



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

March 6, 2019

*Sent via electronic mail only to: XXXXX*

XXXXXX XXXXX  
XXX XXXXX XXXXX XX  
XXX XXXXX XXXXX XXXXX, XXXXX XXX  
XXXXXX, XXXXX XXXXX

Re: OCR Case Number 07-18-1260  
Papillion LaVista Community Schools

Dear XXXXX XXXXX:

On August 28, 2018, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received this complaint alleging discrimination on the basis of disability against the Papillion La Vista Community Schools (District), Papillion, Nebraska. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

In a November 8, 2018 letter, OCR informed your client it would investigate the following issue(s):

1. whether the District excluded the Complainant's son (the Student) from the District's regular education program by regarding him as a student with a disability in violation of 34 C.F.R. §§ 104.3(j)(1)(iii) and (2)(iv); and 104.4(a) and (b)(1)(i); and
2. whether the District failed to evaluate the Student in violation of 34 C.F.R. §§ 104.33(a) and 104.35(a).

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 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.

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>.

To protect individuals' privacy, the names of employees and other parties 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 disabilities 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. § 104.34(a) requires recipients to educate each individual with a disability with individuals without a disability to the maximum extent appropriate to the needs of the individual with a disability. An individual with a disability shall be placed in the regular educational environment unless the recipient demonstrates that the education of the individual with a disability cannot be satisfactorily achieved in the regular educational environment with the use of supplementary aids and services.

The Section 504 regulation at 34 C.F.R. § 104.35 requires recipients to evaluate any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to initial placement of the person or any subsequent significant change in placement. This regulation also states when interpreting evaluation data and making placement decisions, school districts must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and ensure that placement decisions are made by a group of persons knowledgeable about the person with disabilities, the meaning of the evaluation data, and the placement options.

The Section 504 regulation at 34 C.F.R. § 104.36 requires recipients to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of



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.

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.

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