



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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July 6, 2016

Dr. Nikki Woodson
Superintendent
Metropolitan School District of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, Indiana 46240

Re: OCR Docket # 05-16-1241

Dear Dr. Woodson:

This is to notify you of the disposition of the referenced complaint filed against the Metropolitan School District of Washington Township (District) alleging discrimination based on disability.

Specifically, the complaint alleges that the District discriminated against Student A, a xxxxxxxe student at xxxxxxxx xxxxxxxx School (School) based on his disability (xxxxxxxxxxxxxxxxxxxx) when in xxxxxxxx 2016 it denied him the opportunity to attend a School field trip unless a parent accompanied him.

OCR is responsible for enforcing 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 and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and a public entity, the District is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

On June 1, 2016, prior to the conclusion of the investigation, the District requested to resolve the case pursuant to Section 302 of the *Case Processing Manual*.

Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Different Treatment

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 or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

In determining whether a recipient subjected a student to different treatment based on disability, OCR considers whether there were any apparent differences in the treatment of similarly-situated students based on disability. If this is established, OCR assesses the recipient's reason for any differences in treatment of similarly-situated students to determine whether the reasons are legitimate, non-discriminatory and whether they are merely a pretext for unlawful discrimination.

FAPE

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person 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. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of an individualized education plan (IEP) or Section 504 Plan is one means by which FAPE may be provided.

Factual Background

According to the Complainant, the School told her that Student A was involved in an "incident" the week before a xxxxxxxx, 2016 field trip was scheduled to the xxxxxxxx xxxxxxxx xxxxxxxx. The District told her only that Student A pushed another student. The Complainant told OCR that although she asked the School to provide her with written documentation of the incident, none was provided.

It is not disputed that Student A was not allowed to attend the xxxxxxx, 2016 field trip unless accompanied by a chaperone. It is also not disputed that the School informed the Complainant of this decision shortly before the field trip (according to the Complainant, she learned of the District's decision on xxxxxxx, 2016).

The District asserted in its narrative statement that it made the decision to require Student A to have a chaperone to attend the xxxxxxxx 2016 field trip based on safety concerns, explaining that “students on field trips who are not following the directions of teachers or adults expose themselves to greater risks.” The District did not explain how Student A was not “following the directions of teachers” or otherwise describe his conduct that raised specific safety concerns. The District did not provide any documentation of Student A’s allegedly unsafe behavior or that other students, without disabilities and who were allowed to go on the field trip, did not engage in similar behavior. As a result, OCR was unable to ascertain whether the District treated Student A similarly to non-disabled students who engaged in behavior like the behavior attributed to Student A, and whether or why any such students were allowed to participate in the field trip without a parent chaperone.

In addition, the District has not provided documentation establishing that the restriction it placed on Student A’s participation in the field trip was consistent with the District’s obligation to provide Student A with FAPE. The information the District provided to OCR demonstrates that he was prohibited from participating in the class field trip unless a parent accompanied him. The District did not provide, and OCR has not obtained, evidence demonstrating that its decision to limit Student A’s participation in this way was consistent with the terms of his IEP.

Prior to the conclusion of OCR’s investigation, the District requested to resolve the allegation that it discriminated against Student A based on his disability when in xxxxxxxx 2016 it denied him the opportunity to attend a School field trip unless a parent accompanied him. In order to assess whether the District’s act of requiring Student A to be accompanied by a parent on a class field trip subjected Student A to different treatment or constituted a denial of FAPE, OCR would need to review the District’s and School’s policies and procedures governing attendance on field trips, review Student A’s disciplinary records, review other non-disabled students’ disciplinary records, review Student A’s IEP, and interview Student A’s teachers and the School Principal.

The District agreed to enter into a resolution agreement (the Agreement) with OCR on June 16, 2016, which, when fully implemented, will resolve the alleged discrimination with respect to 34 C.F.R. §§ 104.4(a), 104.33(a), 104.33(b)(1) and 28 C.F.R. § 35.130(a), which were at issue in the complaint.¹ The provisions of the resolution agreement are aligned with the complaint allegation, the issues investigated, and are consistent with applicable law and regulations.

OCR will monitor the District’s implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Agreement will address the alleged discrimination with respect to

¹ Although the District signed the Agreement on June 8, 2016, it delivered the Agreement to OCR on June 16, 2016.

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Section 504 and Title II. OCR looks forward to receiving the District's first monitoring report, which is due by September 30, 2016.

This concludes OCR's investigation of the complaint and 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.

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 individual may file a complaint alleging such treatment. The Complainant may also 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. 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.

We wish to thank you for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Patrick Alexander by phone at 303-844-3473, or by e-mail at Patrick.Alexander@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Jonathan Mayes, Counsel