



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

June 18, 2019

Dr. Kimberly Shaver-Hood

By Email: [kshaver-hood@wareham.k12.ma.us](mailto:kshaver-hood@wareham.k12.ma.us)

Re: Complaint No. 01-19-1097  
Wareham Public Schools

Dear Dr. Shaver-Hood:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Wareham Public School (District). The Complainant alleged that the District discriminated against her granddaughter (Student) on the basis of disability by failing to provide the necessary accommodations for the Student to participate in before and after school care provided by the District, thereby limiting her ability to participate in the Program. As explained further below, 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 (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

### Summary of Preliminary Investigation

#### *The Program*

The Beyond School program has two components, one of which is before- and after-school care for District students (Program). Based on OCR's investigation to date, the Program is funded by the fees paid by the guardians of the students enrolled; it receives no funding from the District, though the money for the program is kept in an account within the District's fund. In addition, it operates in District buildings and the Director of the Program is a District employee who reports to the Superintendent.

The handbook for the Program (Handbook) states: "Wareham Public School District and Beyond School Time Extended Care Program does not discriminate on the basis of race, religion, color, national origin, age, sex, veteran's status, sexual orientation or disability in admission to, access

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

to, treatment in or employment in its programs and activities.” However, it also includes a section entitled “Special Considerations,” which states: “In order to best care for your child, it is important that you share with the staff any special physical, cognitive, emotional, or other concerns that may affect your child’s well-being at the Extended Care Program in order to determine if our program is an appropriate placement for your child.”

XX – Paragraph Redacted – XX

*The Student*

XX – Paragraphs Redacted – XX

*Legal Standard*

Under the Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130, a district may not exclude from participation, deny the benefits of, or otherwise discriminate against a person with a disability in any program or activity that it offers.

At 34 C.F.R. § 104.38, the Section 504 regulation provides, in relevant part, that a recipient that provides day care programs may not exclude qualified persons with disabilities on the basis of disability, and shall take into account the needs of such persons in determining the aid, benefit or services to be provided. The regulation implementing Title II, at 28 C.F.R. § 35.130, contains a similar provision. Children with disabilities are “qualified” for day care programs if they meet the programs’ eligibility requirements, e.g., residency, age, and/or fee requirements.<sup>1</sup> Recipients offering voluntary day care programs on a free or tuition basis have discretion as to how to determine what reasonable modifications to their policies, practices, or procedures are appropriate, because the Section 504 and Title II regulations do not require any particular process. To avoid discriminating against qualified children with disabilities, however, the modification process should not create an unreasonable burden, nor result in an undue delay in admission. Finally, although public entities may adopt bona fide safety standards needed to implement their program or activity, they must consider whether safe participation by any particular applicant with a disability can be assured through modifications to their provision of aids, benefits or services.

Finally, pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.8, a recipient must take steps to notify participants or beneficiaries that it does not discriminate on the basis of disability in violation of section 504 and its implementing regulation. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the employee responsible for coordinating the recipient’s efforts to comply with Section 504.

*Preliminary Analysis*

Based on OCR’s preliminary investigation, the Program appears to be a program of the District. Although it is funded solely through fees paid by guardians, that money is kept in a fund within

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<sup>1</sup> 34 C.F.R. § 104.3(1)(4).

the District's accounts, it operates in District facilities, and the Director reports to the Superintendent and receives her paycheck from the District. The District is ultimately in control of the funds, staff, and facilities of the Program. Therefore, the District must ensure the Program is in compliance with Section 504 and Title II.<sup>2</sup>

Here, the District and Complainant agreed that the Student has a disability and needs XXXXXX XXXXXXXXXXXXXXXXXXXX in order to participate. Therefore, the District had an obligation to provide XXXXXXXX. Based on OCR's preliminary investigation, it appears that the District did not provide XXXXXXXX in a manner which allowed the Student to participate fully in the Program. However, OCR has not completed its investigation and is not making a finding as to whether the District failed to comply with Section 504 or Title II. Prior to OCR's issuance of a final determination under Section 303 of the Case Processing Manual, the District expressed an interest in resolving the allegation and OCR determined it was appropriate to resolve because OCR's investigation has identified issues that can be addressed through a resolution agreement.

Additionally, OCR has preliminary concerns about the Handbook. The Special Considerations section<sup>3</sup> suggests that students with disabilities may not be welcome in the Program or that the Program may not accommodate the individual needs of students with disabilities. While the Handbook does include language stating that neither the District nor the Program "discriminate on the basis of . . . disability in admission to, access to, treatment in or employment in its programs and activities," this language does not appear to satisfy the requirements of 34 C.F.R. § 104.8.

### Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations investigated. OCR will monitor the District's implementation of the Agreement.

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

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<sup>2</sup> Even if the Program is not a program of the District, the District provides significant assistance to the Program. Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(v), a District may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the District's program or activity.

<sup>3</sup> As described above, this section reads: "In order to best care for your child, it is important that you share with the staff any special physical, cognitive, emotional, or other concerns that may affect your child's well-being at the Extended Care Program in order to determine if our program is an appropriate placement for your child."

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, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have any questions, you may contact Catherine Deneke at (617) 289-0080 or by e-mail at [Catherine.Deneke@ed.gov](mailto:Catherine.Deneke@ed.gov).

Sincerely,

/s/

Michelle Kalka  
Compliance Team Leader

Enclosure

cc: Gregor Pagnini, [gpagnini@bhpklaw.com](mailto:gpagnini@bhpklaw.com)