



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

February 2, 2018

XXXX XXXX
XXXXXXXXXX
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Sent via email to: XXXXXXXXXXXXXXXX

Re: Docket # 07171254

Dear XXXXXXXXXXXX:

On August 29, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above complaint against Mt. Vernon School District #232 (District), Mount Vernon, Missouri, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

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>.

OCR investigated the following issues:

1. Whether the District denied the Complainant’s son (Student) a free appropriate public education (FAPE) by failing to meet the student’s educational needs by failing to implement provisions of his IEP concerning the use of XXXXXX and his XXXXX, and by refusing to address his behavioral issues, impacting his ability to accomplish his

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

individualized education program (IEP) goals and other aspects of his education, including denying bus transportation and repeatedly calling for him to be picked up from school in violation of 34 C.F.R. § 104.33.

2. Whether the District failed to reconvene IEP meetings and draw upon information from a variety of sources and ensuring that the placement decisions was made by a group of people knowledgeable about the Student and the placement data, including at the start of the 2017-18 school year after being informed of Student's recent diagnosis of XXXXX, in violation of 34 C.F.R. § 104.35.
3. Whether the District failed to notify the complainant of her procedural safeguards, including the right to request an impartial hearing, which is required by 34 C.F.R. § 104.36.
4. Whether the District retaliated against Complainant for asserting the District failed to provide her son a FAPE by refusing to provide him bus transportation service in violation of 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134.

OCR identified this complaint as appropriate for the Rapid Resolution Process (RRP), which is an expedited case processing approach utilized in certain substantive areas determined appropriate by OCR. During the investigation, OCR reviewed information the Complainant submitted, including past Student IEP evaluations and goals, and health information forms. OCR also reviewed the District's policies related to Student's with Disabilities, including its Seclusion, Isolation and Restraint Policy, the Districts Functional Behavior Assessment (FBA) techniques, and all current documentation and correspondence related to Student's current IEP and Behavior Intervention Plan (BIP).

Preliminary Information

The Complainant told OCR that the Student is XXXXX and utilizes XXXXXX and also has a diagnosis of XXX. The Student was diagnosed with XXXXX during the summer of 2017. The Student receives behavioral health services from a behavioral specialist both outside and inside of the school.

The Complainant told OCR the Student has struggled academically in the last two years and should not have been advanced at the end of his kindergarten. The Student went through a variety of different placements, including attending half-days during his kindergarten year and into the start of first grade. During the 2016-17 school year, the Student's behavior issues fluctuated and the Student began to attend full days. The Complainant stated that the District called her on numerous occasions to pick up Student because they could not properly handle him and his behavior. The Complainant stated the Student's XXXXXXXX XXXX taught District staff techniques and interventions to address the Student's behaviors but the District did not implement them.

The Complainant told OCR that the District was aware that the Student was diagnosed with XXXXX but failed to evaluate him to determine whether he needed additional special education

services. The Complainant said that at the beginning of the 2017-18 school year, the District began calling her to request that she pick the Student up. The District suggested that the Student go back to half-days attendance but would not provide transportation. The Complainant XXXXX the Student from the District because she was dissatisfied with the treatment of the Student.

According to the information provided by the District, the Student had a behavior intervention plan and the District engaged in numerous discussions and various courses of action to address the Student's behavioral issues. The District asserted that the Complainant was requested to take the Student home early on four occasions because of the Student's behaviors. The District denied that District employees were aware of the Student's XXXXXX diagnosis.

Prior to the conclusion of the investigation, the District requested to resolve pursuant to Section 302 of the OCR *Case Processing Manual*.¹ Accordingly, the District submitted a signed Agreement (copy enclosed) on February 1, 2018, that, when fully implemented, will address the allegations of the complaint. The District agreed to: 1) revise its disability policies to include a more comprehensive procedure for addressing behavior issues as well as initiating re-evaluations; 2) provide training to staff on Section 504 and Title II compliance; and 3) evaluate the Student if the Complainant enrolls the Student in the District.

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 its 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.

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

OCR is committed to prompt and effective services. If you have any questions, please contact XXXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXXXX@ed.gov.

Sincerely,

A handwritten signature in blue ink that reads "Maria North". The signature is fluid and cursive, with the first name "Maria" written in a larger, more prominent script than the last name "North".

Maria North
Program Manager
Acting Supervisory Attorney

Enclosure