



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

January 11, 2016

**IN RESPONSE, PLEASE REFER TO: 03151259**

Dr. Ron Duerring  
Superintendent  
Kanawha County Schools  
200 Elizabeth Street  
Charleston, WV 25311

Dear Dr. Duerring:

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 Kanawha County Public Schools (the District). XXXXXXXXXXXX, (the Complainant) alleged that the District discriminated against XXXXXXXX, XXXXXXXXXXXX (the Student), on the basis of disability. Specifically, the Complainant alleged that the District subjected him to a hostile environment when it failed to appropriately address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX..

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 Section 504, Title II and their implementing regulations.

**LEGAL STANDARD:**

The regulation implementing Section 504 prohibits the District from discriminating on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.4(a) states that no qualified individual shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or

activity which receives Federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

Disability harassment is a form of discrimination prohibited by Section 504 and the ADA. To establish a violation under the hostile environment theory, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and to ensure that participants in the educational program are not restricted in their participation or benefits as a result of a hostile environment. In evaluating a recipient's response to a hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies.

### **FACTUAL SUMMARY**

The Student is XXXXXXXXXXXX and enrolled in the District and has a disability, XXXXXX. The Student XXX.

XXXXXXXXXXXX - Paragraph deleted.

XXXXXXXXXXXX- Paragraph deleted.

XXXXXXXXXXXX-Paragraph deleted

### **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 complaint allegations 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 (the Agreement). We determined that this complaint was appropriate for resolution pursuant to a Voluntary Resolution Agreement as OCR would have to conduct additional investigation, including interviews with the Complainant and District personnel, in order to make a compliance determination regarding this complaint.

On January 7, 2016, the District signed a Voluntary Resolution Agreement with OCR to resolve the allegation in this complaint. 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 Section 504, Title II and their implementing regulations that 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.

If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or [Dale.Leska@ed.gov](mailto:Dale.Leska@ed.gov) or 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

cc: James W. Withrow, General Counsel (w/encl)