



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

XXXXXX, 2023

**SENT VIA EMAIL ONLY**

XXXXXX XXXXX  
XXXXXX XXXXX XXXXX, XXXXX, XXXXX  
XXXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX  
XXXXXX, XXXXX XXXXX  
XXXXXX

Re: Spearville USD 381  
OCR Complaint No. 07231131

Dear XXXXX XXXXX:

On XXXXX XXXXX, 2023, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Spearville USD 381 (District) located in Spearville, Kansas. The Complainant alleged the District discriminated against his XXXXX (Student) based on his disability. In response to the complaint, OCR investigated whether the District failed to implement the provisions in the Student's Section 504 Plan, and if so, whether this denied the Student a free appropriate public education (FAPE), in violation of Section 504 and its implementing regulation at 34 C.F.R. 104.33, and/or Title II and its implementing regulation at 28 C.F.R. § 35.130. This letter is to acknowledge that the District voluntarily entered into a Resolution Agreement (Agreement) resolving the complaint. 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.

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 and reviewed documentation, including documents related to the Student's Section 504 Plan. To protect individuals' privacy, the Complainant's name and the names of District personnel, witnesses, and other parties are not used in this letter.

## **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual shall, based on disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standards when analyzing the same claims under Title II.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that a recipient of federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's 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 non-disabled students are met, and that are developed in accordance with Section 504's procedural requirements.

## **Preliminary Investigative Findings**

The Student attended XXXXX XXXXX XXXXX and was in XXXXX grade during the 2022-23 school year. The Student's original Section 504 Plan was drafted on XXXXX XXXXX, 2022, and provided the following services for the Student:

1. Extra time on tests, assignments, projects, quizzes. The Student will be given three days of time to make up work for each day absent.
2. Reduction of class work and tests by 50%.
3. Access to recorded instruction of content covered in the classroom.
4. Regular and frequent breaks. The Student will be allowed to get up during class to walk around the room or down the hallway.
5. Keep supplies in the Student's classrooms.

At the Section 504 meeting, the XXXXX told the Complainant that the XXXXX would give the Plan to the teachers, however he failed to do so. When the Complainant advised the XXXXX that the Plan was not being implemented, a meeting was scheduled for XXXXX, 2022. At that time, the Plan was amended to add the following:

6. Copies of teacher's notes, and
7. All assignments, notes, handouts, etc. will be provided to the Student the same day as they are provided to his peers.

The Student's revised Plan was provided to teachers with the additional services included.

The Complainant, however, emailed the XXXXX on XXXXX, 2022, with ongoing concerns about whether the District was implementing the Plan. The teachers met with the XXXXX on XXXXX, 2022, to address the implementation of the Student's Plan.

The Complainant informed OCR that even after this meeting, only some of the Student's teachers were providing the services required by the Plan. The Complainant withdrew the Student from the District and enrolled him in online classes at another District for the second semester of the 2022-23 school year.

### **Analysis and Resolution**

The evidence obtained during OCR's investigation to date raised concerns as to whether the District failed to implement the Student's Section 504 Plan.

Prior to OCR completing the investigation, the District voluntarily entered into the attached Agreement to address the concerns raised by OCR's investigation. The Agreement, executed by the District on XXXXX, 2023, requires the District to: (1) review and revise as necessary its policies and procedures for the identification, evaluation, and placement of students with disabilities; (2) provide training to District administrators, teachers, and other staff with responsibility for implementing Section 504 Plans on the revised policies and procedures; and (3) inform the Complainant that if the Student reenrolls in the District at any point in the future, the District will, upon receiving consent from the Complainant, evaluate the Student to identify any disabilities, and, if necessary, develop a plan, implement any existing plan, or modify an existing plan, to meet the Student's educational needs.

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 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.

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

If you have questions, please contact XXXXX XXXXX, XXXXX, at (XXX) XXXXX (voice) or (877) 521-2172 (telecommunication device for the deaf), or by e-mail at [XXXXX](#).

Sincerely,

XXXXXX XXXXX  
XXXXXX XXXXX