



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
ARKANSAS  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

July 18, 2023

**SENT VIA EMAIL ONLY**

XXXXXX  
XXXXXX  
XXXXXX  
XXXXXX  
XXXXXX

Re: Agra Public Schools  
OCR Complaint No. 07231150

Dear XXXXXX XXXXXX:

On XXXXXX XXXXXX, XXXXXX, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the Agra Public Schools (the District), located in Agra, Oklahoma, alleging that the District discriminated against the XXXXXX XXXXXX (the Student) based on disability. In response to the complaint, OCR investigated:

1. Whether the District failed to properly evaluate the Student for an IEP or Section 504 Plan, in violation of Section 504 and 34 C.F.R. § 104.35 and/or Title II and its implementing regulations; and
2. Whether the District failed to provide a Free Appropriate Public Education (FAPE) to the Student when XXXXXX was XXXXXX XXXXXX XXXXXX XXXXXX during the XXXXXX school year, in violation of Section 504 and 34 C.F.R. § 104.33 and/or Title II and its implementing regulations.

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.

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 education system, the District is subject to Section 504, Title II, and OCR's jurisdiction. Additional information about the laws OCR enforces is available on its website at <http://www.ed.gov/ocr>.

During OCR's investigation, OCR interviewed the XXXXX, the XXXXX XXXXX, and the XXXXX XXXXX. OCR also reviewed documentation, including District policies, District documentation related to the Student, emails between the District and the Complainant, and the Student's XXXXX XXXXX. To protect individuals' privacy, the names of the Complainant, District personnel, witnesses, and other parties are not used in this letter.

### **Legal Standard**

The Title II implementing regulation, at 28 C.F.R. § 35.130(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

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 (FAPE) 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. OCR interprets the Title II regulations, at 28 C.F.R. § § 35.103(a) and 35.130(b)(1)(ii)-(iii), to require public school districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district 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. 34 C.F.R. § 104.35(d), requires a school district to establish procedures for periodic reevaluation of students who have been provided special education and related aids and services. A reevaluation procedure consistent with the Individuals with Disabilities Education Acts is one means of meeting this requirement.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires a recipient that operates a public elementary or secondary education program or activity to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that include: notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by a child's parents or guardian and representation by counsel, and a review procedure.

The Section 504 regulation, at 34 C.F.R. § 104.6(a), provides that if OCR finds that a district has discriminated against persons on the basis of disability, the district shall take such remedial action as OCR deems necessary to overcome the effects of the discrimination. Compensatory

services are required to remedy any educational or other deficits that result from a student with a disability not receiving the evaluations or services to which they were entitled.

### **Preliminary Investigative Findings**

The Student attended the District during XXXXX of the XXXXX and XXXXX school years. The Student experienced XXXXX XXXXX XXXXX XXXXX XXXXX beginning in the XXXXX school year. The Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX during the XXXXX school year, in approximately XXXXX XXXXX and XXXXX XXXXX. The Student finished the XXXXX school year in a XXXXX XXXXX.

The Complainant told OCR that, after the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in XXXXX XXXXX, the District requested written documentation from XXXXX XXXXX in order for the Student to return to school. The Complainant stated XXXXX then sent an email containing XXXXX XXXXX to a XXXXX XXXXX but did not receive a response. In XXXXX of XXXXX, the Student was involved in XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, was suspended, and was given the option of in-school detention or virtual learning. After the Student completed XXXXX suspension and XXXXX XXXXX XXXXX XXXXX XXXXX in a virtual learning environment, XXXXX returned to school. The Complainant told OCR that XXXXX then asked a XXXXX XXXXX if a 504 plan might be appropriate, but no evaluation took place and no 504 plan was put into place. In XXXXX XXXXX, the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and was suspended for a second time. As of the filing of the OCR complaint, the Student was XXXXX XXXXX XXXXX XXXXX.

During an interview, the XXXXX XXXXX told OCR that XXXXX has known the Student since the XXXXX school year. XXXXX told OCR that, although XXXXX was seeing the Student for XXXXX XXXXX and was in regular contact with the Complainant, XXXXX was not aware of any of the Student's XXXXX XXXXX XXXXX XXXXX. The XXXXX further stated that, during the XXXXX school year, XXXXX began to have concerns that XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX did not recall receiving any paperwork from the Complainant relating to the Student's XXXXX XXXXX. The XXXXX told OCR that XXXXX was aware of the District's 504 referral and evaluation process, but with the information XXXXX possessed, did not think that an evaluation was necessary at the time. XXXXX stated that, moving forward, XXXXX believed it would be beneficial to review the District's policies and procedures as they relate to 504 evaluations.

The XXXXX XXXXX told OCR that XXXXX was not made aware of the Student's XXXXX XXXXX XXXXX until after the disciplinary incidents during the XXXXX school year. XXXXX told OCR that XXXXX wanted to improve the District's ability to recognize when a student might be eligible for a 504 evaluation.

## **Analysis and Resolution**

The evidence obtained during OCR’s investigation to date raised concerns that the District may have been aware of the Student’s disabilities and should have evaluated the Student pursuant to the requirements of Section 504. The evidence also raised concerns that the District may have not provided regular or special education services designed to meet the Student’s individual educational needs through an IEP or 504 Plan, which may have denied the Student a FAPE. Detecting students in need of an evaluation and the provision of a FAPE are important steps in making sure students with disabilities are provided equal access to education as required by law.

Prior to OCR completing the investigation, the District voluntarily entered into the attached Agreement to address the concerns raised during OCR’s investigation. The Agreement, executed by the District on June 28, 2023, requires the District to issue written correspondence to the Complainant, assuring that the Student will be evaluated to identify disabilities and consider appropriate placement, if the Complainant XXXXX XXXXX XXXXX the Student at the District. If the Complainant XXXXX XXXXX XXXXX XXXXX, the District will also consider whether the Student requires compensatory or remedial services. The District will adopt new policies and revise existing policies as necessary to ensure compliance with Section 504 and Title II, and train all staff regarding Section 504 and Title II, including, but not limited to, how to identify students who may be eligible for evaluations, how to refer students for evaluations, and training on the evaluation process generally. 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.

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 (XXXXX) XXXXX XXXXX - XXXXX (telecommunications device for the deaf), or by email at XXXXX.

Sincerely,

XXXXX  
XXXXX XXXXX XXXXX

Attachment (Resolution Agreement)