

- 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.

Section 504 and Title II also prohibit 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.

LEGAL STANDARD:

Section 504 at 34 C.F.R. § 104.4 and Title II at 28 C.F.R. § 35.130, requires that no person, on the basis of disability, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any program or activity.

The regulations implementing Section 504, at 34 C.F.R. § 104.3(j), and Title II, at 28 C.F.R. § 35.104, define a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Concerning Title II, under 28 C.F.R. § 35.103, the Title II regulation does not set a lesser standard than those under Section 504. Accordingly, OCR interprets the Title II regulation to require public entities to provide services to students with disabilities (including a free appropriate public education) to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

FAPE

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 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 are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

The Section 504 regulation, at 34 C.F.R. § 104.35, requires districts to: establish standards and procedures for the evaluation and placement of students with disabilities; conduct an evaluation before any significant change in placement; and requires that an evaluation include consideration by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

The Section 504 regulations at 34 C.F.R. § 104.36 provide 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.

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XXXXXXXXXX- PARAGRAPH DELETED.

Allegation 2- Placement decisions made by a group of persons knowledgeable about the child

The Complainant alleged that placement decisions made during the 2014-2015 school year were not made by a group of persons knowledgeable about the Student. The District provided meeting notes XXXXXXXXXXXX-PARAGRAPH DELETED.

Allegation 3- Failure to provide procedural safeguards

The Complainant alleges that the District did not provide her with procedural safeguards during the 2014-2015 school year.

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Allegation 4- Retaliation

The Complainant alleged that the District retaliated against her and the Student
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RESOLUTION:

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 provisions of the agreement must be aligned with the complaint allegations; the issues investigated, and be 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.

Consistent with OCR's procedures, the District requested to resolve the complaint allegations through a voluntary resolution agreement (the Agreement) which was executed on January 28, 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 is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Title VI and its implementing regulation that may exist and are not discussed herein.

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, it 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.

If you have any questions, you may contact Victoria Springs of our staff, at 215-656-3249 or by email Victoria.Springs@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

Enclosure