



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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REGION III
DELAWARE
KENTUCKY
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September 29, 2017

IN RESPONSE, PLEASE REFER TO: 03171062

Dr. Donna C. Hanlin
Superintendent
Wicomico County Schools
2424 Northgate Drive, Suite 100
Salisbury, MD 21801

Dear Dr. Hanlin:

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 the Wicomico County Public Schools (the District). XXXXXX (the Complainant) alleged that the District discriminated against XXXXXX (the Student), on the basis of disability. Specifically, the Complainant alleged that the District:

1. XXXXXX
2. XXXXXX; and
3. 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. Section 504 also prohibits retaliation.
- 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. Title II also prohibits retaliation.

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

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.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. 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 the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

The District maintains a school board approved policy entitled, Acceptable Use of Technology, which delineates that use of student personal electronic devices (cell phones, tablets, etc.) is permitted in school according to specific, listed stipulations. Additionally, the Student's school has a written procedure which includes information about cell phone use at the school (the Middle School Policy). In pertinent part, the Middle School Policy provides that cell phones are allowed for silent use (such as texting, email, checking time). Under the District's Acceptable Use of Technology policy, which is referenced 2016-2017 Student Handbook/Code of Conduct, a cell phone may be confiscated as a result of a Technology/Telecommunications Violation as one of the disciplinary interventions and/or consequences.

The District's disciplinary data of all enrolled students, between August 29, 2016 and March 9, 2017, establishes that there were no disciplinary actions taken that resulted XXXXXX.

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. The provisions of the agreement must be aligned with the complaint allegations and the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, 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 issues in this complaint through a voluntary resolution agreement, which was executed on September 29, 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 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, it 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, you may contact investigator Josh Galiotto at (215) 656-8587 or by email at josh.galiotto@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure