



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
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MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

October 28, 2022

Sent via email to: XXXXX

XXXXX XXXXX, XXXXX
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XXXXX XXXXX, XXXXX XXXXX - XXXXX

Re: Ewing Marion Kauffman School
OCR Complaint No. 07221279

Dear XXXXX XXXXX:

On May 2, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against your client, the Ewing Marion Kauffman School (the Kauffman School), located in Kansas City, Missouri, alleging the Kauffman School discriminated against two of the Complainant's XXXXX (Student 1 and Student 2) based on disability. In response to the complaint, OCR investigated the following issues:

1. Whether the Kauffman School discriminated against Student 1 based on disability by failing to evaluate him for a Section 504 Plan or Individualized Educational Program (IEP), in violation of Section 504 and 34 C.F.R. Section 104.35 and/or Title II and its implementing regulations; and
2. Whether the Kauffman School discriminated against Student 2 based on disability by improperly and excessively disciplining him, in violation of Section 504 and 34 C.F.R. Section 104.4 and/or Title II and its implementing regulations.

This is to inform you the Kauffman School voluntarily entered a Resolution Agreement (Agreement) resolving the complaint in part, and that OCR found insufficient evidence to conclude the Kauffman School discriminated against Student 2 with respect to discipline. This decision is explained below.

OCR enforces 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, which prohibit discrimination based on disability in programs and activities that receive federal financial assistance. OCR also enforces 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, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance.

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

Because the Kauffman School receives federal financial assistance from the Department of Education and is a public charter school, the Kauffman School 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>.

Section 303 of OCR's *Case Processing Manual*¹ states that, at the conclusion of an investigation, OCR will determine, using a preponderance of the evidence standard, whether there is insufficient evidence to support a conclusion of noncompliance with a law or regulation enforced by OCR, or the evidence supports a conclusion of noncompliance. During OCR's investigation, OCR interviewed the Complainant and a XXXXX from the Kauffman School. OCR also reviewed documentation provided by the Kauffman School, including policies and procedures regarding discipline, disciplinary records, internal and external email correspondence, and both Student 1 and Student 2's educational files.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school to conduct an evaluation of any student who 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. Additionally, 34 C.F.R. § 104.35(d) requires a school to establish procedures for periodic reevaluation of students who have been provided special education and related aids and services.

34 C.F.R. § 104.35(b) requires a school to establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services. Pursuant to 34 C.F.R. § 104.35(c), when making placement decisions, a school must: (1) draw upon information from a variety of sources; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with § 104.34.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. In determining whether a recipient has subjected an individual to discrimination on the basis of disability, OCR considers whether the recipient treated similarly situated individuals differently on the basis of disability. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate, non-discriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the individual in a manner that is inconsistent with its established policies, practices, and procedures and whether there is other evidence of discrimination based on disability.

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

Preliminary Investigative Findings and Findings of Fact

Student 1

Student 1 first enrolled at the Kauffman School for the 2020–21 school year after attending the XXXXX XXXXX XXXXX during the 2019–20 school year. The Complainant indicated in Student 1’s enrollment paperwork, dated XXXXX XXXXX, XXXXX, that Student 1 had a 504 Plan at the XXXXX XXXXX XXXXX (the XXXXX 504 Plan). The XXXXX 504 Plan, which was provided to the Kauffman School, was valid for the 2019–20 school year and identified XXXXX / XXXXX and XXXXX / XXXXX as qualifying life events for Student 1. The XXXXX 504 Plan included five accommodations for Student 1: (1) extended time for tests and assignments; (2) a small group setting when Student 1 was distracted during classroom assessment time; (3) preferential seating; (4) a change of clothes available at the school; and (5) twice-a-day visits to the nurse’s office. The Kauffman School also received a copy of Student 1’s 504 Plan from the 2018–19 school year, which was substantively the same as the XXXXX 504 Plan.

The Complainant told OCR the Kauffman School agreed to follow the XXXXX 504 Plan during the 2020–21 school year.² However, OCR’s preliminary investigation did not reveal any documentation showing that the Kauffman School implemented the XXXXX 504 Plan or re-evaluated Student 1 for a new 504 Plan during the 2020–21 school year.

The Complainant told OCR that, at the beginning of the 2021–22 school year, she again notified the Kauffman School’s XXXXX XXXXX XXXXX,³ as well as other Kauffman School personnel, that Student 1 had a 504 Plan which was now expired. Despite this, the Complainant advised OCR that no one responded to her regarding the 504 Plan. The Kauffman School confirmed that the Complainant informed the Kauffman School that Student 1 had a medical condition and needed accommodations in August 2021. Although the Kauffman School told OCR it provided accommodations related to XXXXX XXXXX XXXXX XXXXX XXXXX at the beginning of the year, OCR’s preliminary investigation indicated that the Kauffman School did not evaluate Student 1 at the beginning of the 2021–22 school year and did not provide any other accommodations.

