



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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Date

SENT VIA EMAIL

XXXXXX XXXXXX XXXXXX, XXXXXX XXXXXX

XXXXXX XXXXXX XXXXXX

Blue Springs School District
Bartow Administrative Center
1801 NW Vesper
Blue Springs, Missouri 64015
XXXXXXXXXXXXXXXXXXXX

Re: Blue Spring R-IV School District
OCR Case Number 07-20-1063

Dear XXXXXX XXXXXX:

On November 20, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against Blue Spring R-IV School District (District), Blue Springs, Missouri, 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 daughter 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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

A recipient must periodically reevaluate a student with a disability who is provided special education and related services in accordance with 34 C.F.R. § 104.35(d). The recipient's reevaluation procedures should be in accordance with 34 C.F.R. § 104.35(b).

The District shall reevaluate a student with a disability in the following circumstances, including, but not limited to, (1) in any area where a disability is suspected, (2) if the student's behaviors or needs have changed warranting a reevaluation, (3) before any significant change in placement (including, for example, the termination or significant reduction of educational or related services, or disciplinary removal, (4) when a parent, guardian, or teacher requests a reevaluation.

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 alleges that the District has not followed the Student's 504 plan. She also alleges that due to the absence of the Section 504 coordinator the District did not hold the Student's Section 504 plan review that was anticipated on January 17, 2020. The Complainant informed OCR she was concerned about the following items in the Student's Section 504 Plan: 1) Administers medication as indicated by doctor and provided by parent; 2) Parents will be notified of any high and low blood sugar readings that are outside of the target levels; 3) Carb counts of regular meal menu offered at school are made available at parent request.

The Complainant was informed during a Parent Teacher Association meeting that the XXXXX XXXXX XXXXX Section 504 Coordinator (Coordinator) was on indefinite leave. According to the District, the Section 504 Coordinator's absence for medical reasons started on September 26, 2019. The District notified staff by email on October 1, 2019, that the Coordinator's students had been reassigned to another 504 coordinator in the building. The District explained to OCR that they informed parents of the change only if they did not already have a Section 504 meeting at the beginning of school. According to the District, parents who had a Section 504 meeting prior to their Coordinator's absence were notified when the involvement of the Coordinator was requested by the parent. However, the Complainant provided OCR with an email asking the school principal about the Coordinator and did not receive a response back from the District. The Complainant also provided OCR with a copy of the Student's 504 plan which states that the "Anticipated Next Review Date" was January 17, 2020. To date a Section 504 meeting has not been held.

Following receipt of the complaint, OCR contacted the District on March 18, 2020, 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

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 May 13, 2020, which when fully implemented, resolves OCR's concerns. The Agreement requires the District notify all XXXXX XXXXX XXXXX parents/guardians of the name of the Coordinator responsible for their child. The proposed Agreement also requires the

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

District to convene the Student's Section 504 team meeting pursuant to Section 504 to reevaluate, and revise if necessary, the Student's 504 Plan. During the meeting, the team will also assess whether the Student is in need of compensatory services, and if so, the team will include any needed compensatory services in the 504 Plan. The District will also provide training on the implementation of the Student's Section 504 Plan to all of the Student's teachers, as well as other staff members who are responsible for implementation of the Student's Section 504 Plan. 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 Diana Goold, Equal Opportunity Specialist, at (816) 268-0561 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at Diana.Goold@ed.gov.

Sincerely,

J. Earlene Gordon
Supervisory Attorney

Attachment