



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 16, 2021

Sent via email only to XXXX.

XXXXXX XXXXXX XXXXXX
XXXXXX - XXXXXX XXXXXX
XXXXXX XXXXXX
XXXXXX XXXXXX XXXXXX

Re: Rapid City Area School District #51-4
OCR Case Number: 07211110

Dear XXXXXX XXXXXX:

On March 31, 2021, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Rapid City Area School District #51-4 (District), in Rapid City, South Dakota, alleging the District discriminated against the Complainant's daughter (Student) on the basis of disability. On July 20, 2021, OCR informed the District that it would investigate whether the District failed to provide the Student a free appropriate public education by failing to identify and evaluate the Student as a qualified student with a disability in a timely manner in violation of Section 504 and/or Title II. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to OCR to resolve the complaint consistent with Section 302 of OCR's *Case Processing Manual*.¹

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, prohibit discrimination based on disability in programs and activities that receive federal financial assistance. 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 federal financial assistance.

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

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

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

Background Information

The Student transferred to the District for the fall 2020 semester for her XXXXX -grade school year. Prior to the fall 2020 semester, the Student attended a private school and did not have a Section 504 Plan or receive special education services. The Complainant did not request the Student be evaluated for a Section 504 Plan when she enrolled her in the District.

For the 2020-21 school year, the District instituted a distance learning program for all students who were not comfortable attending in-person learning. The Student participated in remote learning in the fall 2020 semester but was not eligible for the second semester remote learning option.

When the Complainant learned that the Student would need to attend in-person classes for the spring 2021 semester, the Complainant spoke with the Principal and advised him that the Student was unable to attend in-person classes due to XXXXX. The Principal told the Complainant she would need to provide the District with documentation from the Student's healthcare provider to determine if the Student could be re-enrolled in the distance learning program.

The Complainant and District provided OCR with a copy of an email to the District dated XXXXX, 2021, attaching a letter from the Student's healthcare provider. The letter stated that the Student was being treated for "XXXXX, XXXXX, XXXXX, and XXXXX." In its Data Response, the District informed OCR that it received the letter from the Student's healthcare provider, but noted the letter was undated and unsigned.

During the spring 2021 semester, the Student remained enrolled for in-person learning, although she was not attending class. On XXXXX, 2021, the Complainant emailed the Principal and stated in her email that she had contacted special education services to get the Student on a Section 504 Plan. The Complainant and District staff exchanged emails between XXXXX, 2021 and XXXXX, 2021 to arrange a time to speak on the phone. On XXXXX 2021, the Complainant emailed District staff concerning the District dropping or disenrolling the Student from school.

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 *Case Processing Manual*. The District signed an Agreement (copy attached) on August 14, 2021, which when fully implemented will resolve OCR's concerns. The Agreement requires the District to evaluate the Student for eligibility for services under Section 504 and consider whether compensatory services are appropriate for the Student, if it receives consent from the Complainant to do so. For more information, please consult the Agreement.

OCR considers this complaint resolved 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.

The District is 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.

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.

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.

If you have any questions, please contact XXXXX XXXXX Attorney, at XXXXX XXXXX - XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX_XXXXX_@ed.gov.

Sincerely,

Megan Levetzow,
Supervisory Attorney

Attachment