TATES OF MISS

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

August 28, 2019

IN RESPONSE, PLEASE REFER TO #03161175

Dr. Kimberly A. Hill Superintendent Charles County Public Schools khill@ccboe.com Sent via email only

Dear Dr. Hill:

XX - Paragraphs Redacted - XX

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.
- 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.

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.

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.

Legal Standards

Hostile Environment based on Disability

The Section 504 implementing regulation, at 34 CFR 104.4(a), prohibits discrimination on the basis of disability. Disability harassment that is severe, pervasive or persistent can result in the denial or limitation of a student's ability to participate in or receive benefits, services or opportunities from the school's program. If a recipient receives information indicating that a student may have been harassed on the basis of disability, the recipient is responsible for investigating the allegations and, if a hostile environment is found, to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To establish a violation under the hostile environment approach, OCR must determine whether the conduct constitutes a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent is recurrence.

FAPE

Section 504's implementing regulation at 34 C.F.R. § 104.33 states that "[a] recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." Section 504's implementing regulation at 34 C.F.R. §104.3(j), defines an individual with a handicap as any person who has a physical or mental impairment which substantially limits a major life activity, including learning. Section 504's implementing regulation at 34 C.F.R. §104.33, require public school districts to provide a 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 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 (IDEA) is one means of meeting these requirements. 34 C.F.R. §104.33(b) (2)

Factual Summary

XX – Paragraphs Redacted – XX

To resolve the compliance concerns identified above, the District entered into the attached Resolution Agreement, signed on August 23, 2019. When fully implemented, the Resolution Agreement will address these compliance concerns. As is our usual practice, OCR will monitor the District's implementation of the Resolution Agreement.

XX - Paragraph Redacted - XX

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because 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.

Thank you for your cooperation in this matter. If you have any questions, please contact Pam Darville, Attorney, at 215-656-8599 or Pam.darville@ed.gov.

Sincerely,

/s/

Joseph P. Mahoney Program Manager

Enclosure

cc: Rochelle Eisenberg, Esq. reisenberg@pklaw.com