



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
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June 12, 2015

IN RESPONSE, PLEASE REFER TO: 03151057

Dr. Mervin Daugherty
Superintendent
Red Clay Consolidated School District
1502 Spruce Avenue
Wilmington, DE 19805

Dear Dr. Daugherty:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Red Clay Consolidated School District (the District). XXXXXX (the Complainant) alleged that the District discriminated against XXXXXX (the Student) on the basis of disability. Specifically, the Complainant alleged that the District XXXXXX (the School) to the XXXXXX without convening a manifestation review to determine whether the disciplinary matters at issue were related to the Student's disability prior to changing the Student's placement.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). 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, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities.

Because the District receives Federal financial assistance from the Department, and is a public entity, the District is subject to these laws and their implementing regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Legal Standards

Disability Discrimination

To be afforded protection under the regulations implementing Section 504 and Title II, a person must be a qualified individual with a disability. The regulation implementing Section 504 at 34 C.F.R. § 104.3(j) defines a person with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an

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impairment, or is regarded as having such an impairment. “Major life activities” are defined as functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The regulation at 34 C.F.R. § 104.3(l) defines a qualified person with a disability as any person with a disability who is of an appropriate age to receive services from a school district.

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, be denied the benefits of, or otherwise be subjected to discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient that operates a public elementary or secondary education program or activity to 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. OCR policy provides that a proposed exclusion of a child with a disability for more than 10 consecutive school days constitutes a “significant change in placement.” Also a series of suspensions that are each of 10 days or fewer in duration may create a pattern of exclusions that constitutes a “significant change in placement.” Among the factors that should be considered in determining whether a series of suspensions has resulted in a “significant change in placement” are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school. In the disciplinary context, the evaluation consists of a manifestation determination, i.e., a determination of whether the misconduct is related to the student’s disability.

Under 28 C.F.R. § 35.103, the Title II regulation does not set a lesser standard than those under Section 504. Accordingly, OCR interprets the Title II regulation to require public entities to provide services to students with disabilities (including a free appropriate public education) to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

Conclusion

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 the complaint through a Voluntary Resolution Agreement (the Agreement). On June 12, 2015, the District signed an Agreement to address the allegations in this complaint. As is our standard practice, OCR will monitor the District’s implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District’s compliance with Section 504 and Title II, which may exist and are not discussed herein. The Complainant may have the 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Josh Galiotto, investigator, at (215) 656-8587 or by email at joshua.galiotto@ed.gov.

Sincerely,

/s/

Rhasheda S. Douglas
Team Leader
Philadelphia Office

Enclosure