



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

April 15, 2016

IN RESPONSE, PLEASE REFER TO: 03161023

Dr. Ron Duerring
Superintendent
Kanawha County Schools
200 Elizabeth Street
Charleston, WV 25311

Dear Dr. Duerring:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Kanawha County Public Schools (the District). The Complainant alleged that the District discriminated against her son, XXXX (the Student), on the basis of disability by:

- 1) Failing to implement the Student's Section 504 Plan, XXXXXX; and
- 2) Failing to conduct a proper pre-placement evaluation meeting 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 Section 504, Title II and their implementing regulations.

Consistent with OCR procedures, the District resolved this complaint by signing a Voluntary Resolution Agreement (Agreement). The provisions of the Agreement are aligned with the information gathered in our investigation to date.

LEGAL STANDARDS

The Section 504 regulation, at 34 C.F.R. §§ 104.4(a) and (b), provides that no qualified individual shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Section 504 and the ADA have equivalent standards. See 28 C.F.R. §§ 35.130(a),(b). Title II is interpreted as adopting the standards of Section 504 in areas where Title II has not adopted a different standard. Therefore, OCR will apply Section 504.

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.

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 disability, 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.

The provision of Section 504 at 34 C.F.R. § 104.36 requires that a recipient provide notice of procedural rights 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. This system of procedural safeguards includes notice, an opportunity for the parent to examine relevant records, an impartial hearing with opportunity for participation by the parent, and a review procedure.

FACTUAL SUMMARY

XXX- paragraph redacted –XXX

Allegation 1

XXX- paragraph redacted –XXX

XXX- paragraph redacted –XXX

XXX- paragraph redacted –XXX

Allegation 2

XXX- paragraph redacted –XXX

XXX- paragraph redacted –XXX

RESOLUTION

OCR procedures provide that 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 information gathered in our investigation to date 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, which was executed on April 14, 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 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.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or Dale.Leska@ed.gov or me at 215-656-8522 or Vicki.Piel@ed.gov

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: James W. Withrow, General Counsel (w/encl), via email