



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
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PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
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MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

October 10, 2018

Via Email/ [jwoofter@k12.wv.us](mailto:jwoofter@k12.wv.us)

Jeffrey P. Woofter  
Superintendent  
Barbour County Schools  
45 School Street  
Philippi, WV 26416

Re: OCR Complaint No. 03-17-1170

Dear Superintendent Woofter:

This is to advise you of the resolution of the above referenced complaint that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against the Barbour County Schools (the District). The Complainant, XXXXXX, filed the complaint on behalf of XXXXXXX (the Student). The Complainant alleged that the District subjected the Student to a hostile environment when the Student was harassed based on his disability and the District did not promptly respond.

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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Voluntary 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 Voluntary Resolution Agreement.

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

### **Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. 104.4(a), prohibits discrimination on the basis of disability. It also requires, at 34 C.F.R. 104.33(a), that recipients of Federal funding will provide a free appropriate public education (FAPE) to each qualified individual with a disability in the recipient's jurisdiction, regardless of the nature or severity of the disability.

The Section 504 implementing regulation, at 34 C.F.R. Section 104.7(b), requires a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulation, at 28 C.F.R. Section 35.107(b), similarly requires a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

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 its recurrence.

### **Background**

xx – paragraphs redacted – xx

### **Facts**

xx – paragraphs redacted – xx

### **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District requested to resolve the issues in this complaint through a voluntary resolution agreement. On October 10, 2018, the District signed the enclosed Voluntary Resolution Agreement which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Christina Haviland, the attorney assigned to this complaint, at 215-656-5805, or [Christina.Haviland@ed.gov](mailto:Christina.Haviland@ed.gov).

Sincerely,

/s/

Melissa M. Corbin  
Team Leader  
Philadelphia Office  
Office for Civil Rights