



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

DATE, 2022

Sent via email only, to: XXXXX.XXXXX.XXX

XXXXX XXXX
XXXXX XXXX
XXXX XXXXX

Re: Doniphan R-1 School District
OCR Case No. 07221023

Dear XXXXX XXXXX:

On October 13, 2021, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint alleging discrimination based on disability by your XXXX, the Doniphan R-1 School District (District), located in Doniphan, Missouri. 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 Doniphan R-1 School District 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.

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: Whether, during the 2021-2022 school year, the District denied the Student a free appropriate public education by: 1) failing to implement the Student’s Section 504 plan; and/or 2) making significant changes in the Student’s placement without first reevaluating him consistent with Section 504, in violation of Section 504 and/or Title II.

Factual Background

The Complainant informed OCR that her son (the Student), who is diagnosed with XXXXX XXXXX, XXXXX XXXXX, XXXXX, and XXXX, was receiving services under a Section 504 plan to start the 2021-22 school year. The Complainant told OCR that almost immediately after the start of the school year her son began having behavior incidents which resulted in discipline. The Complainant alleged that these incidents were escalated by school staff’s failure to properly implement the Student’s Section 504 plan, including allowing the Student XXXXX and a space to “XXXXXX XXXX,” as well as not “XXXXXX XXXXX” the Student in front of his peers.

The Complainant alleged that these failures culminated in an incident on September XX, 2021, which resulted in the Student being given a 10-day out-of-school suspension and being assigned to the District’s Alternative School for the remainder of the year. The District provided OCR details regarding the District’s response and handling of these incidents and advised OCR that it provided the relevant accommodations and/or services to the Student.

After the Complainant raised concerns about the implementation of the Student’s Section 504 plan and the potential placement of the Student in the Alternative School, an Individualized Education Program (IEP) meeting was held on October XX, 2021, where it was determined that the Student qualified for special education services under an IEP. During this meeting the

District also determined the most appropriate placement for the Student would be at the District's Alternative School until Christmas Break.

The Complainant told OCR that on approximately October XX, 2021, she expressed concern to the District that the Student's disabilities and related behaviors were not properly considered in their placement decision and requested a "manifestation review," and that placement in the Alternative School would cause further disruption to his education. The Complainant stated she was informed that the decision to assign to the Student to the Alternative School until Christmas Break was made during the same meeting where the IEP was created. A subsequent IEP meeting was held on December XX, 2021, and an updated IEP was implemented on January XX, 2022.

The Complainant informed OCR that the Student returned to the regular education school for the start of the second semester and the implementation of his IEP seemed to be going well. However, the Complainant later informed OCR that following an incident on February XX, 2022, in which the Student became upset and XXXX XXXXX, the District informed her that the Student would be suspended for 180-days (the remainder of the school year).

The District informed OCR that following this incident, it conducted a manifestation determination meeting on March XX, 2022, which found the Student's behavior was a manifestation of his disability. The District further advised that as a result of the manifestation determination, the IEP team discussed developing a behavior plan for the Student and the District arranged for an outside Behavior Analyst to conduct a functional behavior assessment (FBA). The Complainant and District informed OCR that shortly after the manifestation determination and before the FBA could be conducted, the Complainant decided to withdraw the Student from the District and as of the date of this letter the Student is not currently enrolled in the District.

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*.¹ The District submitted a signed Resolution Agreement (copy enclosed) on **April 11, 2022**, that, when fully implemented, will address the allegations in this complaint. The Resolution Agreement requires the District to convene an IEP meeting should the Student return to the District to discuss appropriate services and placement, and determine whether any compensatory services are appropriate. The Resolution Agreement also requires the District to complete Section 504 training. 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. 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.

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

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

Sincerely,

Keith Smith
Supervisory Attorney, Region VII

Attachment