



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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April 13, 2017

IN RESPONSE, PLEASE REFER TO DOCKET #03161264

Dr. Kevin M. Maxwell, CEO
Prince George's County Public Schools
Office of the Chief Executive Officer
Sasscer Administration Building
14201 School Lane
Upper Marlboro, MD 20772

Dear Dr. Maxwell:

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 Prince George's County Public Schools (the District). XXXXXX, (the Complainant) alleged that the District discriminated against XXXXXX, (the Student) on the bases of XXXXXX.

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.

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 April 11, 2017, which when fully implemented, will resolve these allegations.

Legal Standards

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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 - XXXXXX

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.

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.

Different Treatment – XXXXXX

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

XXX—paragraphs redacted---XXX

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 April 11, 2017. 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 Sarah Haake at 215-656-8516 or sarah.haake@ed.gov or me at 215-656-8522 or vicki.piel@ed.gov

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Shauna Battle, District General Counsel (w/encl), via email only