



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION VII
ARKANSAS
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April , 2022

Sent via email only, to: Tim.Graf@k12.sd.us

Tim Graf, Superintendent
Harrisburg School District 41-2
200 East Willow Street
Harrisburg, South Dakota 57032

Re: Harrisburg School District 41-2
OCR Case No. 07221019

Dear Superintendent Graf:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 12, 2021, with the U.S. Department of Education, Office for Civil Rights (OCR) against the Harrisburg School District 41-2 (District) alleging the District discriminated against the Complainant's daughter based on disability. Specifically, the Complainant alleged the District failed to respond to her email that on October 4, 2021, a teacher did not allow her daughter to have a fidget in class as required by her 504 plan. OCR investigated whether the District violated Section 504 by failing to respond promptly and equitably to the Complainant's email that the District did not implement her daughter's 504 plan.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

The District is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations. Accordingly, OCR had jurisdiction to investigate and resolve this complaint under Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.7(b), requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation. The Title II regulation at 28 C.F.R. § 35.107(b) contains a similar requirement.

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

School districts are required to establish grievance procedures for resolving complaints related to those cases where the complainants allege that employees, other students, or third parties engaged in discriminatory behavior. The grievance procedures must ensure that complaints are resolved in a prompt and equitable manner. In evaluating whether a school district's grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees of the school; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

Preliminary Investigative Findings

During OCR's investigation, OCR interviewed the Complainant and spoke with the Superintendent. OCR also reviewed documentation provided by the Complainant and the District, including: the District's student complaint procedure; the Complainant's daughter's Section 504 records; and correspondence between District personnel and the Complainant.

The District identified Board Policy JFH, Student Complaints and Grievances, as its Section 504 grievance procedure even though it is not explicitly applicable to complaints alleging discrimination based on disability. Policy JFH outlines the following five levels for resolution of complaints and grievances in the District.

1. Any student or his/her parent or guardian will be provided the opportunity to discuss with the student's teacher a decision or situation which the student, parent, or guardian considers unjust or unfair.
2. If the incident remains unresolved, the student or his/her parent or guardian, or the teacher may bring the matter to the principal's attention for consideration and action.
3. The student may also bring a matter of general student concern to the attention of class officers or the student council (in grades and schools where such are elected) for possible presentation to the principal.
4. If the matter is still unresolved after the procedure outlined above, it may be brought to the Superintendent for consideration.
5. Complaints that remain unresolved following any action of the Superintendent may be referred in writing to the Board for review. The Board's decision is final.

The Complainant's daughter's September 8, 2021, Section 504 plan recognized her diagnosed anxiety as a disability and allowed her to have fidget toys to use in class during the school day.

The Complainant advised OCR that on October 4, 2021, a teacher yelled at her daughter to put away her fidget in class. The Principal emailed the Complainant that she had spoken to the teacher about the October 4th incident. The Principal explained that the Complainant's daughter had a fidget out while the teacher was reviewing her expectations for the class and that the teacher asked the Complainant's daughter to put it away.

In an October 6, 2021, email to the Director of Special Education, the Complainant stated she was formally filing a grievance because on October 4, 2021, the teacher told her daughter to put her fidget away even though her 504 plan allows her to have a fidget in class. The Director responded that she would forward the email to the District’s 504 Coordinator and the Superintendent. The Complainant informed OCR that the District did not interview her or otherwise respond to her grievance. On October 12, 2021, the Complainant emailed the Director that her daughter’s withdrawal from the District should not be construed as a dismissal of her October 6, 2021, grievance.

The Complainant informed OCR that her daughter is currently enrolled in Rosa Parks Elementary School in Sioux Falls, South Dakota, and she is pleased with the educational services her daughter is receiving there.

Resolution

Before OCR completed its investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR’s *Case Processing Manual*.¹ OCR found compliance concerns and determined it is appropriate to resolve the complaint pursuant to a Resolution Agreement. The District submitted a signed Resolution Agreement (copy enclosed) on 2022, that, when fully implemented, will address the complaint allegation.

The Resolution Agreement requires the District to develop, adopt and implement a Section 504 grievance procedure to provide for the prompt and equitable resolution of complaints of disability discrimination as required by Section 504. The Agreement requires the District to disseminate the grievance procedure and train District personnel responsible for implementing the procedure. The Agreement also requires the District to provide the Complainant a prompt and equitable grievance process in response to the Complainant’s October 6, 2021, grievance using the grievance procedures developed and adopted pursuant to this Resolution Agreement. Please consult the Agreement for further details.

As a matter of technical assistance, OCR noticed the District’s document “Your Rights Under Section 504” provides incorrect contact information for OCR. The correct address and contact information is

U.S. Department of Education
Office for Civil Rights
One Petticoat Lane
1010 Walnut Street, Suite 320
Kansas City, Missouri 64106
(816) 268-0550 (office)
(816) 268-0599 (FAX)
OCR.KansasCity@ed.gov

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

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. OCR will not close the monitoring of the Agreement until OCR determines that the District has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504 and Title II and their implementing regulations, which were at issue in this complaint.

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. 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 questions concerning this letter, please contact Linda White, attorney, at (816) 268-0581 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at linda.white@ed.gov.

Sincerely,

Keith Smith
Supervisory Attorney

Attachment