



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KANSAS CITY, MO 64106

REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

March 8, 2023

Sent via email to: XXXXX

XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX, XXXXX XXXXX

Re: Independence #30 School District
OCR Complaint No. 07221400

Dear XXXXX XXXXX:

On September 9, 2022, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against your client, the Independence #30 School District (the District), located in Independence, Missouri, alleging the District discriminated against the Complainant's XXXXX (the Student) based on disability. In response to the complaint, OCR investigated the following issues:

1. Whether the District discriminated against the Student based on disability when it failed to properly evaluate her for an Individualized Education Program (IEP) or Section 504 Plan, 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 District discriminated against the Student by denying her a Free Appropriate Public Education (FAPE) when she was suspended and placed in virtual learning during the first semester of the 2022–23 school year, in violation of Section 504 and 34 C.F.R. Section 104.33 and/or Title II and its implementing regulations.

This letter is to acknowledge that on March 8, 2023, the District voluntarily entered into a Resolution Agreement (Agreement) to resolve this complaint.

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 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>.

During OCR’s investigation, OCR interviewed the Complainant, the District’s XXXXX XXXXX, a XXXXX XXXXX XXXXX, a XXXXX XXXXX XXXXX, a XXXXX XXXXX XXXXX XXXXX, the District’s XXXXX XXXXX, and a XXXXX XXXXX XXXXX. OCR also reviewed documentation provided by the District, including District policies and procedures, internal and external email correspondence, and the Student’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.

Preliminary Investigative Findings

The Student is currently a XXXXX XXXXX student at the District’s XXXXX XXXXX XXXXX. The previous year, the Student attended XXXXX XXXXX XXXXX XXXXX for XXXXX XXXXX. The Complainant told OCR that the Student has been diagnosed with XXXXX XXXXX XXXXX

XXXXX (XXXXX) and XXXXX XXXXX XXXXX (XXXXX) since the XXXXX Grade and has been in the District XXXXX XXXXX XXXXX XXXXX. The Complainant informed OCR that, throughout middle school, the Student took medication for XXXXX in the school nurse’s office but did not have a 504 Plan.

The XXXXX XXXXX XXXXX told OCR that the Student was identified as a student with gifted abilities and enrolled in XXXXX, a class for gifted and talented students. The XXXXX XXXXX XXXXX also informed OCR that the Student was enrolled in XXXXX during XXXXX XXXXX, an advanced course.

On XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX – XXXXX school year, the Student was involved in a fight with another student at the XXXXX XXXXX. As a result, the District initially suspended the Student for nine days and referred her to the District XXXXX XXXXX to be considered for long-term suspension or expulsion. After a hearing on June 20, 2022, the District XXXXX XXXXX recommended placing the Student in virtual learning for the first semester of the XXXXX – XXXXX school year as a consequence for the fight.

Shortly before the start of the XXXXX – XXXXX school year, on XXXXX XXXXX, XXXXX, the Complainant sent an email to the XXXXX XXXXX XXXXX stating that the Student may have a learning disability, identified the Student’s disabilities, and requested information regarding an evaluation for special services.

On XXXXX XXXXX, XXXXX, a team met to discuss the Complainant’s request for an initial evaluation for an IEP. The XXXXX XXXXX told OCR that the team considered the Student’s XXXXX sch XXXXX ool grades, the concerns shared by the Complainant, and the discipline of the Student. The XXXXX XXXXX stated that the team did not interview or survey the Student’s XXXXX XXXXX teachers, did not conduct any testing, and did not request any medical information from the Complainant. The District issued a Prior Written Notice on XXXXX XXXXX, XXXXX, refusing the Complainant’s request for an initial evaluation of the Student.

After the District refused an initial IEP evaluation, the District evaluated the Student for a Section 504 Plan. On XXXXX XXXXX, XXXXX, the 504 Team concluded that the Student may have a disability and a Section 504 evaluation was warranted.

The 504 Team met on XXXXX XXXXX, XXXXX, and considered feedback from the Student’s XXXXX teachers and the Student’s medical diagnosis. The 504 Team concluded that the Student was eligible under Section 504 as a student with disability but determined that the Student did not require any accommodations. The XXXXX informed OCR that accommodations were not provided because the accommodations the Student would need, such as extra time on assignments, were already offered as part of virtual learning. As a result, the Student did not have any accommodations throughout the first semester of the XXXXX – XXXXX school year.

During the Student’s semester in virtual learning, she attended three virtual classes offered directly by the District: XXXXX, XXXXX, and XXXXX. The Student had planned to take a fourth class with the District, XXXXX XXXXX, but the District could not find a teacher. The Student also took elective classes through FuelEd, an online learning program. The District’s XXXXX XXXXX

informed OCR that FuelEd classes are self-paced, online classes that are not teacher-led. Although the XXXXX XXXXX indicated that a student should ideally complete eight total classes in virtual learning, the Student only completed six classes during the XXXXX XXXXX semester, including three classes with the District and three FuelEd courses.¹ In those six classes, the Student received grades of XXXXX XXXXX, XXXXX D XXXXX and XXXXX XXXXX.

The Student returned to in-person learning at XXXXX XXXXX XXXXX in XXXXX XXXXX. The XXXXX told OCR that he had started the process of re-evaluating the Student for a Section 504 Plan, but a 504 meeting had not been scheduled yet.

Analysis and Resolution

The evidence obtained during OCR’s investigation raised concerns as to whether the District failed to properly conduct a pre-placement evaluation in accordance with 34 C.F.R. § 104.35 when it initially refused to evaluate the Student for an IEP. The evidence showed that the first District team may not have considered a sufficient amount of information before refusing the Complainant’s request to evaluate. The evidence also raised concerns as to whether the District provided the Student a FAPE during the XXXXX XXXXX of the XXXXX – XXXXX school year while she was enrolled in virtual learning. Although the District conducted an evaluation for a 504 Plan and found that the Student was a qualified individual with a disability, it did not provide any accommodations to the Student and the Student performed poorly during her time in virtual learning after previously being identified as a XXXXX XXXXX.

The District entered into the attached Agreement to address the concerns raised by OCR’s investigation. The Agreement, executed by the District on March 8, 2023, requires the District to convene a multi-disciplinary team to evaluate the Student and, if necessary, develop a plan to meet the Student’s educational needs in accord with the requirements of Section 504 and 34 C.F.R. § 104.33–36. The multi-disciplinary team will also consider whether the Student requires any compensatory or remedial services. The Agreement also requires the District to conduct training for staff regarding (1) the District’s policies and procedures for identifying and evaluating students with disabilities; (2) the District’s responsibilities under Section 504 and Title II with respect to the identification, eligibility determination, and evaluation of students with disabilities; and (3) the evaluation and re-evaluation of students with disabilities who are subject to discipline and/or placed in a virtual learning environment.

OCR considers the allegations of 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, Title II, and their implementing regulations, which were at issue in this complaint.

¹ The Counselor indicated that the Student was not on schedule to graduate with only six classes completed after Fall 2022 semester, but that he would speak to the Student about summer school.

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 any questions, please contact XXXXX XXXXX, XXXXX, at (XXXXX) XXXXX - XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.

Sincerely,

XXXXX XXXXX
XXXXX XXXXX, XXXXX XXXXX