



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
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NEBRASKA
OKLAHOMA
SOUTH DAKOTA

January 17, 2023

Sent via email to: XXXXX

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XXXXX, XXXXX XXXXX

Re: KIPP Delta Public Schools
OCR Complaint No. 07221309

Dear XXXXX XXXXX:

This letter is to inform you of the disposition of the above-referenced complaint filed on May 25, 2022, with the U.S. Department of Education, Office for Civil Rights (OCR), against the KIPP Delta Public Schools (KIPP Delta), located in Blytheville, Arkansas, alleging disability discrimination. Specifically, the complaint alleged that KIPP Delta discriminated against a student (the Student) based on disability by improperly restraining her in XXXXX XXXXX. OCR investigated whether KIPP Delta discriminated against the Student by denying her a free appropriate public education (FAPE) when it improperly restrained her in XXXXX XXXXX, in violation of Section 504 and 34 C.F.R. Section 104.33 and/or Title II and its implementing regulations.

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.

Because KIPP Delta receives federal financial assistance from the Department of Education and is a public entity, KIPP Delta 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>.

During OCR's investigation, OCR interviewed the Complainant and KIPP Delta's XXXXX XXXXX XXXXX (the XXXXX XXXXX). OCR also reviewed documentation provided by the Complainant and KIPP Delta, including KIPP Delta's policies and procedures regarding restraint and disability discrimination complaints, internal and external communications, and the

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

Student’s educational file. To protect individuals’ privacy, the names of the Complainant, the Student, school employees, witnesses, and other parties are not used in this letter. Prior to the completion of the OCR’s investigation, KIPP Delta voluntarily entered a Resolution Agreement (Agreement) resolving the complaint. OCR’s compliance concerns are explained below.

Legal Standards

OCR defines “physical restraint” as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

OCR’s analysis in this investigation is primarily framed in terms of Section 504, because as a general rule, Title II provides no less protection than Section 504, so violations of Section 504 will also constitute violations of Title II. 28 C.F.R. § 35.103.

The Section 504 regulation at 34 C.F.R. § 104.33 requires recipients to provide a FAPE to all students with disabilities in the recipient’s jurisdiction, regardless of the nature or severity of the disability. 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 are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34–36. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a recipient shall 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. The regulation at 34 C.F.R. § 104.35(b) provides that a recipient shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.¹

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;² (2) establish

¹ The procedures must ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b)(1)-(3).

² The regulation at 34 C.F.R. § 104.35(c)(1) provides a nonexclusive list of possible sources of information: aptitude

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, including persons 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, which requires placement in the regular educational environment to the maximum extent appropriate.

When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause a teacher, or other school personnel, to suspect that the student has a disability, as defined under Section 504, a recipient must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. For a student who has already been identified as a student with a disability, a recipient's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide a FAPE.

Preliminary Investigative Findings

KIPP Delta is a public charter school located in Arkansas that serves two communities, Helena and Blytheville, through five schools. KIPP Delta enrolls approximately 1200 students and has approximately 200 staff members. KIPP Delta informed OCR that it currently serves approximately 132 students with disabilities.

The Complainant informed OCR that the Student has XXXXX XXXXX XXXXX XXXXX XXXXX. She indicated that she told KIPP Delta about the Student's disability when she first enrolled the Student in XXXXX for the XXXXX – XXXXX school year.

The Student was in XXXXX at KIPP Delta during the XXXXX – XXXXX school year. During that school year, the Student did not receive special education services and was not on a Section 504 Plan or IEP. The Complainant told OCR that her XXXXX had been disciplined and suspended by KIPP Delta during the 2021–2022 school year. KIPP Delta provided documents to OCR corroborating the Complainant's statement and indicating the Student received four disciplinary referrals during the school year.

April 27 Incident

The Complainant told OCR that, on XXXXX XXXXX, XXXXX, the KIPP Delta XXXXX XXXXX dragged the Student down a hallway. The Complainant reported the incident to a KIPP Delta XXXXX the same day it occurred (XXXXX XXXXX), however KIPP Delta did not begin a full investigation until XXXXX XXXXX when the Complainant spoke with the XXXXX XXXXX.³ The XXXXX XXXXX was placed on administrative leave the same day the XXXXX XXXXX learned of

and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

³ The XXXXX XXXXX told OCR a full investigation was not started earlier because the Complainant had informed the XXXXX on XXXXX XXXXX only that the XXXXX XXXXX pulled on the Student's arm.

the incident.

The XXXXX XXXXX informed OCR that KIPP Delta does not have formal documented procedures for conducting investigations, but completed this investigation based on procedures used in prior investigations. The XXXXX XXXXX also informed OCR that KIPP Delta's investigation was not treated as a disability discrimination investigation because the Student was not receiving special education services and was not on a Section 504 Plan or IEP. The XXXXX XXXXX also told OCR that, at the time of the investigation, the Complainant did not indicate the incident was due to disability discrimination.

As part of its internal investigation, KIPP Delta obtained statements from three staff members and reviewed in-school camera footage of the hallway where the Student is alleged to have been dragged. KIPP Delta's XXXXX XXXXX informed OCR that that the video footage confirmed the Complainant's account. OCR also reviewed the video evidence corroborating the Complainant's statement.

OCR reviewed the staff statements from KIPP Delta's internal investigation. Those statements indicated the incident occurred after the Student was defiant and disruptive during a building tour. The XXXXX XXXXX acknowledged to OCR that, based on information acquired during KIPP Delta's investigation of the incident, the Student did not pose an imminent danger of serious harm to herself or others. The XXXXX XXXXX also told OCR the XXXXX XXXXX response was not appropriate. The XXXXX XXXXX informed OCR this was the only incident where KIPP Delta personnel restrained the Student.

