



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

August 4, 2016

Mr. Matthew Burrows
Superintendent
Appoquinimink School District
313 South Fifth Street
PO Box 4010
Odessa, DE 19730-4010

RE: OCR Complaint No. 03161117

Dear Mr. Burrows:

This is in further reference to the complaint filed with the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against the Appoquinimink School District (the District). The Complainant, XXXXXX, alleged that the District discriminated against XXXXXX (the Student), on the basis of disability. Specifically, she alleged that:

1. The District failed to implement the Student's Section 504 plan XXXXXX; and
2. 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. Section 504 also prohibits retaliation.
- 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. Title II also prohibits retaliation.

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.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a

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

discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.33 requires a recipient of Federal funds from the Department to provide a free appropriate public education (FAPE) to each qualified student with a disability within its jurisdiction. The regulation implementing Section 504 at 34 C.F.R. § 104.33(b) explains that the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of a student with a disability as adequately as the needs of nondisabled students are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. Section 504 and the ADA provide similar protections

The regulation implementing Section 504, at 34 C.F.R. § 104.35(b) requires a recipient to establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education and related services.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(c) requires that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with §104.34. OCR has interpreted this to include input and documentation from parents.

Factual Background

xx – paragraphs redacted – xx

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 District signed the enclosed Resolution Agreement on August 2, 2016, the provisions of which align with the complaint allegations, the issues investigated, and are 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. As is our standard practice, OCR will monitor the District's implementation of the Agreement until we have determined that the District is in compliance with Section 504 and Title II with respect to the issues raised in this complaint. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District’s cooperation in the resolution of this complaint. If you have any questions, please contact Dannelle Walker, the Team Attorney assigned to this complaint, at 215-615-5711 or Dannelle.Walker@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure

cc: Matt Fallis, Human Resources Director