



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

September 19, 2022

Sent via email only to XXXXX

XXX XXXXX
Waverly/South Shore School
319 Mary Place
Waverly, South Dakota 57201

Re: Waverly/South Shore School
OCR Case Number: 07221221

Dear XX XXXXX:

On March 30, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Waverly/South Shore School (District), located in Waverly, South Dakota, alleging discrimination on the basis of disability. Specifically, the Complainant alleged the District failed to implement her son's Section 504 Plan during the Spring 2022 semester. This letter is to confirm that the District has voluntarily entered into an agreement to resolve this complaint.

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.

Because the District receives federal financial assistance from the Department of Education and is 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>.

The Complainant told OCR that her son (Student) is in XXXXX grade at Waverly/South Shore XXXXX. The Student first got a 504 Plan in XXXXX 2020. At the Section 504 meeting on XXXXX, 2021, the Section 504 Team agreed a teacher would make sure that the Student's planner was filled out and the Student had what he needed for homework.

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

The accommodations in the 504 Plan included:

- Alternative location for tests.
- Allowed to wear noise cancelling earbuds as needed to reduce background noise.
- Chunked assignments as needed particularly for larger assignments, breaks, fidgets as needed.
- Daily chore if needed.
- End of day check-in with the teacher.
- Preferential seating (closest to teacher).

The Complainant told OCR that the District did not provide the items in the 504 Plan on a consistent basis, especially the use of the planner. In an email to the Superintendent on XXXXX XX, 2021, the Complainant complained about the District not following the 504 Plan. As a result of the District not following the Section 504 Plan, the Student ended up with missing assignments and his work was not done on time. In response, the Superintendent said he would tell the teacher to implement the 504 Plan, but the Complainant said that did not change anything.

There was another Section 504 meeting on XXXXX XX, 2022. During that meeting the Complainant proposed a new planner, which was agreed to by the Section 504 Team. The XXXXX 2022 Section 504 Plan stated, the school would “Use planner provided by parents with "bag check" by [teacher] in XX XXXX study hall.”. The Complainant told OCR that the District continued to fail to implement the Section 504 Plan, including the use of the planner, during the Spring 2022 semester. The District completed an amended Section 504 Plan in XXXXX 2022. That Plan also required the use of the planner with a bag check by the teacher.

Prior to the completion of OCR’s investigation, the District agreed to resolve this complaint pursuant to a resolution agreement in accordance with Section 302 of OCR’s *Case Processing Manual* (CPM), which is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>. OCR determined it would be appropriate to resolve this complaint in accordance with OCR’s rapid resolution process. On September 19, 2022, the District submitted a signed resolution agreement (Agreement) (copy attached) that, when fully implemented, will address the allegation in the complaint. The Agreement requires the District to implement the Student’s 504 Plan and train District staff on the requirements of Section 504.

OCR considers this complaint resolved effective the date of this letter. OCR will monitor the District’s implementation of the Agreement. When OCR concludes the District has fully complied with the terms of the Agreement, OCR shall close this case.

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. Complainants may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your assistance in resolving this complaint. 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.

Sincerely,

XXXXX XXXXX
Supervisory Attorney