



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

September 14, 2016

IN RESPONSE, PLEASE REFER TO: 03161070

Mr. Victor Zimmerman
Superintendent
Livingston County School District
127 East Adair Street
Smithland, KY 42081

Dear Mr. Zimmerman:

This is to notify you of the resolution of the complaint filed against the Livingston County School District (the District) alleging discrimination on the basis of disability. The Complainant, alleged that the District discriminated against her XXXXXX, XXXXXX (the Student), on the basis of disability by failing to implement his Section 504 Plan during the 2015-2016 school year. During the course of OCR's investigation, the Complainant clarified that she was alleging XXXXXX:

- The Student was not provided XXXXXX; and
- The Student was not provided XXXXXX.

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, which prohibit discrimination on the basis of disability in any education program or activity operated by a recipient of Federal financial assistance. OCR also enforces 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, which prohibit 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 Section 504, Title II and their implementing regulations.

LEGAL STANDARD:

The regulation implementing Section 504 prohibits the District from discriminating on the basis of disability. The Section 504 implementing regulation, at 34 C.F.R. Section 104.33 requires that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified individual 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. 104.35, requires districts to establish

standards and procedures for evaluation and placement. Section 104.35 requires consideration by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Section 504 and the ADA provide similar protections. Accordingly, we have applied the Section 504 standards to the facts of this case.

FACTUAL SUMMARY:

The Student was XXXXXX at the District's XXXXXX during the 2015-2016 school year. XXXXXX.

Projected Materials Provision

xxx – paragraphs redacted – xxx

OCR determined that the following information is needed to complete its investigation of this allegation: additional documentation from the District and interviews with District personnel to determine whether the Student was provided with XXXXXX. However, the District requested to enter into a voluntary resolution agreement before OCR completed its investigation.

RESOLUTION:

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 voluntary resolution agreement. The provisions of the agreement must be aligned with the complaint allegations; the issues investigated, and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, 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 allegations through a voluntary resolution agreement (the Agreement) which was executed on August 31, 2016 and provided to OCR by the District on September 6, 2016. 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 College's compliance with Section 504, Title II, and their implementing regulation 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, it 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.

If you have any questions, you may contact Amy Niedzalkoski, Team Attorney, at (215) 656-8571 or by email at amy.niedzalkoski@ed.gov.

Sincerely,

Page 3 – Mr. Victor Zimmerman, Superintendent

/s/

Beth Gellman-Beer
Team Leader

Enclosure