



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
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MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 29, 2021

Sent via email only to XXXXX

XXXXX XXXXX XXXXX
XXXXX, XXXXX & XXXXX
XXX XXXXX XXXXX
XXXXX, XXXXX XXXXX

Re: Newton Unified School District 373
OCR Case Number: 07191174

Dear XXXXX XXXXX:

On April 25, 2019, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Newton Unified School District 373, located in Newton, Kansas, alleging Newton discriminated against students XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX on the basis of disability. Based on the allegations in the complaint, OCR opened the following issues for investigation:

1. Newton discriminated against students XXXXX XXXXX XXXXX XXXXX in violation of Section 504 by treating them differently than students without a disability with regard to
 - a. the performance of non-academic chores during the school day;
 - b. participation in Railer Pride activities; and
 - c. the assignment of students XXXXX XXXXX XXXXX XXXXX to a classroom that is not comparable to those provided to students without a disability and contains machines which distract from the learning environment; and
2. Newton discriminated against students XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in violation of Section 504 by treating them differently than students without a disability with regard to the length of their school day.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, prohibit discrimination against qualified individuals with disabilities by public entities,

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

including public education systems and institutions, regardless of whether they receive federal financial assistance.

As a recipient of federal financial assistance from the Department and a public entity, Newton Unified School District 373 is subject to Section 504, Title II, and OCR’s jurisdiction. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Section 303 of OCR’s *Case Processing Manual* states that, at the conclusion of an investigation, OCR will determine, using a preponderance of the evidence standard, whether there is insufficient evidence to support a conclusion of noncompliance, or the evidence supports a conclusion of noncompliance.¹ In its investigation, OCR considered information provided by the Complainant and the District to OCR. OCR also interviewed the Complainant, the Principal, the Special Education Director, a special education teacher, four paraprofessionals, and two parents. OCR does not use the names of employees, witnesses, or other parties in this letter to protect individuals’ privacy.

After carefully considering all of the information obtained during the investigation, OCR made the following findings:

- Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve Allegation 1(a).
- OCR found insufficient evidence to support Allegation 1(b).
- OCR found that Allegation 1(c) and Allegation 2 have been resolved by the District.

OCR’s findings and conclusions are discussed below.

Findings of Fact

Non-academic chores

The Complainant informed OCR that students XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX every day XXXXX XXXXX even though students without a disability never XXXXX XXXXX XXXXX XXXXX. Students XXXXX XXXXX XXXXX XXXXX also XXXXX XXXXX, XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX, took out the trash, washed windows, swept up bugs, and got water for teachers’ coffee, even though students without a disability did none of these chores.

According to the District’s response to OCR’s data request, four XXXXX XXXXX XX students XXXXX XXXXX XXXXX XXXXX during the 2018-19 school year were employed by Newton in the work-study program. They worked XXXXX XXXXX XXXXX completing a variety of tasks including XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. These four students were paid for their work as part of the work-study program. Ten XXXXX XXXXX XX students participated XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX during the 2018-19 school year, even though they were not in the work-study program.

¹ OCR’s *Case Processing Manual* is available at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

The Complainant advised OCR that the non-academic chores performed regularly throughout the school year XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX were part of their Railer Pride activity. The Complainant informed OCR that parents were concerned XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX had to perform Railer Pride activities on an ongoing basis rather than once in the fall and once in the spring like other students.

OCR interviewed District staff concerning XXXXX XXXXX XXXXX XXXXX XXXXX in Railer Pride activities. One XXXXX paraprofessional stated XXXXX XXXXX XXXXX did not XXXXX for Railer Pride; XXXXX XXXXX XXXXX had been XXXXX regularly for years before Railer Pride. Another XXXXX paraprofessional said XXXXX XXXXX XXXXX participated in Railer Pride in 2018-19 by XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX around the building. She confirmed that XXXXX XXXXX XXXXX XXXXX XXXXX did XXXXX XXXXX regularly for years before the start of Railer Pride activities. A third paraprofessional was not aware that XXXXX XXXXX XXXXX XXXXX XXXXX participated in any service projects for Railer Pride.

Crowded, noisy classroom

The Complainant informed OCR that XXXXX XXXXX classroom was very crowded with little room to move around the desks and that equipment at the school, including XXXXX XXXXX, XXXXX XXXXX XXXXX, and XXXXX XXXXX, located XXXXX XXXXX XXXXX classroom created noisy distractions for students XXXXX XXXXX XXXXX class. OCR observed during a site visit in October 2019 that the XXXXX classroom consists of XXXXX XXXXX XXXXX. XXXXX XXXXX XXXXX a classroom with desks for the teacher, the students, and the paraprofessionals, while the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX.

