

June 14, 2016

Dr. Jeff Mingus, Superintendent
Forsyth R-III School District
178 Panther Rd.
Forsyth, MO 65653

Re: Docket # 07161075

Dear Superintendent Mingus:

On December 17, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Forsyth R-III School District (District), Forsyth, Missouri, alleging discrimination against Complainant's son on the basis of disability (ADHD/ADD/OCD). This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

Specifically, Complainant alleged the District denied her son a free appropriate public education (FAPE) by refusing her requests to evaluate him for special education services.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The regulation implementing Title II at 28 C.F.R. § 35.134 also prohibits retaliation.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Under the Case Processing Manual, OCR’s case processing procedures include the Rapid Resolution Process (RRP), which provides an expedited resolution for certain OCR complaints if a recipient expresses an interest in immediately resolving the complaint allegation or has taken action to resolve the complaint allegation.

OCR determined that it was appropriate to attempt to resolve this complaint through the RRP. Accordingly, OCR contacted the District on January 8, 2016, to provide notice of the complaint allegation, as well as the opportunity to resolve the allegation through the RRP. The District provided OCR data in response to the complaint on January 22, 2016.

In the remainder of this letter, Complainant’s son is referred to as “the Student.” To protect individuals’ privacy, the names of employees, witnesses, and other parties also were not used in the letter.

Based on the information provided by the Complainant and the District, OCR determined the following:

The Student enrolled in the District on February 2, 2015, at which time the District requested the Student’s records from his prior school district. Subsequently, the District received the Student’s records, including a Section 504 plan from the 2013-14 school year. The Complainant told OCR that the 2013-14 Section 504 plan set out the special education or related services the prior school district provided the Student. The Complainant spoke with the District’s special education teacher in October 2015 following numerous discipline referrals of the Student. The special education teacher told the Complainant that the Student did not have a current Section 504 plan and was not receiving special education or related services.

The District provided OCR a copy of an email dated September 24, 2015, notifying the Complainant of a Section 504 team meeting on October 7, 2015. The Complainant told OCR she did not receive notice of the October 7, 2015, meeting and that she learned of the meeting when she received the Notice of Action (NOA) dated October 9, 2015. The NOA stated that the Section 504 team determined the Student’s Section 504 plan would be discontinued but did not provide the basis for discontinuing the Section 504 plan. The NOA stated that the parents did not attend the Section 504 team meeting but a voicemail was left on October 7, 2015, to discuss the team’s proposal. The NOA also states that a copy of the District’s Section 504 Procedural Safeguards was enclosed.

The Complainant requested the Student be evaluated for special education services on November 13, 2015. The District issued a NOA dated December 9, 2015, which states the District refused the Complainant’s request for an evaluation because the Student had a “behavior plan” in place with the middle school counselor. The District did not provide OCR with a copy of the behavior plan. The Complainant told OCR that she was told by District staff that the behavior plan was a verbal agreement with the Student’s vice principal. The Complainant withdrew the Student from the District.

Prior to the completion of OCR's investigation, the District submitted a signed Agreement on May 10, 2016, that, when fully implemented, will address the complaint allegation and the District's Section 504 procedures. The Agreement provides that in the event the Student returns to the District he will be evaluated to determine his eligibility for special education or related services and if eligible, whether he should receive compensatory education.

The Agreement also requires the District to review, and if necessary, revise its Section 504 and Title II policies and procedures related to the identification, evaluation, and placement of students with disabilities and its notice of procedural safeguards to ensure they comply with the regulation implementing Section 504. The District will ensure the identified Section 504 coordinator receives training on the legal requirements of Section 504 and his or her responsibilities as the District's designated Section 504 coordinator. The District will provide annual Section 504 and Title II compliance training, including the OCR approved Section 504 policies and procedures, grievance procedure and procedural safeguards to District officials and staff. The District will also review the records of all students who transferred to the District during the 2015-16 school year to ensure each student was evaluated or provided special education services as appropriate.

OCR considers the complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. All actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. When OCR concludes 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 the investigation.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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.

OCR is committed to prompt and effective service. If you have any questions, please contact Lachuna Edwards, Attorney, at (404) 974-9390 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at Lachuna.Edwards@ed.gov.

Sincerely,

Maria L. North
Supervisory Attorney

Enclosure