After KIPP Delta's investigation, the XXXXX XXXXX employment with KIPP Delta was terminated on XXXXX XXXXX. The XXXXX XXXXX told OCR the XXXXX XXXXX employment was terminated because the XXXXX XXXXX violated KIPP Delta's Professional Conduct Policy. The XXXXX XXXXX informed OCR that the Student was offered counseling services after the XXXXX XXXXX incident through KIPP Delta's XXXXX XXXXX XXXXX XXXXX XXXXX. The XXXXX XXXXX also told OCR that KIPP Delta did not determine whether the Student needed any additional supports, such as compensatory services, after the XXXXX XXXXX incident.

KIPP Delta informed OCR that, several weeks later, the Complainant requested that KIPP Delta evaluate the Student for special education and related services, and for the provision of FAPE. Documents provided by the Complainant show that the Student was evaluated on or around XXXXX XXXXX, XXXXX, but that KIPP Delta determined that it did not have sufficient information to determine whether or not the Student should be accepted into the special education program. KIPP Delta, however, told OCR that the Student continued to have behavioral challenges during the XXXXX XXXXX XXXXX, was evaluated, and has been on a Section 504 Plan since XXXXX XXXXX. KIPP Delta provided the 504 Plan to OCR, which provides two accommodations for the Student: (1) XXXXX XXXXX XXXXX XXXXX XXXXX; and (2) XXXXX XXXXX - XXXXX XXXXX.

Policies and Procedures

KIPP Delta provided documentation to OCR indicating that it provides information regarding

nondiscrimination in four separate locations: the KIPP Delta website, the KIPP Delta Team and Family Handbook, the KIPP Delta Policy Manual, and the KIPP Delta Student and Family Handbook. The KIPP Delta website, Team and Family Handbook, and Policy Manual state that KIPP Delta does not discriminate based on race, color, national origin, sex, disability, and age. The nondiscrimination statements on the KIPP Delta website and in the Team and Family Handbook refer generally to requirements imposed by the U.S. Department of Agriculture (USDA) and only include contact information for filing a complaint with the USDA. The Student and Family Handbook, however, does not include a general nondiscrimination statement but contains a section regarding sexual harassment and states that students are admitted to KIPP Delta without regard to, among other things, race, ethnicity, national origin, gender, or disability. None of the materials identified by KIPP Delta identify KIPP Delta's Section 504/Title II Coordinator.

OCR reviewed the internal grievance policies and procedures identified by KIPP Delta. KIPP Delta's Policy Manual includes policies and procedures related to harassment complaints but does not include a specific grievance policy for disability discrimination complaints. Both the Policy Manual and the Student and Family Handbook contain general grievance policies for matters unrelated to suspension or expulsion. Those policies indicate that a parent or guardian with a concern should initially contact the KIPP Delta personnel charged with supervising the educational function that is the subject of the grievance. The policies then allow a parent to escalate their concerns to the School Director and, ultimately, the KIPP Delta Executive Director. Neither the Policy Manual nor the Student and Family Handbook describe a specific investigative procedure for internal grievances or a standard for the evaluation of grievances. These grievance procedures also do not specifically address policies or procedures for handling disability discrimination complaints.⁴

OCR also reviewed KIPP Delta's policies and procedures related to restraint of students. KIPP Delta's Policy Manual states that KIPP Delta administrators and licensed personnel selected by the KIPP Delta Executive Director will receive training on the appropriate use of restraint and seclusion in accordance with state guidelines. The Policy Manual and the KIPP Delta Student and Family Handbook do not include any policies that define physical restraint or provide guidance on the appropriate use of such restraint.

Resolution

In accordance with Section 302 of the OCR's *Case Processing Manual*,⁵ a complaint 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.

⁴ Additionally, only the Policy Manual includes information regarding filing a complaint with OCR. The Policy Manual, however, did not provide the contact information for the relevant OCR regional office and contained a non-functioning website link for filing a complaint with OCR.

⁵ The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

In this case, the evidence obtained during OCR's investigation raised concerns as to KIPP Delta's policies and procedures. Concerns include whether KIPP Delta publicizes the identity or contact information for its Section 504/Title II Coordinator, has policies and procedures for addressing disability discrimination, and has policies addressing the restraint of students. OCR's investigation also raised concerns that the XXXXX XXXXX incident and KIPP Delta's subsequent response may have denied the Student a FAPE.

KIPP Delta entered into the attached Agreement to address the concerns raised by OCR's investigation. The Agreement, executed by KIPP Delta on January 13, 2023, requires KIPP Delta to (1) determine if any additional support services are required for the Student; (2) identify a Section 504/Title II Coordinator and include that individual's information in KIPP Delta's notice of nondiscrimination; (3) revise its notice of non-discrimination; (4) draft and publish grievance procedures that provide for the prompt and equitable resolution of disability discrimination complaints; (5) review and revise KIPP Delta's restraint and seclusion policies; and (6) provide training to KIPP Delta personnel regarding both disability discrimination grievance policies and the restraint and seclusion of students.

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

Please be advised that KIPP Delta 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 Benjamin Carr, Attorney, at (816) 268-0520 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at Benjamin.Carr@ed.gov.

Sincerely,

Jennifer Brooks
Supervisory Attorney, Region VII