



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
ARKANSAS
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH
DAKOTA

July 26, 2023

SENT VIA EMAIL ONLY

XXXXXX
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Re: Brookfield R-III School District
OCR Complaint No. 07231165

Dear XXXXX XXXXX:

On XXXXX XXXXX, XXXXX, the U.S. Department of Education, Office for Civil Rights (OCR), opened a complaint for investigation against the Brookfield R-III School District (the District), located in Brookfield, Missouri. Specifically, OCR investigated:

1. Whether the District failed to properly reevaluate the XXXXX XXXXX (the Student), in violation of Section 504 and 34 C.F.R. § 104.35; and/or Title II and its implementing regulations;
2. Whether the District denied the Student a free appropriate public education (FAPE), in violation of Section 504, 34 C.F.R. § 104.33 and 104.4 and/or Title II and its implementing regulations, by failing to implement provisions of the Student's 504 Plan; and
3. Whether the District treated the Student differently than students without disabilities, in violation of Section 504, 34 C.F.R. § 104.4 and/or Title II and its implementing regulations, by assessing XXXXX XXXXX against XXXXX for XXXXX XXXXX.

This is to inform you that OCR dismissed Allegation 1 as resolved; the District voluntarily entered a Resolution Agreement (Agreement) resolving Allegation 2, and that OCR found insufficient evidence of a violation regarding Allegation 3. 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 considered documentation submitted by the Complainant and the District, including the Student's initial Section 504 Plan, 504 re-evaluation documentation and meeting audio, modified 504 Plan, District attendance policy, correspondence between District staff and the Complainant, and correspondence among District staff regarding the Student's modified 504 Plan. OCR interviewed the Complainant, as well as the Student's XXXXX XXXXX XXXXX, XXXXX, and XXXXX XXXXX. To protect individuals' privacy, the names of employees, witnesses, and other parties are not used in the letter.

Allegation 1

Section 110(d) of OCR's *Case Processing Manual* states that OCR will dismiss an allegation when it obtains credible information indicating that the allegation has been resolved.¹ In this case, the evidence provided to OCR reflects that the District re-evaluated the Student after this complaint was filed on XXXXX XXXXX XXXXX. The District held a meeting on XXXXX XXXXX XXXXX, developed an updated 504 plan with staff and parent input to account for new symptoms and medications, and provided new academic accommodations for the Student. Additionally, the updated 504 plan was memorialized in writing and a modification checklist was provided to the Student's parents and teachers. Based on this information, OCR determined that Allegation 1 has been resolved and is dismissing Allegation 1 in accordance with Section 110(d).

Allegation 2

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to 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 the severity of the person's disability. An appropriate education for purposes of FAPE is defined as the provision of 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 nondisabled students are met, and that are developed in accordance with procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the district provided the student the services and, if

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

not, whether this resulted in a denial of FAPE.

Preliminary Investigative Findings

The Student attended the XXXXX XXXXX at Brookfield XXXXX XXXXX (the School) during the XXXXX XXXXX school year. The Student was initially referred for a Section 504 plan in XXXXX, for issues related to XXXXX, XXXXX, XXXXX, and XXXXX after the Student was diagnosed with XXXXX. The 504 Plan provided multiple accommodations for the Student, XXXXX including the following: providing XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX in classrooms, XXXXX XXXXX XXXXX XXXXX at Student's request XXXXX XXXXX XXXXX, and allowing XXXXX XXXXX to XXXXX XXXXX assignments XXXXX XXXXX.

The District offers multiple XXXXX XXXXX through XXXXX XXXXX XXXXX XXXXX (XXXXX XXXXX). The Student enrolled in a XXXXX XXXXX class taught at Brookfield XXXXX XXXXX by a XXXXX teacher XXXXX XXXXX XXXXX XXXXX during the XXXXX XXXXX XXXXX XXXXX. The XXXXX advised OCR that the XXXXX XXXXX teacher denied the Student's request to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in an XXXXX XXXXX and failed to provide the Student with XXXXX XXXXX after XXXXX XXXXX. The XXXXX told OCR that XXXXX XXXXX the denial of services to the District's attention in XXXXX XXXXX XXXXX. The XXXXX XXXXX informed OCR that XXXXX XXXXX the matter, and the District did not have a policy regarding implementation of 504 plans for students in XXXXX XXXXX XXXXX XXXXX.

The Complainant also alleged that the Student's XXXXX XXXXX teacher did not allow the Student to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The XXXXX told OCR that, to the best of XXXXX knowledge, this was a XXXXX XXXXX XXXXX XXXXX XXXXX and estimated XXXXX XXXXX would have taken XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and estimated XXXXX XXXXX would have taken XXXXX XXXXX XXXXX XXXXX. The XXXXX told OCR that it was XXXXX normal practice XXXXX XXXXX XXXXX XXXXX to ask if any 504 or Individualized Education Program (IEP) students XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The XXXXX explained that while XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX encouraged students to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX students XXXXX XXXXX XXXXX XXXXX the classroom for XXXXX XXXXX XXXXX XXXXX.

