



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

REGION III
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KENTUCKY
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November 20, 2015

IN RESPONSE, PLEASE REFER TO: 03-15-1265

Mr. Mike Hogg
Superintendent
Berea Independent School District
3 Private Parkway
Berea, KY 40403

Dear Mr. Hogg:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Berea Independent School District (the District). The Complainant alleged that the District discriminated against her XXXXXX (the Student) on the basis of disability by failing to implement her Section 504 Plan from 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.

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

Legal Standards

The regulation implementing Section 504 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 a student with disabilities as adequately as the need of non-disabled students are met, and that are developed in accordance with the procedural requirements of subsections 104.35-104.36 pertaining to evaluation and placement and due process protections. Implementation of an individualized education program developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one way of meeting these requirements. OCR interprets the Title II regulations at 28 C.F.R. §§ 35.130(a) and 35.130(b)(1)(ii) and (iii) to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The regulation implementing Section 504 at 34 C.F.R. §§104.4(a), (b)(1)(i), (ii) and (vii), provides 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.

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.

Factual Background

The Complainant alleges that the District failed on multiple occasions to provide the Student with the accommodations contained in her Section 504 Plan. According to the Complainant, XXXXXXX.

Specifically, the Complainant alleged that the District failed to provide the Student with the following accommodations from her Section 504 Plan:

- XXXXXX

The Complainant stated that the Student's teachers did not implement any of the listed accommodations.

The District provided a copy of the Student's Section 504 Plan, which included the accommodations asserted by the Complainant. The District also submitted handwritten notes brought to the meeting by the Complainant when the Section 504 Plan was drafted. The District provided a December 8, 2014 email from the school guidance counselor to the Student's teachers with a description of the Student's Section 504 Plan, as well as sample notes, study guides and e-mails to the parents.

x – paragraph redacted – x

x – paragraph redacted – x

Conclusion

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 and 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 this complaint through a resolution agreement, and on November 6, 2015, the District signed a Voluntary Resolution Agreement (Agreement) with OCR to resolve the allegations contained within the complaint. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504 or 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.

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.

If you have any questions, please contact Irene Town, at 215-656-8586 or by e-mail at Irene.town@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure