



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 28, 2019

IN RESPONSE, PLEASE REFER TO: 03171382

Jeffrey A. Lawson, Ed.D.
Superintendent
Cecil County Public Schools
201 Booth Street
Elkton, MD 21921

Dear Dr. Devine:

This is to notify you of the resolution of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Cecil County Public Schools (the District) alleging discrimination on the basis of disability. The Complainant alleged that the District discriminated against XXXXXXXXXXXX XXXXXXXX (the Student), on the basis of disability XXXXXXXXXXXXXXXXXXXXXXXX by failing to conduct a timely and appropriate evaluation of the Student's need for special education or related services.

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. OCR also enforces 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. 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.

OCR interviewed the Complainant and District personnel and reviewed information submitted by both parties. Prior to the conclusion of OCR's investigation, the District agreed to resolve this complaint.

Legal Standards

Section 504 requires a District to provide a qualified student with a disability an opportunity to benefit from the District's program equal to that of students without disabilities. The Section 504 regulations at 34 C.F.R. § 104.4(a) state that no qualified person 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. 34 C.F.R. § 104.4(b)(1) provides that 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 the aid, benefit, or service. Title II of the ADA prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II of the ADA.

The regulation implementing Section 504, 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. The implementation of a Section 504 Plan is one way to comply with the FAPE requirement. 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 Section 504 regulation at 34 C.F.R. § 104.35(a) provides that school districts are required to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. §104.35(b) further provides that tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Regarding placement procedures, the regulation implementing Section 504 at 34 C.F.R. 104.35(c) further provides that in interpreting evaluation data and in making placement decisions, (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) a recipient shall (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 104.34.

Although the Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation, a recipient should conduct an evaluation within a reasonable period of time after it has reason to suspect that a student, because of disability, may need special education or related services. OCR may consider state law when determining whether a district has conducted a timely evaluation of a student.

The Section 504 regulation at 34 C.F.R. § 104.36 establishes procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students who, because of disability, need special instruction or related services. Recipients must establish and implement a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure.

XX – Paragraphs Redacted – XX

Request to Resolve through a Voluntary Resolution Agreement

Allegations under investigation may be resolved at any time when, prior to the point when the OCR issues a final determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will 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, on February 22, 2019, the District requested to resolve this complaint through a Voluntary Resolution Agreement (the Agreement). On February 26, 2019, the District signed a Voluntary Resolution Agreement with OCR to resolve the allegation in this complaint. When fully implemented, the Agreement will address the allegation investigated. 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. 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.

OCR would like to thank the District and its attorney for their cooperation in this matter. If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or

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Dale.Leska@ed.gov. Additionally, please also feel free to me at 215-656-8522 or Vicki.Piel@ed.gov as well.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

cc: David Burkhouse, Esquire (w./encl.)

Enclosure