



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
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REGION III  
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WEST VIRGINIA

November 9, 2018

Dr. Mark Stamm  
Superintendent  
South Williamsport Area School District  
515 West Central Avenue  
South Williamsport, PA 17702

**Sent via email only: [mstamm@swasd.org](mailto:mstamm@swasd.org)**

RE: OCR Complaint No. 03-18-1225

Dear Dr. Stamm:

This is to inform you of the outcome of the above referenced complaint that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) by XXXXXX (the Complainant) against the South Williamsport Area School District (the District) on behalf of XXXXXXXX (Student 1) and XXXXXXXX (Student 2), who attended the District's XXXXXXXX (the School). The Complainant alleged that:

1. The District discriminated against Student 1 on the basis of disability when it denied her a free appropriate public education (FAPE) during the 2017–2018 school year, by:
  - a. XXXXXXXX and;
  - b. XXXXXXXX.

Regarding Student 2, the Complainant alleged that:

2. XXXXXXX;
3. XXXXXXX;
4. XXXXXXX;
5. XXXXXXX; and
6. XXXXXXX.

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

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

whether they receive Federal financial assistance from the Department. Section 504 and Title II also prohibit retaliation. 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.

### **Legal Standards**

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 regulation implementing Section 504 at 34 C.F.R. §104.33 requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. 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 §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(a) requires that the District evaluate a student who, because of disability, is believed to need special education and/or related aids and services before that student's initial placement or before a significant change in placement. 34 C.F.R. § 104.35(c) requires the District to implement a process to interpret the evaluation data and determine and then deliver an appropriate education. The District uses the IEP process for this purpose. OCR interprets Title II regulations as requiring a free appropriate public education to the same extent as the Section 504 requirements.

The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.7(e), provides that no recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing. The Section 504 regulation at 34 C.F.R. § 104.61 incorporates by reference the regulatory provisions of Title VI which prohibit retaliation for engaging in an activity that is protected under the laws OCR enforces.

### **Factual Background**

XX – paragraphs redacted – XX

## **Conclusion**

XX – paragraph redacted – XX

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Voluntary Resolution Agreement on November 6, 2018, which, when fully implemented, will resolve Allegation 4, raised in this complaint. The provisions of the Agreement are aligned with the allegation and issue 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.

If you have any questions, please contact Elizabeth Cavallucci, the investigator assigned to this complaint at 215-656-6939 or [elizabeth.cavallucci@ed.gov](mailto:elizabeth.cavallucci@ed.gov); Christina Haviland, the attorney assigned to this complaint, at 215-656-5805, or [christina.haviland@ed.gov](mailto:christina.haviland@ed.gov) or me at 215-656-8526 or [melissa.corbin@ed.gov](mailto:melissa.corbin@ed.gov).

Sincerely,

/s/

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

Enclosure