On January 3, 2022, the XXXXX sent an email to the XXXXX XXXXX XXXXX, asking if Student 1 had a 504 Plan. In an interview with OCR, the XXXXX indicated that the Complainant said she was worried about Student 1 not having a 504 Plan. The same day, the XXXXX XXXXX XXXXX sent an email to the Complainant and asked if she would like to set up a meeting to discuss a 504 Plan for Student 1. The Complainant responded to the former 504 Coordinator on January 5, 2022, stating that she would like to set up a meeting.

The XXXXX told OCR that, although she was not involved, it was her understanding that the XXXXX XXXXX XXXXX attempted to call the Complainant but did not receive a response. The Complainant told OCR that Student 1 was never evaluated for a Section 504 Plan by the Kauffman School during the remainder of the 2021–22 school year and OCR’s preliminary

² Due to the COVID-19 pandemic, the Kauffman School provided virtual instruction during the entire 2020–21 school year.

³ The XXXXX XXXXX XXXXX left the Kauffman School after the 2021–22 school year and is no longer employed by the Kauffman School.

investigation did not uncover any indication that such an evaluation occurred. The Complainant informed OCR she did not re-enroll Student 1 at the Kauffman School for the 2022–23 school year and XXXXX now attends school in a different district.

Student 2

Student 2 was in the XXXXX XXXXX at the Kauffman School during the 2021–22 school year. The Complainant informed OCR that Student 2 did not have a 504 Plan or IEP during the 2021–22 school year, nor had she requested the Kauffman School provide a 504 Plan or IEP for Student 2. The Complainant, however, indicated on Student 2’s Kauffman School enrollment forms from 2019 that she had XXXXX XXXXX regarding Student 2. The Complainant also told OCR she had requested documentation during the 2021–22 school year from Student 2’s teachers that would help his doctor provide a XXXXX XXXXX diagnosis. In an internal Kauffman School email from October 2021, a teacher stated that, during a parent-teacher conference with the Complainant, the Complainant discussed providing the XXXXX XXXXX XXXXX to Student 2’s teachers.

The Complainant told OCR the Kauffman School discriminated against Student 2 based on disability when it suspended him on two different occasions: once for allegedly making a rude gesture at a teacher and once for an incident related to the destruction of XXXXX XXXXX XXXXX. Documentation provided to OCR by the Kauffman School confirmed that Student 2 received two suspensions during the 2021–22 school year. On December 14, 2021, Student 2 received a one-day of out-of-school suspension for “[e]gregious disrespect towards teacher/adult.” On April 7, 2022, Student 2 received a two-day out-of-school suspension for “[d]efacement of property.”⁴

The Kauffman School also provided a summary of discipline imposed for rude gestures and defacement of property during the 2021–22 school year. For rude gestures, six other students received a suspension. Three of those students, including one student with a disability, received two days of out-of-school suspension and three students, none with a disability, received one day of out-of-school suspension. With respect to defacement of property, nine students received discipline. None of those students had a disability. The most common punishment for defacement of property was out-of-school suspension for two days (applied to six students). However, one student received more punishment (four days of out-of-school suspension) for breaking another student’s phone and two students received only one day of in-school suspension for writing on desks.

The Dean’s Handbook for the Kauffman School states that the appropriate consequence for inappropriate gestures to staff members is up to 10 days out-of-school suspension, a possible referral to the Principal or Chief Executive Officer, and/or a referral to the appropriate law enforcement agency. The Dean’s Handbook also states the appropriate consequence for vandalism or damage to school property is restitution and/or up to 10 days out-of-school suspension as well as a possible referral to the Principal or Chief Executive Officer and referral

⁴ The Kauffman School provided OCR with data indicating that Student 2 also received numerous consequences that did not rise to the level of an in-school or out-of-school suspension during the 2021–22 school year.

The evidence obtained during OCR’s investigation, however, raised concerns that the Kauffman School may have failed to evaluate Student 2 pursuant to 34 C.F.R. § 104.31–104.36 after he received multiple instances of discipline. The evidence showed that the Complainant contacted the Kauffman School in early 2021 to request information to assist Student 2’s doctors with a diagnosis of Student 2’s disability and that the Complainant had previously indicated to the Kauffman School that she had concerns regarding Student 2’s behavior. Accordingly, the Agreement requires the Kauffman School to notify the Complainant that—if Student 2 re-enrolls—the Kauffman School will evaluate Student 2 and, if necessary, develop a Section 504 plan or IEP.

OCR considers the allegations of this complaint resolved and will monitor the Kauffman School’s implementation of the Agreement. When OCR determines the Kauffman School has fully implemented the terms of the Agreement, OCR will close this complaint. If the Kauffman School fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the Kauffman School has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504, 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 OCR policy. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

The Complainant has a right to appeal OCR’s determination of insufficient evidence with respect to Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why he or she believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the Kauffman School. The Kauffman School has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Kauffman School.

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

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 @ed.gov.

Sincerely,

Jennifer Brooks
Supervisory Attorney, Region VII