



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  
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**October 3, 2018**

**IN RESPONSE, PLEASE REFER TO: 03161297**

George Arlotto, Ed.D.  
Superintendent  
Anne Arundel County Public Schools  
2644 Riva Rd  
Annapolis, MD 21401

Dear Dr. Arlotto:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint filed against the Anne Arundel County Public Schools (the District). The Complainant (XXXXXX) alleged that the District discriminates on the basis of disability and retaliated against XXXXXX (the Student), because of her advocacy on her behalf as a student with a disability. Specifically, the Complainant alleged:

1. The District's policy for identifying gifted students discriminates against students with disabilities by using assessments and eligibility criteria that screen out students with disabilities and failing to address implementation of accommodations for students with disabilities within the identification process; and
2. The District has inadequate disability grievance procedures under Section 504 and Title II.

The Complainant further alleged that the District discriminated against the Student on the basis of disability by:

3. XXXXXX;
4. XXXXXX;
5. XXXXXX;
6. XXXXXX; and
7. XXXXXX.

Finally, the Complainant alleged the District retaliated against the Student by:

8. XXXXXX;
9. XXXXXX; and
10. 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. Section 504 also prohibits retaliation.
- 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 II also prohibits retaliation.

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.

During our investigation, we interviewed the Complainant and District personnel, and reviewed documentation submitted by the Complainant and the District. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence to support the Complainant's allegation that the District discriminated against the Student on the basis of disability by XXXXXX (#5). OCR did not find sufficient information to support the Complainant's remaining allegations. OCR's findings and conclusions are discussed below.

## **LEGAL STANDARDS**

### **DISCRIMINATION – DIFFERENT TREATMENT/DISPARATE IMPACT**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified individual with a disability 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 regulation also prohibits recipients of Federal financial assistance from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disabilities.

The Title II regulation, at 28 C.F.R. § 35.130, provides that a public entity may not afford a qualified disabled person with an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded to others. Title II has been interpreted to adopt the standards of Section 504 in areas where Title II has not adopted a different standard. Since Title II does not specifically address discrimination in public elementary and secondary education programs, OCR has applied the Section 504 standards in conducting this investigation.

To determine whether individuals with disabilities are subject to unlawful discrimination as described above, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether a recipient treats individuals with disabilities less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the recipient has a legitimate, nondiscriminatory reason for the difference in treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination. In a disparate impact analysis, OCR considers whether a neutral qualification standard or selection criterion screens out individuals with a disability on the basis of disability when these individuals satisfy other requirements. If so, the recipient may then prove that such a standard is educationally

necessary and there are no alternatives with a lesser impact, or prove that an individual with a disability could not meet the standard with reasonable accommodation or modification.

To determine whether a school district's policy or practice has an unlawful disparate impact on the basis of disability, OCR examines: (1) whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students with disabilities; (2) whether there is a substantial, legitimate justification for the policy or practice; and (3) if so, whether there is an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the school district's.

## **GRIEVANCE PROCEDURES**

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires that a recipient take appropriate steps to notify participants, beneficiaries, applicants, employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate in admission or access to, or treatment or employment in, its program or activity on the basis of disability; and, that this notice should also include the identity of its designated coordinator(s). The regulation implementing Section 504, at 34 C.F.R. §104.8(b), requires that a recipient publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing Title II, at 28 C.F.R. §35.106, contains similar requirements.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. The regulation implementing Title II, at 28 C.F.R. §35.107(b), contains similar requirements.

## **FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education to each qualified nondisabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. A recipient that operates a public elementary or secondary education program or activity must also conduct an evaluation in accordance with the requirements of Section 504 regulations of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. In interpreting evaluation data and making placement decisions, a recipient must (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with the Section 504 regulation's requirements. 34 C.F.R. §§ 104.35 (a), (b), and (c).

## **EFFECTIVE COMMUNICATION**

The regulation implementing Title II, at 28 C.F.R. § 35.160 (a)(1), requires that public entities take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. The regulation implementing Title II, at 28 C.F.R. § 35.160(b) (1) and (2), requires that public entities furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

## **RETALIATION**

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will consider whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes a *prima facie* case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

OCR will find that an individual engaged in a protected activity if he or she opposes an act or policy that he or she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing. 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.

## **Findings of Fact and Legal Analysis**

### **Background**

XX – paragraphs redacted – XX

## **CONCLUSION**

This concludes OCR's investigation of the complaint. In order to address the compliance issues identified above, the District entered into a Resolution Agreement with OCR (attached). When fully implemented, the Resolution Agreement will address these issues. OCR will monitor the

University's implementation of the Resolution Agreement to ensure the University's compliance with Section 504 and the ADA. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact Marcia Jones at (215) 656-8555 or by email at [marcia.jones@ed.gov](mailto:marcia.jones@ed.gov).

Sincerely,

/s/

Nancy E. Potter  
Team Leader