



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  
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MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

January 24, 2018

**IN RESPONSE, PLEASE REFER TO: 03171343**

Superintendent Debbie Stephens  
Elliott County Schools  
100 South KY 7  
Sandy Hook, KY 41171

Dear Superintendent Stephens:

This letter is to inform you of the disposition of the above-referenced complaint that was filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Elliott County Schools (the District) alleging discrimination on the basis of disability. 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, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. We also enforce 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, which prohibits discrimination on the basis of disability by public entities. 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.

Legal Authority:

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. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

The Section 504 regulations at 34 C.F.R. Sections 100.4(a) and (b)(i-vii) and Title II ADA regulations at 28 C.F.R. Sections 35.130(a) and (b)(i-vii), prohibit a recipient of Federal

financial assistance from providing a service, financial aid or other benefit to an individual, which is different or is provided in a different manner from that provided to others under the program. In order to establish a finding of a violation of different treatment under Section 504 and the ADA, OCR must determine that the Student was treated differently than similarly-situated 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, in making a determination as to whether discrimination occurred, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of disability discrimination.

When investigating an allegation of disability harassment or hostile environment, OCR determines whether: (1) a student was subjected to harassment on the basis of disability; (2) the harassment rose to a level that denied or limited the student's ability to participate in or benefit from the educational program, service or aid; (3) the recipient had actual or constructive notice of the harassment; and (4) the recipient failed to take prompt and remedial action to end the harassment and prevent its reoccurrence.

To establish a violation under the hostile environment approach, OCR must determine whether the collective incidents and social atmosphere constitute a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment was 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 and, or, staff involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual, infrequent, or isolated incidents to constitute a hostile environment on the basis of disability. Harassment based on disability, if sufficiently severe, denies or limits a student's ability to participate in or benefit from the school program. 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.

If an employee who is acting within the scope of his authority over students engages in disability harassment and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of disability, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the

harassment and preventing its recurrence. This is true whether or not the recipient has actual notice” of the harassment.

Investigation to Date:

XX – paragraphs redacted – XX

District’s Request for Voluntary Resolution:

On December 1, 2017, prior to the completion of OCR’s investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual*. On January 18, 2018, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the District has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR’s investigation of the complaint and 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.

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 harmed individual may file a complaint alleging such treatment.

The Complainant may 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 letter 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.

Thank you for your cooperation with this matter. If you have any questions, please contact me at 215-656-8522 or [vick.piel@ed.gov](mailto:vick.piel@ed.gov).

Sincerely,

/s/

Vicki Piel  
Team Leader

Enclosure: Resolution Agreement