



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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September 10, 2015

Dr. Todd Leden
Superintendent
Kaneland CSD #302
47W326 Keslinger Road
Maple Park, IL 60151

Re: OCR #05-15-1217

Dear Dr. Leden:

This is to notify you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on April 16, 2015 against Kaneland CSD #302 (District) alleging discrimination on the basis of disability (XXXXXXX).

More specifically, the Complainant alleged 1) that the District discriminated against the Student on the basis of disability in fall 2014 when it failed to evaluate the Student's eligibility for special education and related services; and 2) that the District discriminated against the Student in fall 2014 when it refused to modify its attendance policy for the Student because of XXXXXXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in educational programs or activities that receive Federal financial assistance and by public entities, respectively. As a recipient of Federal financial assistance and a public entity, the District is subject to these laws.

OCR determined it had jurisdiction over the complaint and proceeded to investigate to determine whether the District discriminated as alleged.

Legal Standard

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

The regulation implementing Section 504 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 or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall,

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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(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of a Section 504 Plan is one means by which FAPE may be provided.

According to the complaint and the investigation to date, OCR learned the following.

District Policies and Procedures

District Board policy 6:120, Education of Children with Disabilities, provides that the District "shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act." This policy section also recognizes that the District has a legal obligation to ensure that students with disabilities are identified, evaluated and provided with appropriate education services.

Moreover, District policy recognizes that while a student may not be found eligible for services under IDEA, that student may be found eligible under Section 504 and that pursuant to Section 504, the District "shall establish and implement a system of procedural safeguards. The safeguards shall cover students' identification, evaluation, and educational placement. This system shall include notice, an opportunity for the student's parent(s)/guardian(s) to examine relevant records, an impartial hearing with opportunity for participation by the student's parent(s)/guardian(s), representation by counsel, and a review procedure."

Factual Summary and Investigation

In the 2014-15 academic year the Student was XXXXX at the District's XXXXXX school. He was diagnosed with XXXXXXXX at a very young age and received primarily speech services prior to kindergarten. However, after that time the Student was in the District's general education program and was not receiving special education services under an individualized education program (IEP) or a Section 504 plan.

According to documentation provided by the District, the Student was absent for XX days in the 2014-15 academic year. The Student's parent provided to the District medical excuses signed by a physician in late October and again in early November requesting temporary homebound services. The District provided homebound services to the Student during his absences from school beginning in November and continuing through the summer of 2015.

The District convened a Section 504 meeting on March 17, 2015 with the Student and his mother in attendance. As a result of this meeting the District began a Section 504 evaluation of the Student. On April 22, 2015, the District determined the Student was a student with a disability and the District created a Section 504 Plan which went in to effect on April 30, 2015. Documentation provided by the District indicates the Student's mother was provided notice of Section 504 procedural safeguards.

Prior to the conclusion of OCR's investigation of this complaint, and before OCR could obtain sufficient information to make a compliance determination, the District agreed to resolve this complaint. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines it is appropriate to resolve the allegations with an agreement. On August 31, 2015, the District voluntarily executed the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the agreement are aligned with the complaint allegations and the information obtained during OCR's investigation, and consistent with the application regulations. OCR will monitor the District's implementation of the agreement until the District is in compliance with Section 504 and Title II and their implementing regulations at issue in this case.

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 complainant may file another complaint alleging such treatment. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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, 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.

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.

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If you have any questions, please contact me or Susan Johlle at 312-730-1586 or by email at Susan.Johlle@ed.gov.

Sincerely,

Dawn Matthias
Team Leader