disability and, if so, determine the student's appropriate regular or special education placement and related service needs.

The regulation implementing Title II at 28 C.F.R. § 35.130(a) states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity. The Title II regulation at 28 C.F.R. § 35.130(b)(1)(i) similarly states that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service on the basis of the individual's disability. OCR interprets the Title II regulation to require school districts to provide a FAPE to qualified individuals with a disability to the same extent required by the Section 504 regulation. Under 28 C.F.R. § 35.171(3)(i), OCR processes Title II complaints according to its procedures for enforcing Section 504.

Section 504, Title II, and their implementing regulations do not require recipients to include a student's parents on the student's Section 504 team. However, in most circumstances, a student's parents should be given a meaningful opportunity to provide input before a Section 504 placement decision is made for the student. If a student's parents disagree with the regular or special education placement a Section 504 team makes for their child, the parents have a right under Section 504 to request an impartial due process hearing to challenge the placement.

Preliminary Investigative Findings

Background Information

Student is sixteen years old and was enrolled in XXXXX grade during both the 2015-16 and 2016-17 school years. She was diagnosed with XXXXX XXXXX XXXXX (XXXXX), XXXXX, and XXXXX during the 2015-16 school year, and still suffers from XXXXX and XXXXX.

Student was enrolled in the XXXXX XXXXX School District during the 2015-16 school year and missed a significant amount of school due to her XXXXX, XXXXX, and XXXXX, both for XXXXX and because she would refuse to go to school, would leave school without permission, or would hide in the bathroom at school. The XXXXX XXXXX School District did not develop an IEP or Section 504 plan for Student. The Complainant withdrew Student from the XXXXX XXXXX School District in December 2015.

Complainant's IEP and 504 Plan Requests to District

Student has been enrolled in the North Kansas City #74 School District, specifically at North Kansas City High School, since XXXXX 2016, and missed a significant amount of school during the 2016-17 school year due to her XXXXX and XXXXX. According to the Complainant, she informed the District about Student's XXXXX and XXXXX diagnoses shortly after enrolling Student in the District. The Complainant alleged that she made multiple requests to the District, including to Student's high school counselor, for an IEP or Section 504 plan for Student and was told it was too late in the school year to pursue an IEP or Section 504 plan.

Student earned 0.5 school credits in one District course during the 2016-17 school year, and received a failing grade in the other course in which she was enrolled (XXXXX XXXXX). In

July 2017, the Complainant informed OCR that Student wanted to return to school but still had a lot of XXXXX about school. After the District was notified of this OCR complaint, it put a Section 504 plan in place for Student, and took steps to initiate a special education evaluation of Student.

Resolution

Prior to the completion of OCR's investigation into this complaint, the District signed an Agreement (copy enclosed) on October 25, 2017, that, when fully implemented, will address preliminary concerns identified by OCR. The Agreement requires the District to: develop and disseminate a policy or procedure regarding the processing of parent requests for a Section 504 or special education evaluation of a student; provide training to high school administrators and staff regarding Section 504 and Title II; require notification to, and oversight by, the District's Section 504 coordinator regarding parent requests for a Section 504 evaluation of a student; continue implementing Student's Section 504 plan and develop a plan for completing a special education evaluation of Student if she remains enrolled in the District; and, as warranted, develop and implement an IEP and compensatory services plan for Student. In addition, the Agreement requires the District to determine if the failing grade Student received during the 2016-17 school year was related to her disability, and if so, remove the failing grade from Student's transcript. Please consult the Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes that 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.

Recipients of Federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Federal civil rights law. Complaints alleging such retaliation may be filed with OCR. 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, it will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

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

Kelli Douglas
Supervisory Attorney

Enclosure