



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

January 24, 2020

Sent via email only to XXXXX@XXXXX

XXXXX XXXX XXXXX
XXXXX
XXXXX
XXXXX, XXXXX XXXXX

Re: Greenwood School District
OCR Case Number: 07-19-1253

Dear XXXXX:

On July 29, 2019, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against your client, the Greenwood School District (District), Greenwood, Arkansas, alleging discrimination on the basis of disability. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve the complaint.

The Complainant alleged the District discriminated against XXXXX (the Student) on the basis of disability by failing to implement his Section 504 Accommodation Plan (504 Plan); failing to evaluate him for special education services; and failing to provide written notice of its procedural safeguards.

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, prohibit discrimination on the basis of disability in programs and activities receiving Federal financial assistance (FFA). 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, including public education systems and institutions, regardless of whether they receive FFA. As a recipient of FFA from the Department and a public entity, the District 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>.

OCR opened three issues for investigation including whether the District:

1. denied the Student a free appropriate public education (FAPE) when it failed to implement the Student’s “504 Accommodation Plan” for the second semester of 2018-2019 school year;
2. failed to conduct an evaluation of a student who, because of disability, needs or is believed to need special education or related services; and
3. failed to notify the Complainant of its system of procedural safeguards.

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

In reaching a determination in this complaint, OCR considered information the Complainant and the District submitted, including the Student’s Section 504 and special education records, the Student’s academic records, email messages between the Complainant and the Student’s teachers, and the District’s procedural safeguards. A summary of the evidence obtained to date is set forth below.

Allegation 1

Legal Standard

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) provides that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified individual with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the individual’s disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met and (ii) are based upon adherence to the procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standards established in the regulation.

Factual Background Information

The Student’s Section 504 Plan required email notification to the Complainant whenever the Student missed an assignment. In May 2019, the Complainant learned the Student was missing assignments in XXXXX, XXXXX, and XXXXX and contacted the teachers of the three classes to arrange for the Student to make up the missed work. Two of the three teachers (XXXXX and XXXXX) were unwilling to allow the Student to turn in the missing assignments for full credit. According to the Complainant, the XXXXX teacher worked with the Student to complete all of his missing assignments in that class for full credit. According to the Principal, the District was unable to document that the Student’s teachers notified the Complainant of the Student’s missing assignments by email and, as a result, the District exempted the Student from missing assignments in those three classes.

Allegation 2

Legal Standard

The Section 504 implementing regulating at 34 C.F.R. § 104.35(a) states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the regulatory requirements of any person who, because of disability, needs or is believed to need special education or related services before taking action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

Factual Background Information

The Complainant alleged that even though she has requested it, the District has declined to evaluate the Student for special education for several years. She stated that she requested a special education evaluation for the Student verbally on XXXXX, during the Student's XXXXX XXXXX. She sought the evaluation to address the Student's XXXXX and XXXXX. According to the Complainant, her concerns were confirmed in July 2019, through an independent evaluation that concluded the Student had a XXXXX and needed XXXXX. The District did not evaluate the Student for special education during the 2018-19 school year or notify the Complainant it was declining to evaluate the Student. After meeting with the Complainant and her husband in May 2019, the Principal acknowledged the Complainant wanted the District to evaluate the Student for special education. On July 22, 2019, the District sent the Complainant a Notice of Conference for an August 5, 2019 meeting to consider referring the Student for a special education evaluation. To date, the Student has not attended school in the District during the 2018-19 school year.

Allegation 3

Legal Standard

The regulation implementing Section 504 at 34 C.F.R § 104.36 states that a recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the IDEA is one means of meeting this requirement.

Factual Background Information

The Complainant alleged the District never gave her a copy of its procedural safeguards even though the Student is a student with a disability, received services under Section 504 throughout the 2018-19 school year, and she requested that the Student be evaluated for special education services. OCR has reviewed the District's Procedural Safeguards and determined they are consistent with the requirements of the regulation implementing Section 504 at 34 C.F.R § 104.36. Although the District asserted that a copy of its Procedural Safeguards was provided to the Complainant on multiple occasions, the District has not submitted any documentation confirming its provision of the Procedural Safeguards to the Complainant. To date, OCR has not interviewed the District's 504 Coordinator or other staff to confirm the District's provision of its Procedural Safeguards to the Complainant.

Resolution

On October 9, 2019, prior to the completion of OCR's investigation into this complaint, the District indicated its interest in entering into a voluntary resolution agreement with OCR pursuant to Section 302 of OCR's *Case Processing Manual*. OCR determined that such a resolution would be appropriate based on issues identified during the investigation. The District signed an Agreement (copy enclosed), which when fully implemented, resolves OCR's concerns. If the Student returns to school in the District, the Agreement requires the District to determine whether the Student's 504 plan or IEP from his previous school provides a FAPE and, if not, to reevaluate the Student, determine an appropriate educational placement, and develop and implement a 504 plan or IEP setting forth the services the Student is to receive. For more information, please consult the Agreement.

OCR considers this complaint resolved effective the date of this letter and will monitor the University'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.

OCR noted the District's Procedural Safeguards inform parents and legal guardians they may file a complaint with OCR at the agency's Dallas office which is no longer responsible for OCR complaints in Arkansas. OCR Kansas City is currently responsible for OCR complaints in Arkansas. As a matter of technical assistance, OCR recommends the District revise its Procedural Safeguards to include the following contact information for the Kansas City OCR office.

U.S. Department of Education
Office for Civil Rights
1010 Walnut Street, Suite 320
Kansas City, Missouri 64106
(816)268-0550 (telephone)
(816)268-0599 (FAX)

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. A complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Thank you for your cooperation. If you have questions concerning this letter, please contact XXXXX XXXXX, attorney, at (816) 268- XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@ed.gov.

Sincerely,

XXXXX XXXXX
Supervisory Attorney

Enclosure