UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
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November 25, 2016

IN RESPONSE, PLEASE REFER TO: 03-16-1174

Maureen Reusche, Ed.D.
Superintendent
The School District of Haverford Township
50 East Eagle Rd.
Havertown, PA 19083

Dear Dr. Reusche:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the School District of Haverford Township (the District). The complaint was filed by XXXXXX (the Complainant) on behalf of her son, XXXXXX (the Student). The Complainant alleged that the District discriminated against the Student on the basis of disability and retaliated against her due to her advocacy efforts on behalf of the Student. Specifically, the Complainant alleged that the District:

1. XXXXXX
2. XXXXXX
3. XXXXXX

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Section 504 and Title II also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding.

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

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

LEGAL STANDARDS

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. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets Title II to impose legal obligations similar to those imposed by Section 504. Consequently, we use the Section 504 standard to determine compliance with Title II.

When investigating a complaint of retaliation, OCR determines whether: (1) the complainant engaged in a protected activity; (2) the recipient had notice of the protected activity; (3) the recipient took a materially adverse action against the complainant; and (4) there was a causal connection between the protected activity and the adverse action. If one of the above elements cannot be established, then OCR finds insufficient evidence of a violation. If these four elements are present, then a *prima facie* case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

In order for an activity to be considered "protected," the complainant must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by a recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. OCR follows the general principle that as the time period between the protected activity and the materially adverse action increases, the likelihood that there is a causal link between these two activities decreases. Other evidence of a causal connection may include the recipient's treatment of the complainant compared to other similarly situated individuals, the recipient's deviation from established policies or practices, and changes to the treatment of the complainant after the protected activity occurred.

FACTUAL SUMMARY

xx – paragraphs redacted – xx

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 (Agreement). The provisions of the 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 the complaint through an Agreement. On November 21, 2016, the District signed this Agreement, a copy of which is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement. Accordingly, OCR is concluding its investigation of these allegations as of the date of this letter. 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.

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 thank the District for its cooperation and assistance in addressing this matter. If you have any questions or concerns about our determination, please contact Michael Wesley, Equal Opportunity Specialist, at (215) 656-6908 or at michael.wesley@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office

Enclosure

cc: Lawrence D. Dodds, Esq. – Wisler Pearlstine, LLP