



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
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REGION VII  
ARKANSAS  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

February 18, 2022

*Sent via email only, to: XXXXX.XXXXX.XXXXX*  
XXXXX, XXXXX  
XXXXX XXXXXXX XXXXX  
XXXXX XXXXX, XXXXX XXXXX  
XXXXX, XXXXX XXXXX

Re: Omaha Public Schools  
OCR Case No. 07211261

Dear XXXXX:

On August 23, 2021, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint alleging discrimination based on disability and retaliation by your client, the Omaha Public Schools (District), located in Omaha, Nebraska. This letter is to confirm the District has voluntarily submitted a Resolution Agreement to resolve this complaint.

Section 504 of the Rehabilitation Act of 1973, 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 receiving federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.61 incorporates by reference the regulatory provision at 100 C.F.R. § 100.7(e), which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law OCR enforces, or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws or regulations. OCR has Section 504 enforcement jurisdiction over recipients of federal financial assistance from the U.S. Department of Education.

Title II of the Americans with Disabilities Act of 1990, 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. The regulation implementing Title II, at 28 C.F.R. § 35.134, prohibits retaliation by public entities. OCR has Title II jurisdiction over public school districts.

Because the Omaha Public Schools receives federal financial assistance from the U.S. Department of Education and is a public entity, the District is subject to Section 504, Title II, and to OCR's jurisdiction. Additional information about the laws that OCR enforces is available on our website at <http://www.ed.gov/ocr>.

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

[www.ed.gov](http://www.ed.gov)

During OCR’s investigation, OCR reviewed records and documentation, including but not limited to, District policies and procedures and correspondence regarding the alleged discrimination and the District’s response to the alleged discrimination.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-36. Districts are required to conduct an evaluation 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. 34 C.F.R. § 104.35(a). Implementation of an Individual Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2). As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

OCR investigated whether the District discriminated against the Student on the basis of disability by doing the following:

1. Whether the District discriminated against the Student on the basis of disability by failing to provide services and aids included in the Student’s Individualized Education Program, specifically with respect to transportation during the 2020-21 school year, in violation of Section 504 and/or Title II; and
2. Whether the District retaliated against the Complainant and/or the Student by discontinuing the transportation component of the Student’s Individualized Education Program because the Complainant advocated and requested disability related compensatory services for the Student in the summer of 2021, in violation of Section 504 and/or Title II.

### **Factual Background**

The Complainant informed OCR that his daughter (the Student), who is diagnosed with XXXXX and receives her education under the District’s “alternative curriculum program,” or ACP, had been receiving Applied Behavior Analysis therapy services for the first half of her day at the XXXXX XXXXX School. The Complainant informed OCR that the Student had been attending a specific XXXXX XXXXX school location for almost two years which was located approximately six minutes from her primary school within the District. During the 2020-21 school year, the District regularly picked the Student up from XXXXX XXXXX and transported her to her primary school.

The Complainant alleged that he had raised concerns with the District about special education students who were required to stay home as a result of the Covid-19 pandemic. The Complainant informed OCR that as a result of his advocacy, towards the end of the 2020-21 school year, the District determined the Student was owed over 100 hours of compensatory education services. According to the Complainant, the District abruptly suspended the transportation services it had been providing his daughter as part of her IEP at the start of the 2021-22 school year.

After receiving notice from the District's transportation department, on or around August 16, 2021, indicating the District would be picking up the Student from her home, the Complainant contacted the District to discuss this change and the implementation of the Student's IEP. On August 17, 2021, the XXXXX XXXXX (Director) informed the Complainant that the District could not provide transportation to the current XXXXXX XXXXX location because it was outside of the District's boundaries. The Director explained to the Complainant that there was a XXXXX XXXXX location inside the District's boundaries, and if the parents were to transfer the Student to this location, the District would arrange transportation for the Student.

In an email dated August 23, 2021, the Director informed the Complainant that the District erred when it allowed transportation for the Student from a XXXXX XXXXX location that is outside of District's boundaries. The Director informed the Complainant that the District was prepared to meet its obligations under the IEP to transport Student from the XXXXX XXXXX located within District boundaries to school.

OCR learned that the District's decision to change transportation services under the IEP occurred without an IEP review meeting. After OCR opened the Complaint for investigation, OCR confirmed that an IEP review meeting is currently scheduled for March 3, 2022.

## **Resolution**

Prior to the completion of OCR's investigation, the District expressed interest in voluntarily resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.<sup>1</sup> The District submitted a signed Resolution Agreement (copy enclosed) on **February 18, 2022**, that, when fully implemented, will address the allegations of this complaint. The Resolution Agreement requires the District to convene an IEP meeting to discuss changes in transportation services under the IEP, including transportation to and from Radical Minds, and determine whether any compensatory services are appropriate. Please consult the Resolution Agreement for further details.

OCR considers this complaint resolved effective the date of this letter and will monitor the District's implementation of the Resolution Agreement. When OCR concludes that the District has fully implemented the terms of the Resolution Agreement, OCR will close the complaint. If the District fails to carry out the Resolution Agreement, OCR may resume its investigation.

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

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

the public. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

Sincerely,

Timothy Mattson  
Chief Attorney, Region VII

Attachment