One of the paraprofessionals XXXXX XXXXX XXXXX class informed OCR that the XXXXX classroom was cluttered and crowded during the 2018-19 school year. She told OCR the XXXXX staff cleaned out the clutter and reconfigured the classroom for the 2019-20 school year by removing all the desks, except the teacher's desk, and replacing them with three round tables and chairs. During the October 2019 site visit, OCR confirmed the XXXXX classroom was neither cluttered nor crowded and had clear paths and open spaces for students and staff to move easily through the room.

XXXXX XXXXX paraprofessional explained to OCR that there had been XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX, in the XXXXX XXXXX XXXXX XXXXX XXXXX classroom during the 2018-19 school year. She further stated that the XXXXX XXXXX XXXXX was loud when XXXXX XXXXX XXXXX XXXXX. Another XXXXX paraprofessional informed OCR that the XXXXX XXXXX XXXXX had since been removed. OCR confirmed during the October 2019 site visit that the XXXXX XXXXX XXXXX was, in fact, removed from the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX class.

OCR spoke with three XXXXX paraprofessionals about the XXXXX XXXXX XXXXX. All three paraprofessionals advised OCR that the XXXXX XXXXX XXXXX were not loud and created no distractions for students.

Shortened school day

The Complainant informed OCR the school day for students XXXXX XXXXX XXXXX XXXXX XXXXX classes was shorter than for regular education students because the XXXXX XXXXX XXXXX classes prepared to load the school bus as early at 2:30 p.m. even though the school day does not end until 3:10 p.m. The District confirmed to OCR that during the 2018-19 school year, Newton High School was dismissed for the day at 3:10 p.m. According to the District's data response, students XXXXX XXXXX XXXXX XXXXX XXXXX classes boarded the bus before the rest of the student body at approximately 3:02 p.m.

OCR spoke with two XXXXX paraprofessionals regarding procedures at the end of school day. One paraprofessional stated that during the 2018-19 school year the class "wrapped up" at 2:50 or 2:55 p.m. and loaded the bus at 3:00 or 3:05 p.m. The other paraprofessional stated that the end of class depended on the season. During the winter, XXXXX students often prepared to leave at 2:40 p.m. and boarded the bus at 2:45 p.m., while XXXXX students boarded the bus later during the fall and spring. Both XXXXX paraprofessionals agreed that during the 2019-20 school year, the XXXXX class went to their lockers at 3:00 p.m. or later and boarded the bus at 3:10 p.m. when the dismissal bell rang.

OCR spoke with XXXXX XXXXX teacher and paraprofessional regarding procedures at the end of school day. The XXXXX teacher told OCR that during the 2018-19 school year, three students XXXXX XXXXX from XXXXX XXXXX class rode the school bus. They started final checks XXXXX XXXXX at 2:30 or 2:35 p.m. to be sure students were XXXXX XXXXX XXXXX before boarding the bus. Once students were returned XXXXX XXXXX XXXXX, they put on hats and coats and secured backpacks. Bus riders from the XXXXX class were dismissed to the bus at 2:55 or 3:00 p.m. so their bus could depart before the other busses and students would have less time on the bus XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The teacher told OCR on very rare occasions, if no one XXXXX XXXXX XXXXX XXXXX and everyone was cooperative, they could be ready to board the bus by 2:45 p.m.

The XXXXX teacher and paraprofessional also informed OCR they started final checks later in 2019-20 because students had XXXXX XXXXX until 2:50 p.m. three days a week. They staggered the final checks starting with the students who finished XXXXX XXXXX first. They left the classroom to board the bus at approximately 3:05 p.m.

In its supplemental data response, the District informed OCR that commencing with the 2019-20 school year, the XXXXX XXXXX XXXXX classes boarded the bus with all other students when the dismissal bell rang. OCR spoke with two parents of students XXXXX XXXXX XXXXX XXXXX who confirmed that commencing with the 2019-20 school year, the school day XXXXX XXXXX XXXXX XXXXX no longer ended earlier than it did for regular education students. Rather, students XXXXX XXXXX XXXXX XXXXX begin getting ready to

leave at approximately 3:00 p.m. and students are dismissed to board the bus at 3:10 p.m. with the regular education students.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability will, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a recipient’s programs and activities.

The Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(i)(ii)(iii)(iv) and (vii) provides that a recipient, in providing an aid, benefit or service, may not directly, or through contractual, licensing or other arrangements, deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; provide a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provided to others; provide a qualified individual with a disability with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits or services to qualified individuals with a disability unless such action is necessary to provide qualified individuals with a disability with aid, benefits or services that are as effective as those provided to others; or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit or service.

Allegation 1(a)

Prior to the completion of OCR’s investigation into this complaint, the District expressed interest in entering into a voluntary resolution agreement with OCR pursuant to Section 302 of OCR’s *Case Processing Manual*. The District signed an Agreement (copy attached) on September 29, 2021, which when fully implemented, will resolve OCR’s concerns. The Agreement requires the District to review and modify its practice of having students XXXXX XXXXX XXXXX XXXXX perform nonacademic chores to be consistent with Section 504, and to determine and provide compensatory education services to students XXXXX XXXXX XXXXX XXXXX.

OCR considers Allegation 1(a) 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 its investigation.

Allegation 1(b)

The preponderance of the evidence did not establish that the District treated students XXXXX XXXXX XXXXX XXXXX differently than students without a disability with regard to Railer Pride activities. Although recycling by XXXXX XXXXX XXXXX was listed with XXXXX XXXXX XXXXX on the 2018-19 spreadsheet of Railer Pride activities, the evidence indicates that XXXXX was not a Railer Pride activity for the XXXXX XXXXX. Rather, XXXXX was an

ongoing activity, separate from Railer Pride, in which students XXXXX XXXXX XXXXX XXXXXXX had participated for years prior to the initiation of Railer Pride.²

Based on the above information, OCR determined there is insufficient evidence that the District treated students XXXXX XXXXX XXXXX XXXXX differently than students without a disability with regard to Railer Pride in violation of Section 504. Accordingly, OCR is closing Allegation 1(b).

Allegation 1(c)

Section 108(k) of the *Case Processing Manual* states OCR will dismiss an allegation, or, if appropriate, the complaint in its entirety, when OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved. OCR received information that the District reconfigured the XXXXX classroom for the 2019-20 school year in a manner that provided adequate space for all students and staff to move easily through the room as needed. OCR also received information that the loud XXXXX XXXXX XXXXX XXXXX XXXXX was removed. Further, OCR confirmed during the site visit that, commencing with the 2019-20 school year, the XXXXX classroom had been reconfigured and the XXXXX XXXXX XXXXX, the loudest of the machines, is no longer located XXXXX XXXXX XXXXX XXXXX classroom. Based on the above information, OCR determined Allegation 1(c) is currently resolved. Accordingly, OCR is dismissing Allegation 1(c).

Allegation 2

Section 108(k) of the *Case Processing Manual* states OCR will dismiss an allegation, or, if appropriate, the complaint in its entirety, when OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved. Information from the Complainant and some special education staff indicated there may have been occasions during the 2018-19 school year when students with a disability, particularly those in XXXXX XXXXX XXXXX, had a shorter school day than regular education students. The information obtained from District staff and parents, however, indicates that commencing with the 2019-20 school year, the school day for all students at the high school ends at 3:10 p.m., including those students in XXXXX XXXXX XXXXX XXXXX XXXXX. Based on the above information, OCR determined Allegation 2 is currently resolved. Accordingly, OCR is dismissing Allegation 2.

The Complainant has a right to appeal OCR's determination as to Allegation 1(b) within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or by fax. The Complainant must either submit a completed appeals form online at <https://ocras.ed.gov/content/ocr-electronic-appeals-form>, or a written statement of no more than ten (10) pages (double-spaced, if typed): if submitted by mail, please send the appeal to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via email, send it to OCR@ed.gov; if submitted via fax, please send it to (202) 453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted

² To the extent that Allegation 1(b) alleges the District generally treated XXXXX students differently on the basis of disability by having them perform non-academic chores, this allegation is addressed in the Agreement resolving Allegation 1(a).

electronically or submitted via fax. In the appeal, the Complainant must explain why she believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the Complainant's appeal form or written statement to the College. The Complainant can find appeals forms at <https://www2.ed.gov/about/offices/list/ocr/docs/appeals-form.pdf>. The District has the option to submit to OCR a response to the Complainant's appeal.

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. OCR would like to make the District aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint with OCR or participated in the complaint resolution process. If this happens, complainants 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. If OCR receives such a request, we 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.

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,

Timothy Mattson
Chief Attorney, Region VII