



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III

DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**December 22, 2015**

**Reissued February 23, 2016**

**IN RESPONSE, PLEASE REFER TO: 03151228**

Dr. Don C. Adams  
Superintendent  
Williamsport Area School District  
2780 West Fourth Street  
Williamsport, PA 17701

Dear Dr. Adams:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Williamsport School District. The Complainant alleged that the District discriminated against XXXXXX (the Student), on the basis of disability by failing to take prompt and effective action in response to XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 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, 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. Because the District receives Federal financial assistance from the Department and it is a public entity, the District is subject to these laws.

As a recipient of Federal financial assistance from the Department, and a public entity, the recipient is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

During our investigation, we interviewed the Complainant, the Student and reviewed documents submitted by the Complainant and the District. Based on our investigation, OCR has determined the District had notice that the Student was XXXXXX; however, the District failed to take prompt and effective action to investigate XXXXXX, and prevent it from recurring. OCR also determined that the District's grievance procedures were not compliant with the requirements of Section 504. On December 16, 2015, the University voluntarily signed a Resolution Agreement resolving this matter.

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

## **Legal Standards**

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.

### *Hostile Environment*

Disability harassment under Section 504 is intimidation or abusive behavior toward an individual based on disability that creates a hostile environment by interfering with or denying an individual's participation in or receipt of benefits, services, or opportunities in the recipient's programs.

To establish a violation of Section 504, under a hostile environment theory, the evidence must establish, based on a totality of the circumstances, that: (1) the conduct was sufficiently serious so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient; (2) the recipient had actual or constructive notice of the conduct; and (3) failed to take prompt remedial action to stop the harassment, remedy its effects, and prevent its recurrence.

Once a recipient has notice of disability harassment, it must take immediate and appropriate action to investigate, which should be prompt, thorough, and impartial. At the conclusion of the investigation, the parties must be notified in writing about the outcome of the complaint. A recipient may also be required to provide other services to the victim to address the effects of the harassment.

### *Notice of Nondiscrimination*

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients to notify participants, beneficiaries, applicants, and others that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, it shall include in those materials or publications a statement of the nondiscrimination policy.

The regulation implementing Title II, at 28 C.F.R. § 35.106, provides that a public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

### *Grievance Procedures*

The Section 504 regulation, at 34 C.F.R. § 104.7, requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment.

The regulation implementing Title II, at 28 C.F.R. § 35.107 requires:

(a) Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- notice of the procedure, including where complaints may be filed;
- application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

### **The District's Policies and Procedures**

The District's nondiscrimination policies and procedures provide that complaints of discrimination shall be investigated promptly, and corrective action shall be taken when allegations are verified. According to the policy, confidentiality of all parties shall be maintained, consistent with the District's legal and investigative obligations. Moreover, neither reprisals nor retaliation shall occur as a result of good faith complaints of discrimination.

The District's Compliance Officer is the Director of Human Resources. According to the District's policy, the Compliance Officer shall publish and disseminate its nondiscrimination policy and complaint procedure at least annually to students, parents, employees and the public. Furthermore, the District's policy provides that nondiscrimination statements shall include the position, office address and telephone number of the Compliance Officer.

### *Complaint Procedures*

The District's complaint procedures provide that complaints of discrimination shall be reported to the building principal. If the building principal is the subject of the complaint, the complaint shall be made directly to the Compliance Officer or other designated administrator. The procedures further provide that:

- A student or third party who believes he/she has been a victim of discrimination is encouraged to immediately report the incident to the school principal;
- A school employee who witnesses or is notified that a student has been a victim of discrimination shall report the incident to the building principal; and
- The complainant or reporting employee is encouraged to use the report form available from the building principal, but oral complaints are accepted.

Upon receiving a complaint of discrimination, the building principal shall immediately notify the Compliance Officer, who will authorize the building principal, or a designated employee, to investigate the complaint. The investigation may consist of individual interviews with the complainant, the accused, and others with relevant information, and a review of all relevant documents. The District must conduct an investigation, regardless of whether a criminal investigation into the same matter is pending or has been completed.

The District's procedures further provide that the building principal shall prepare a written report within fifteen (15) days stating the outcome of the investigation, a determination of whether the complaint has been substantiated, and a recommending disposition of the complaint. Findings of the investigation shall be provided to the complainant, the accused, and the Compliance Officer. If the investigation results in a determination that discrimination has occurred, the District shall take prompt, corrective action to ensure that such conduct shall cease and will not recur. Disciplinary actions shall be consistent with the Student Code of Conduct, Board policies and District procedures.

### **Facts**

x – paragraphs redacted – x

### **Analysis**

The evidence shows that although the District was aware of XXXXXX, the District failed to investigate or take any action XXXXXX.

OCR also finds that the District's grievance procedures are deficient in that the procedures do not provide for correcting the discriminatory effects on the victim. The District and signed a Voluntary Resolution Agreement on December 16, 2015 resolving this matter.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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 Complainant may file another complaint alleging such treatment.

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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's findings, you may contact Team Leader Nancy Potter at 215-656-8578.

Sincerely,

/s/

Judith O'Boyle  
Chief Attorney

Enclosure