



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**December 12, 2014<sup>1</sup>**

IN RESPONSE, PLEASE REFER TO: 03141194

Michael Davis, Esq.  
General Counsel  
The School District of Philadelphia  
440 N. Broad Street  
Philadelphia, PA 19130

Dear Mr. Davis:

This is to notify you of the resolution of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Philadelphia School District (the District), alleging discrimination XXXXXX. Specifically, XXXXXX (the Complainant) alleged that, during the XXXXXX (the Student) was enrolled in XXXXXX (the Middle School), the District discriminated against XXXXXX.

OCR enforces:

- 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.
- 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.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II and their implementing regulations.

The Section 504 regulation at 34 C.F.R. § 104.33(a) requires public school districts to provide a free appropriate public education to each qualified disabled person in their jurisdiction. The Section 504 regulation at 34 C.F.R. § 104.35 provide that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person who, because of disability, 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. The Section 504 regulations at 34 C.F.R. § 104.36 require that a recipient that operates a public elementary or secondary education program or activity shall 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

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<sup>1</sup> This document replaces and supersedes the letter OCR issued on December 10, 2014.

that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Title II is interpreted consistently with the provisions of Section 504.

With regard to Complainant's allegation that the District did not implement the Student's Section 504 Plan, the District acknowledged to OCR that it did not do so. Therefore, there is sufficient evidence to support a finding of noncompliance with regard to this issue.

With regard to the Complainant's allegation that the District failed to consider her repeated requests to revise the Student's Section 504 Plan, under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve this complaint through a Voluntary Resolution Agreement (the Agreement). On December 3, 2014, the District signed a Voluntary Resolution Agreement to address the allegations in this complaint. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein.

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.

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.

If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or [Dale.Leska@ed.gov](mailto:Dale.Leska@ed.gov). Additionally, please also feel free to contact Attorney Jerry Hand at 215-656-8547 or [Jerome.Hand@ed.gov](mailto:Jerome.Hand@ed.gov) and/or myself at 215-656-8522 or [Vicki.Piel@ed.gov](mailto:Vicki.Piel@ed.gov) as well.

Sincerely,

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

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Enclosure

cc: XXXXXX