



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

November 4, 2016

**IN RESPONSE, PLEASE REFER TO DOCKET #03151242**

Dr. Jack Smith, Superintendent  
Montgomery County Public Schools  
850 Hungerford Drive  
Rockville, MD 20850

Dear Dr. Smith:

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 Montgomery County Public Schools (the District). XXXXXX (the Complainant) alleged that the District discriminated against her son, XXXXX (the Student) on the bases of disability and national origin. Specifically, the Complainant alleged that the District discriminated against the Student on the basis of disability by:

a. XXXXXX

xx – paragraph redacted – xx

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.
- Title VI of the Civil Rights Act of 1964 (Title VI), §§ 2000d et seq., and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, Title VI and their implementing regulations.

xx – paragraphs redacted – xx

During the course of the investigation, the District requested to resolve these allegations. Prior to concluding the investigation of these allegations, the District signed the enclosed Resolution Agreement (Agreement) on November 1, 2016, which when fully implemented, will resolve these allegations.

### **Legal Standards**

Section 504 and the ADA have equivalent standards. Title II is interpreted as adopting the standards of Section 504 in areas where Title II has not adopted a different standard. Therefore, OCR applied Section 504 in analyzing this complaint.

### **FAPE**

The Section 504 regulation at 34 C.F.R. § 104.33(a) and (b) requires a recipient that operates a public elementary or secondary education program to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or the severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual education needs of persons with disabilities as adequately as the needs of persons without disabilities 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 procedural safeguards.

### **Restraint**

Inappropriate physical restraint of a student by recipient staff for conduct related to the student's disability that interferes with or denies the student's participation in or receipt of benefits, services, or opportunities in the recipient's program can constitute disability discrimination in violation of Section 504 and Title II. OCR defines "physical restraint" as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

### **Different Treatment**

The regulations implementing Section 504 at 34 C.F.R. §§104.4(a), (b)(1)(i), (ii) and (vii) provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance. A recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

In order to establish a finding of a violation of Section 504, OCR would have to find that the Student was treated differently than similarly-situated nondisabled students in a way that limited the Student's opportunity to participate in or benefit from a school program or activity, and that either the District cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the District has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the recipient treated the Student in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on disability.

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), provides that a school district may not exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to different treatment on the basis of race, color, or national origin. In order to establish a finding of a violation of Title VI in this case, we would have to find that the Student was treated differently than similarly-situated students of other races/national origins in a way that limited the Student's opportunity to participate in or benefit from a school program or activity, and that either the District cannot articulate a legitimate, nondiscriminatory reason for the different treatment or that the District has articulated a legitimate, nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the District treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination on the basis of race, color, or national origin.

### **Factual Summary**

xx – paragraphs redacted – xx

### **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 November 1, 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 me at 215-656-8522 or [Vicki.Piel@ed.gov](mailto:Vicki.Piel@ed.gov)

Sincerely,

/s/

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

Enclosure

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cc: Rebecca Bixler, Assistant General Counsel (w/encl), via email