Analysis and Resolution

The evidence obtained during OCR's investigation to date raised concerns that the District did not have policies or procedures for implementing Section 504 Plans or IEPs in the context of XXXXX XXXXX XXXXX XXXXX. The evidence also raised concerns that the District may not have provided the Student certain 504 accommodations during the XXXXX XXXXX XXXXX XXXXX, which may have denied the Student a FAPE.

Prior to OCR completing the investigation, and pursuant to Section 302 of OCR's *Case*

Processing Manual, the District voluntarily entered into the attached Agreement to address the concerns raised during OCR’s investigation. The Agreement, executed by the District on July 26, 2023, requires the District to determine whether the Student requires compensatory and/or remedial services and consider whether the Student’s grade in XXXXX XXXXX XXXXX XXXXX requires adjustment. The District will adopt new policies as necessary to ensure compliance with Section 504 and Title II in XXXXX XXXXX XXXXX XXXXX, and train all staff regarding Section 504 and Title II, including, but not limited to, training regarding the District’s new policies regarding implementation of 504 plans/IEPs for students in XXXXX XXXXX XXXXX XXXXX Please consult the Agreement for further details. OCR will monitor the District’s implementation of the Agreement until the District has fulfilled its terms.

Allegation 3

Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person 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 federal financial assistance. Title II’s implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that are not equal to that afforded others; and providing a qualified person with a disability aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iii); 28 C.F.R. § 35.130(b)(1)(i)-(iii).

Findings of Fact

The Complainant alleged that the District treated the Student differently based on disability by XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. OCR reviewed the School’s XXXXX XXXXX in the Student Handbook. The policy states that the XXXXX XXXXX is intended as a XXXXX XXXXX XXXXX XXXXX. The XXXXX XXXXX XXXXX XXXXX in the form of XXXXX XXXXX for students who XXXXX XXXXX or XXXXX XXXXX as follows:

Absence	Grade Reduction	Unexcused Absence	Grade Reduction
6 days=39.6 hours	2%	1 day=6.6 hours	4%
7 days=46.2 hours	4%	2 days=13.2 hours	8%
8 days=52.8 hours	8%	3 days=19.8 hours	16%
9 days=59.4 hours	16%	4 days=26.4 hours	32%
10 days=66 hours	32%	5 days=33 hours	50%

The policy also provides any student the opportunity to reduce accrued absences by attending make up study sessions held on Saturday mornings, also referred to as “seat time.”

During the investigation, the XXXXX XXXXX told OCR that the XXXXX XXXXX had not been enforced during the XXXXX XXXXX school years. During that time, the District asked that all students stay home if they had a high temperature or manifested other possible COVID-19 symptoms. As a result, the District chose not XXXXX XXXXX XXXXX XXXXX during the pandemic. The XXXXX stated that by XXXXX XXXXX XXXXX XXXXX, the District elected to XXXXX XXXXX of the XXXXX XXXXX.

The XXXXX told OCR that in XXXXX XXXXX XXXXX, his office generated a report listing all School students that had a XXXXX XXXXX XXXXX XXXXX or XXXXX XXXXX XXXXX. Then, the School sent a letter to the parents of every student on the report, notifying the parents XXXXX XXXXX XXXXX. The XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX, notifying XXXXX that the Student had XXXXX XXXXX XXXXX XXXXX of school during the XXXXX XXXXX and would XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The XXXXX stated that the Student had an opportunity to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The letter also offered parents the opportunity to XXXXX and XXXXX XXXXX XXXXX XXXXX that should be considered.

The XXXXX XXXXX, highlighting a number of XXXXX XXXXX XXXXX related to the Student's XXXXX. The XXXXX told OCR that XXXXX reviewed the XXXXX and determined that the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX requirement from XXXXX XXXXX XXXXX XXXXX XXXXX. The Student served the XXXXX XXXXX XXXXX, and all XXXXX XXXXX XXXXX XXXXX were restored.

Analysis

OCR's investigation found insufficient evidence, pursuant to Section 303(a) of OCR's *Case Processing Manual*, to conclude the District treated the Student differently than students without disabilities by XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The evidence shows that the Student Handbook contains a XXXXX XXXXX XXXXX XXXXX intended to deter XXXXX XXXXX. The District XXXXX the Student's XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX after the Complainant XXXXX. As a result, the District reduced the Student's XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Student completed the XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX were restored. Accordingly, OCR finds that the evidence is insufficient to conclude the District discriminated against the Student with respect to Allegation 3.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The District must 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have questions, please contact XXXXX XXXXX XXXXX, at XXXXX XXXXX XXXXX (voice) or XXXXX XXXXX XXXXX (telecommunication device for the deaf), or by e-mail at XXXXX.

Sincerely,

XXXXX XXXXX
XXXXX XXXXX, XXXXX XXXXX