



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
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November 24, 2014

IN RESPONSE, PLEASE REFER TO: 03-14-1159

Dr. Lawrence Mussoline, Superintendent
Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335

Dear Dr. Mussoline:

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 Downingtown Area School District (the District). XXXXXX (the Complainant) alleged that the District discriminated against the XXXXXX (the Students), XXXXXX (the Parents). Specifically, the Complainant alleged that the District discriminated against the Students on the basis of disability by:

1. Failing to properly consider the Parents' request for XXXXXX; and
2. Failing to respond to the Parents' request to convene an IEP team meeting to discuss modifying the Students' IEPs.

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 these laws.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school districts to provide a free and appropriate education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

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

The regulation implementing Section 504, at 34 C.F.R. § 104.35, provides that a recipient that operates a public elementary or secondary education program shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

The regulation implementing Section 504, at 34 C.F.R. § 104.36, provides that a recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

The regulation implementing Section 504, at 34 C.F.R. § 104.37, requires recipients to provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

The regulation implementing Title II, at 28 C.F.R. § 35.130 (b) provides that a public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. Public entities are also required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

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 Resolution Agreement. The provisions of the Resolution Agreement must be aligned with the complaint allegations or the information obtained during the investigation 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 the complaint through a Voluntary Resolution Agreement (the Agreement), which was executed by the District on November 24, 2014. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement. Accordingly, OCR is concluding its investigation of this allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Title IX, which may exist and are not discussed herein. 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.

A monitoring report is due December 30, 2014. Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Cynthia Wesley at (215) 656-8548 or by email at cynthia.wesley@ed.gov.

Sincerely,

/s/

Joseph P. Mahoney
Program Manager

Enclosure