



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
ARKANSAS  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

November 17, 2022

**SENT VIA EMAIL ONLY**

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**Counsel for the Recipient**

Re: Farmington Public Schools  
OCR Case Number: 07221308

Dear XXXXXX XXXXXX:

On October 7, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), opened the above-referenced complaint filed against the Farmington Public Schools, located in Farmington, Arkansas, (the District) to investigate whether the District violated Section 504/Title II and 34 C.F.R. § 104.4 at by treating the Student differently than his nondisabled peers, because of his disability. This letter is to confirm the District has voluntarily entered into a Resolution Agreement (Agreement) with OCR to resolve the 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 on the basis of disability in programs and activities that receive federal financial assistance. OCR has Section 504 enforcement jurisdiction over recipients of federal financial assistance from the Department of Education. 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. OCR has Title II enforcement jurisdiction over public school districts.

Because Farmington Public Schools receives federal financial assistance from the Department of Education and is a public education system, the District is subject to Section 504, Title II and to OCR’s jurisdiction. Additional information about the laws OCR enforces is available on its 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 the investigation to date, OCR interviewed the Complainant, and reviewed documentation provided by the Complainant and the District, including a video. OCR also spoke with legal counsel for the District. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*,<sup>1</sup> which states that allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides 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. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i) and (ii), states that a recipient may not deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit or service; or afford a qualified individual with a disability with an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. The regulation implementing Title II, at 28 C.F.R. § 35.130 contains similar requirements.

### **Preliminary Investigative Findings**

The following is a summary of the evidence obtained by OCR during the investigation to date. To protect individuals' privacy, the names of the Complainant, District staff and administrators, witnesses, and other parties are not used in this letter.

On May 13, 2022, the District held a kindergarten program in which all the kindergarten classes at Williams Elementary performed for their grandparents. The Student was originally assigned to play a role in the program which he was prepared to perform. The day of the program the Complainant dressed the Student in the attire suggested for his part and sent him to school, but at the performance he was required to play a different role. The District explained to OCR that the Student had not attended the dress rehearsal the day before the program, so due to the Student's absence from the dress rehearsal, the organizers changed his role in the performance. The school district officials knew the student missed dress rehearsal because he was absent from school to attend therapy, which he does every Tuesday and Thursday.

During the Student's performance, the Student was located on the floor next to the Program Director, who sang a song while the Student was next to the Program Director holding a prop.

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<sup>1</sup> OCR utilized its Rapid Resolution Process, an expedited case processing approach that can be used to resolve cases. The outcomes in all Rapid Resolution Process cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory authority. Under subsection 203 of the *Case Processing Manual*, where a recipient has indicated that it is willing to take action in the future to resolve the complaint allegations, upon the recipient's request and OCR's agreement, the complaint may be resolved pursuant to *Case Processing Manual* Section 302(b). The *Case Processing Manual* is available on OCR's website at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

The rest of the Student's class performed on stage, while the Student remained on the floor. Had the Student been allowed to keep his original role, he would have performed on stage with all of the other students.

The District provided OCR with the name of one other student, Student 2, who was also absent for the dress rehearsal. Student 2, a student without a disability, did not have her part reassigned and was allowed to perform on the stage during the performance.

Before OCR finished its investigation, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

## **Resolution**

On November 17, 2022, the District signed the attached Resolution Agreement which, when fully implemented, will address the concerns identified by OCR during the investigation. The provisions of the Agreement are aligned with the allegation, and require the District to conduct training for administrators, counselors, and teachers regarding the District's obligations under Section 504 and Title II and to evaluate the student to determine whether compensatory services are needed and to provide such services to the student if needed. Please consult the Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled its terms.

OCR considers this complaint resolved, and will monitor the District's implementation of the Agreement. When OCR determines the District has fully implemented the terms of the Agreement, OCR will close this complaint. If the District 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 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 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.

Please be advised that 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, 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 questions concerning this letter, please contact, XXXXX XXXXX, Equal Opportunity Specialist, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@XX.XXX.

Sincerely,

J. Earlene Gordon  
Supervisory Attorney

Attachment (Resolution Agreement)