



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

March 22, 2018

Sent via email only to XXXXX

XXXXX X. XXXXX, XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX
XXXX XXXXX XXXXX
XXXXX, XXXXX XXXXX

Re: Concordia Unified School District #333
OCR Case Number: 07-17-1273

Dear XXXXX XXXXX:

On September 20, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Concordia Unified School District #333 (District), Concordia, Kansas, alleging discrimination on the bases of disability and race against the Student. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

In a letter dated November 22, 2017, OCR informed you that it would investigate the following issues:

1. whether the District discriminated against the Student on the basis of disability by failing to provide the free appropriate public education required by his Individualized Education Program (IEP) in violation of 34 Code of Federal Regulations (C.F.R.) § 104.33(a) and (b); and
2. whether the District discriminated against the Student, who is White, on the basis of race in violation of 34 C.F.R. § 100.3(a) and (b)(i)(ii) and (iv) by disciplining the Student differently than a similarly situated Hispanic student for fighting at school.

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).

- 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.
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of FFA.

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504, Title II, and Title VI. Additional information about the civil rights statutes OCR enforces is available at <http://www.ed.gov/ocr>.

To protect individuals' privacy, the names of employees, witnesses, and other parties were not used in the letter.

Legal Standards

Allegation 1

The Section 504 regulation at 34 C.F.R. § 104.33(a) requires a recipient 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. Pursuant to 34 C.F.R. § 104.33(b)(1) and (2), a FAPE is 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 IEP is one means of providing services that are designed to meet the individual educational needs of persons with a disability as adequately as the needs of nondisabled persons.

Allegation 2

The Title VI regulation at 34 C.F.R. § 100.3(a) prohibits subjecting a person to discrimination on the ground of race, color, or national origin. The Title VI regulation at 34 C.F.R. § 100.3(b)(1)(i)(ii) and (iv) provides that a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin: (i) deny an individual any service or other benefit provided under the program; (ii) provide any service or other benefit to an individual which is different or is provided in a different manner from that provided to others under the program; or (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit under the program.

When OCR investigates allegations of different treatment on the basis of race, OCR will determine whether the recipient treated the student or students differently than similarly situated students of another race. If OCR determines the recipient treated the student or students differently than it treated a similarly situated student or students of another race, the recipient must identify a legitimate nondiscriminatory reason for the different treatment. Then OCR will

determine whether the stated reason is a pretext for unlawful discrimination and different treatment of the students based on race.

Preliminary Investigative Findings

Allegation 1

According to the Complainant, sometime during the first two or three weeks of the 2017-18 school year, she learned the Student was failing two classes. When she contacted the school about the Student's grades, she asked the principal and counselor about the Student's IEP, but they insisted the Student did not have one. According to the Complainant, the Student's XXXXX XXXX IEP required the District to provide XXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, but the Student did not receive XXXXX XXXXX XXXXX XXXXX for the first few weeks of the 2017-18 school year. After the counselor obtained a copy of the Student's XXXXX XXXX IEP from the school he previously attended in the District, the Student's IEP team met and amended the Student's IEP to increase his special education services. According to the Complainant, the Student's amended IEP provides for the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX for assistance in two of his classes and provides XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in all other classes. The Complainant said the Student's grades improved after the District located and amended his IEP.

The District provided OCR with a copy of the Student's XXXXX XXXX IEP and his XXXXX XXXX IEP. According to the XXXXX XXXX IEP, the Student was to receive XXXXX XXXXX XXXXX XXXXX XXXXX in the regular education classroom XXXXX XXXXX XXXXX XXXXX. According to the Student's XXXXX XXXX IEP, the Student's services were increased to XXX XXXXX XXXXX XXXXX XXXXX XXXXX in the regular education classroom XXXX XXXXX, XXXXX XXXXX XXXXX XXXXX. The Student's IEP team added XXXXXXXX XXXXX special education services XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX to the Student's IEP. To date, OCR has not obtained evidence that the District provided XXXXX XXXXX to the Student during the first few weeks of the 2017-18 school year.

Allegation 2

According to the Complainant, after the Student became ineligible to play football, one of the football coaches told the football team it was okay to ridicule the boys that were ineligible to play due to grades and that was when the trouble started. Some of the boys on the team started calling the Student "gay." The Complainant stated that in XXXXX XXXX, in response to the continued name-calling, the Student told the boys to "shut up." A Hispanic student struck the Student and the Student responded by striking the Hispanic student. The Complainant said that even though the Hispanic student struck the first blow, he was not disciplined for fighting. The Student was suspended from school XXXXX XXXXX XXXXX for fighting.

The District provided OCR a copy of the Student's disciplinary log entries from the District's PowerSchool database. According to this record, on XXXXX X, XXXX, the Student was

suspended from school XXXXX XXXXX XXXXX for assaulting another student during a XXXXX altercation. The log entry stated the Student admitted to administrators that he had punched another student on the chin and XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. According to the PowerSchool log, the other student said the Student punched him on the chin and the back of the head. The log entry stated administrators interviewed witnesses to the altercation, but did not identify any of the witnesses. According to the log entry, however, witnesses stated the Student punched the victim on the chin with a closed fist and hit him on the back of the head with an open hand. Both boys pushed each other a couple of times before being separated. To date, OCR has not obtained information and records about the Hispanic student involved in the XXXXX X, XXXX incident or information from student witnesses to the altercation.

In mid-October 2017, the Complainant withdrew the Student from the District.

Resolution

Prior to the completion of OCR’s investigation into this complaint, the District signed an Agreement (copy enclosed) on March 14, 2018, that, when fully implemented, will address the allegations in this complaint. The Agreement requires the District to: revise its Section 504 Policy to comply with the requirements of Section 504; train administrators, faculty, and staff about the requirements of Section 504 and the revised Section 504 Policy; provide compensatory education services to the Student if he returns to school in the District; and remove the XXXXX X, XXXX incident from the Student’s discipline record. 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,

Kelli Douglas
Supervisory Attorney

Enclosure