



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

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ILLINOIS  
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WISCONSIN

September 20, 2016

Jeff Ronneberg, Ed.D.  
Superintendent  
Spring Lake Park Schools  
1415 81<sup>st</sup> Ave NE  
Spring Lake Park, MN 55432

Re: OCR #05-16-1231  
Spring Lake Park Schools

Dear Superintendent Ronneberg:

This is to advise you of the disposition of the above-referenced complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on March 24, 2016, alleging that the Spring Lake Park Schools (MN) (District) discriminated against a student on the basis of disability and retaliated against the student.

Specifically, the complaint alleged the following:

1. The District discriminated against Student A based on disability when the District failed to implement Student A's Section 504 plan during the 2015-16 school year by,
  - a. Refusing to allow Student A to XXXXXXXX on numerous occasions;
  - b. Punishing Student A for being tardy to class;
  - c. Not accepting late assignments and failing to allow Student A to only complete "essential" assignments as provided in the Section 504 plan.
2. The District retaliated against Student A in XXXXXXXX when Teacher A forced XXXXXXXXXXXX, because the complainant had complained about Teacher A's failure to comply with the Section 504 plan.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation against individuals because they have asserted rights protected by these laws. As a recipient of FFA from the Department and a public entity, the District is subject to these laws.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

During the investigation, OCR reviewed information provided by the Complainant and the District. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual*. Subsequent discussion with the District resulted in the execution of enclosed Resolution Agreement.

### **Applicable Legal Standards**

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.

#### *Free Appropriate Public Education*

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 an individualized education plan (IEP) or Section 504 Plan is one means by which FAPE may be provided.

#### *Retaliation*

Title VI of the Civil Rights Act of 1964, at 34 C.F.R. §100.7(e), which is also incorporated by reference in the Section 504 implementing regulation, at 34 C.F.R. § 104.61, prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. The Title II regulation contains a similar provision prohibiting retaliation.

### **Factual Background**

According to the Complainant, during the 2015-16 school year, the District repeatedly failed to implement Student A's Section 504 plan. The Complainant maintained that Student A was not allowed to XXXXX on XXXXXXXX separate occasions, which resulted in XXXXXXXX. The District does not dispute that Student A's request to XXXXXXXX was deferred or denied on at least XXXX occasions XXXXXXXX and that on another occasion during XXXXXXXX, the nurse XXXXXXXXXXXX.

The Complainant further maintains that the District failed to implement Student A's Section 504 plan by punishing him for being tardy to class and not accepting late assignments or allowing Student A to only complete "essential assignments." In its narrative response, the District denied that Student A received a consequence for being tardy to class and that a Section 504 plan "should have been in place when academic challenges occurred." However, Student A's report card for the 2015-16 academic year shows that he received XXXXXXXXXX."

Finally, the Complainant alleged that the District retaliated against Student A by XXXXXXXXXf after Student A complained about Teacher A's failure to comply with Student A's Section 504 plan. Student A's report card indicates that he received a XXXXXXXXXX. The District acknowledges that Student A was asked to XXXXXXXXXXs. However, the District denies that Teacher A's actions were retaliatory and maintains that this was a "strategy used by Teacher A with other students who were off task and not following classroom expectations."

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. On September 19, 2016, the District signed the enclosed Agreement which, when fully implemented, will address the issues raised in the complaint. The provisions of the Agreement are aligned with the issues raised by the allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in this case. We look forward to receiving the District's first report on its implementation of the Agreement, which is due by December 15, 2016.

Please be advised that the School 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.

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 provide by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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Thank you for the cooperation extended to OCR during the resolution of this complaint. In particular, we wish to thank XXXXXXXX. If you have any questions about this determination, please feel free to contact me or Lauren Skerrett, Attorney Advisor at (312) 730-1603.

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

Enclosure

cc: XXXXXXXX