



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

ONE PETTICOAT LANE
1010 WALNUT STREET, SUITE 320
KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

February 21, 2023

Sent via email only to: eddie.ray@hackettschools.org.

Eddie Ray, Superintendent
Hackett School District
102 North Oak Street
Hackett, Arkansas 72937

Re: Hackett School District
OCR Complaint No. 07221389

Dear Mr. Ray:

On August 29, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Hackett School District (District), located in Hackett, Arkansas, alleging the District discriminated against the Complainant's daughter (Student) based on disability. This letter is to inform you that the District has voluntarily entered into an agreement to resolve this complaint.

OCR investigated whether the District violated Section 504 and/or Title II by:

1. treating the Complainant's daughter differently than her peers without disabilities by not allowing her to participate in field trips in violation of Section 504 at 34 C.F.R. §104.4 and Title II at 28 C.F.R. § 35.130; and
2. not providing the Complainant's daughter with a free appropriate public education as required by Section 504 at 34 C.F.R. §104.33 and Title II at 28 C.F.R. § 35.130.

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.

Because the District receives federal financial assistance from the U.S. Department of Education and is a public education entity, it 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

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

OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and the Hackett Elementary School Principal. To protect individuals' privacy, your name and the names of your daughter, school employees, witnesses, and other parties are not used in this letter.

The Student enrolled in the District as a kindergartener during the 2021–2022 school year. After identifying the Student as a student with a Specific Learning Disability, the District created an Individualized Education Program (IEP) for the Student on November 17, 2021. This IEP placed the Student in the regular classroom for half the school day and provided therapy or direct instruction for the rest of the school day.

On May 11, 2022, the Student's teacher (Teacher) emailed the Complainant to inform her that the Student's class would be taking a field trip to a local city park. The field trip required the students to walk from the school to the park—a trip that included crossing a highway—and the teacher expressed concern for the Student's safety. The Teacher told the Complainant that the Student could only attend the field trip if the Complainant came too, otherwise the Student would have to stay home. The Complainant emailed the Teacher back the same day to say that the Student would stay home because the Complainant had to work. On May 22, 2022, the teacher emailed the Complainant to remind the Complainant of the field trip and the Complainant confirmed that the Student would stay home. The following day, the Student stayed home while her class went on the field trip.

During the Summer of 2022, the Student was diagnosed with autism. Based on this new diagnosis, on August 12, 2022, the District reconvened the Student's IEP team which determined the Student required additional support and changed her placement for first grade to be primarily in a self-contained special education classroom.

On August 26, 2022, the regular first grade and kindergarten classes attended the county fair. Most of the students in the self-contained class, including the Student, did not attend this field trip. The District informed OCR that the teacher who coordinated this field trip did not invite the self-contained class. According to the District, only one student from the self-contained class attended this field trip because that student's sibling was in the regular classroom and their parent took both children on the field trip.

Based on the evidence OCR has reviewed to date, OCR has concerns whether or not the District treated the Student differently based on her disability or provided her the same opportunity to participate in educational services, such as field trips, provided by the District.

Resolution

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*.¹ OCR determined it would be appropriate to resolve this complaint in accordance with OCR's rapid resolution process. On February 17, 2023, 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 reconvene the Student's IEP Team to determine whether different or additional services are needed and to hold a training for administrators and teachers on the District's responsibilities to provide a free and appropriate education. Please consult the Agreement for further details.

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 will 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

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

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.

If you have questions concerning this letter, please contact Geoff Townsend, attorney, at (816) 268-0424 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at geoffrey.townsend@ed.gov.

Sincerely,

Jennifer Brooks
Supervisory Attorney