



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

February 28, 2020

Sent via email to: XXXX XXXX XXX

XXXX XXXXX
Attorney at Law
XX XXX XXXX XXX
Liberal, KS XXXXX

Re: Liberal USD # 480
OCR Case Number 07-19-1254

Dear Mr. XXXXX:

On July 31, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Liberal USD # 480 (District), Liberal Kansas, 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.

Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, prohibit discrimination on the basis of disability in programs and activities receiving Federal financial assistance (FFA). Under Section 504, OCR has jurisdiction over recipients of FFA from the Department. Additionally, Title II of the Americans with Disabilities Act of 1990 (Title II) 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 from the Department. As a recipient of FFA from the Department and a public entity, the District it 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>.

In the remainder of this letter, the Complainant's son is referred to as the "Student." 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. The legal and factual bases for OCR's determination are set forth below.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) requires a recipient to

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

provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards.

Pursuant to 34 C.F.R. § 104.35(a), a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of that section of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. Section 504 requires that a timely evaluation be conducted and provides that compliance with the IDEA is one means of complying with the provisions of Section 504. IDEA requires recipients to conduct an evaluation within 60 calendar days of receiving parental consent for the evaluation. Thus, OCR considers the 60-day standard in assessing the reasonableness of a recipient's evaluation.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Under 28 C.F.R. § 35.103, the Title II regulation does not set a lesser standard than that found in Section 504. The regulation implementing Title II at 28 C.F.R. § 35.130(a) states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity. The Title II regulation at 28 C.F.R. § 35.130(b)(1)(i) similarly states that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service on the basis of the individual's disability. Accordingly, OCR interprets the Title II regulation to require public entities to provide a FAPE to students with disabilities to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

Factual Background Information

In the complaint and as clarified during an interview with OCR, the Complainant alleged the District failed to evaluate the Student in order to provide him regular or special education and related aids and services, designed to meet his individual educational needs, when it had reason

to believe he was a qualified student with a disability.

The Complainant stated that in the Fall of 2019 she requested a Section 504 evaluation from the Principal to be completed for the Student who has a medical diagnosis of XXXX XXXX XXXX. The Principal told the Complainant to submit the Section 504 evaluation paperwork to a school counselor, which she did. The school held a meeting with the Principal, the School Psychologist and others on December 20, 2018 to determine the Student's placement. The school had not begun any evaluation before the meeting. During this meeting, the Complainant asked about her request for a Section 504 evaluation, but the School Psychologist said she was not involved in that process and no one else commented on the evaluation.

In January 2019, the Complainant contacted the then 504 Coordinator (Prior Coordinator) to discuss the Student's placement. The Complainant reminded her that she had requested a Section 504 evaluation and renewed the request. The Prior Coordinator did not act on this request. On April 18, 2019, the Complainant received an email from the Student's homeroom teacher, that the school was recommending summer school for the Student. The Complainant responded that she had requested a Section 504 evaluation and had never received a response. On April 23rd, 2019, the Complainant received an email from the school social worker that stated the Student's Section 504 evaluation had been completed in November 2019, and he "was under the impression" they had told her. He also stated that the evaluation was concluded because they had no evidence that the Student has a medical diagnosis. She reminded him that she had given the school documentation of the Student's diagnosis in person at a meeting in October. The Complainant's husband talked to the Prior Coordinator who said that the school would conduct an evaluation, but no evaluation was started. The Complainant told OCR that the only issue she wanted addressed was the failure to evaluate.

Following receipt of the complaint, OCR contacted the District on September 26, 2019, and the District expressed interest in resolving the matter through OCR's Rapid Resolution Process as set forth in Section 110 of the *Case Processing Manual (CPM)*.¹ On October 10, 2019, the attorney for the District contacted OCR and stated that the current Section 504 Coordinator (Coordinator) agreed to conduct a full evaluation of the Student. OCR interviewed the Coordinator on January 22, 2020. She stated that on October 29, 2019 the Student's Section 504 Team met with the Student's parents and obtained consent to evaluate for a disability under Section 504. The parents identified the medical providers from whom they wanted the District to obtain information and the District prepared releases for the parents to sign. On November 5, 2019 the parents emailed back the signed releases for the District to request information from the Student's doctors. The Coordinator requested information from the doctors on November 8, 2019.

The Coordinator said the District has gathered information for the evaluation including a behavior rating scale and report; teacher observations; State and interim assessment reports; and grades, discipline and attendance records. She said the parents can give the District any other materials they think are relevant to the evaluation.

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

The Coordinator stated that XXXX XXXX XXXX XXXX of the student on January 3, 2020. The District had not previously been provided with XXXXX XXXXX and the parents wanted the testing results included in the materials submitted to the District. On January 10, 2020 the XXXX XXXX XXXX told the Coordinator they were preparing the report. The District has not received the report. The Coordinator said once the District has received the report, an evaluation meeting will be scheduled with the parents and the District team.

Resolution

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 CPM. The District signed an Agreement (copy enclosed) on February 24, 2020, which when fully implemented, resolves OCR's concerns. The Agreement requires the District to conduct a comprehensive evaluation to determine the Student's unique educational needs. This evaluation will include all information the 504 Team determined necessary during the meeting held on October 29, 2019, which was documented in the Section 504 Notice and Consent to Evaluate and signed by both parents. The District will complete an eligibility determination meeting (Eligibility Meeting) to consider the comprehensive evaluation and assess the Student's current eligibility for services and/or accommodations through a Section 504 plan, and will make an eligibility determination. If the Student is determined to be eligible for services and/or accommodations under Section 504, the District will conduct a team meeting (Team Meeting) within 10 days of such determination in order to develop a Section 504 plan for the Student, in accordance with Section 504 regulations at 34 C.F.R. § 104.35. The District will provide the Student's parents with a meaningful opportunity to provide input into these determinations, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree.

As a part of the initial evaluation meeting, the 504 Team will determine whether the Student is in need of compensatory services and will determine whether a delay in evaluation time has impacted the Student's credits earned by delaying an implementation of accommodations. If (i) the Student qualifies under Section 504; and (ii) the 504 Team determines the Student requires compensatory services, those will be implemented as the 504 Team determines appropriate on a timeline agreed upon by the Parents and District. If the 504 Team determines delayed implementation of accommodations has negatively impacted the number of credits the Student has earned toward graduation, the 504 Team will adjust graduation requirements from the 26 credit hours required by District to a number determined appropriate by the 504 Team, provided it is not fewer than the 21 credit hours required by the Kansas State Department of Education and meets requirements for the types of courses required by KSDE. For more information, please consult the Agreement.

OCR considers this 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.

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

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.

If you have any questions regarding this matter, please contact XXXX XXXXX, Attorney, at (816) XXX XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXX XXXX XX.

Sincerely,

Megan Levetzow
Supervisory Attorney

Attachment