



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

July 28, 2020

Sent via email only, to: XXXXX.com

XXXXX XXXXX
XXXXX XXXXX XXXXX
XXXX XXXXX XXXXX, XXXXX XXX
XXXXX XXXXX, XXXXX XXXXX

Re: Liberty #53 School District
OCR Case Number: 07-20-1127

Dear XXXXX XXXXX:

On February 7, 2020, the U.S. Department of Education (Department), Office for Civil Rights (OCR), Kansas City Enforcement Office, received the above-referenced complaint against the Liberty #53 School District (District), Liberty, Missouri, alleging the District discriminated against a student (the Student) on the basis of disability by failing to provide accommodations for his disability in Kid's Zone, the District's school-age care program.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving Federal financial assistance (FFA). OCR has enforcement jurisdiction over recipients of FFA from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive FFA. Under Title II, OCR has enforcement jurisdiction over public school districts. 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 investigated whether the District failed to provide the Student an equal opportunity to participate in Kid's Zone, the District's school-age care program, in violation of Section 504 and Title II.

This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement), prior to the completion of OCR's investigation under Section 302 of OCR's Case

Processing Manual (CPM), to resolve the complaint allegation.¹ To protect individuals' privacy, the names of employees, witnesses, and other parties were not used in the letter. A summary of the evidence obtained to date is set forth below.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. §104.4(a) states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulation implementing Section 504 at 34 C.F.R. §104.4(b) states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford 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 afforded others; . . . or (vii) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Section 504 at 34 C.F.R. §104.38 states that a recipient that provides preschool education or day care or adult education may not, on the basis of disability, exclude qualified individuals with a disability and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

Evidence Obtained to Date

The Student is a student with a disability under the Individuals with a Disability Education Act (IDEA). According to the Complainant, during the 2019-20 school year, the Student had an Individualized Education Program under the category XXXXX XXXXX XXXXX. He was diagnosed with XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX. At all times relevant to this complaint, the Student attended Kid's Zone, the District's school-age childcare program.

On XXXXX XX, XXXX, the Student was suspended from Kid's Zone for three days for receiving his third Behavior/Discipline Notice and notified that any future Behavior/Discipline Notices could result in dismissal from the program consistent with the 2019-20 Kid's Zone Parent Handbook (Handbook).² According to the Complainant, on XXXXX XX, XXXX, she notified Kid's Zone that the Student was XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. She asked Kid's Zone to have the Student XXXXX XXXXX XXXXX XXXXX XXXXX to avoid behavioral issues while at Kid's Zone, rather than XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, but Kid's Zone staff did not

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

² The Handbook states that student behavior involving verbal or physical acts of violence to self or others it may result in a Behavior/Disciplinary Notice. Students may be suspended or dismissed from Kid's Zone without notice for receiving three or more Behavior/Disciplinary Notices.

follow her request. The Complainant stated she spoke with the Program Manager on several occasions during the 2019-20 school year about making modifications to help the Student participate successfully in Kid's Zone, but even when the Program Manager agreed with her requests, site-based staff did not make the requested modifications. The Complainant stated the Student XXXXX XXXXX XXXXX XXXXX XXXXX during the 2019-20 school year and that all three of the Student's Behavior/Discipline Notices occurred at times when the Student XXXXX XXXXX XXXXX XXXXX XXXXX.

In a XXXXX XX, XXXX letter to the Program Manager, the Complainant requested a formal plan to accommodate the Student's participation in Kid's Zone. In a XXXXX XX, XXXX email, the Chief Operating Officer (the COO) of the District responded to the Complainant's XXXXX XX, XXXX request. The COO stated that although Kid's Zone had been "accommodating" with regard to the Student, they have a responsibility to all students in the program to remove students who do not comply with Kid's Zone's expectations for safe behavior. The COO stated the Student could continue participating in Kid's Zone provided there were no other incidents between then and the end of the school year. The COO added that Kid's Zone was unable to offer additional support for the Student because Kid's Zone is a fee-for-service, tuition-based program.

To date, the District has not provided OCR documentation of the actions, if any, the District took during the 2019-20 school year through XXXXX XXXX to account for the Student's needs and provide the Student an equal opportunity to participate in Kid's Zone. The District has provided OCR a copy of a draft plan³ outlining services to be provided the Student in Kid's Zone that is contingent upon the review and input of the Student's multi-disciplinary team when the District returns to school.

Resolution

On June 4, 2020, 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. OCR determined that such a resolution would be appropriate based on the concern identified during the investigation. The District signed an Agreement (copy enclosed) on July 24, 2020, which when fully implemented, resolves OCR's concern. The Agreement requires the District to complete and implement a plan to provide the Student an equal opportunity to participate in Kid's Zone, taking into account the needs of the Student in determining the aids, benefits, or services to be provided the Student at Kid's Zone.

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.

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

³ The District's work on the plan was interrupted by the District's March 2020 transition to distance learning for the remainder of the 2019-20 school year due to COVID-19.

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.

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,

/S/

Kelli Douglas
Supervisory Attorney

Enclosure