



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 1, 2019

IN RESPONSE, PLEASE REFER TO: 03181294

Dr. George Arlotto
Superintendent
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, MD 21401

Via email to: GArlotto@aacps.org

Dear Dr. Arlotto:

This is to notify you of the resolution of the complaint that XXXXXXXX (the Complainant) filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging that Anne Arundel County Public Schools (the District) discriminated on the basis of disability. Specifically, the Complainant alleged that the District discriminated on the basis of disability by failing to properly consider modifications/adaptations that would permit XXXXXXXXXXXXXXXX (the Student), an equal opportunity to participate in XXXXXXXXXXXXXXXXXXXX.

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.
- 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.

Because the District receives Federal financial assistance from the Department and it is a public entity, the District is subject to these laws.

Legal Standards:

Section 104.4 (a) of Section 504 provides in general 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 that receives Federal financial assistance. Moreover, a recipient is prohibited from engaging in discriminatory actions on the basis of disability where it provides different or separate aid, benefits, or services to

persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others. 34 C.F.R. § 104.4(b)(iv). Recipients are also prohibited from limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service. 34 C.F.R. § 104.4(b)(vii).

With respect to “Nonacademic Services”, Section 504 provides, in part, that in providing physical education courses to its students, a recipient may not discriminate on the basis of disability and shall provide to qualified students with disabilities an equal opportunity for participation. 34 C.F.R. § 104.37 (c)(1). However, a recipient may offer to students with disabilities physical education and athletic activities that are separate or different from those offered to nondisabled students only if separation or differentiation can be achieved in this manner and only if no qualified student with a disability is denied the opportunity to compete for teams or to participate in courses that are separate or different. 34 C.F.R. § 104.37 (c)(2). Section 504 provides that a free and appropriate public education (FAPE) may include services a student requires in order to ensure that he or she has an equal opportunity to participate in extracurricular and other nonacademic activities. 34 C.F.R. § 104.33(a).

The Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b) include similar requirements.

Investigation to Date:

XX – Paragraphs Redacted – XX

Conclusion:

On July 25, 2019, pursuant to Section 302 of OCR’s Case Processing Manual, the District requested to resolve this complaint with a voluntary resolution agreement. 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 27, 2019. When fully implemented, the resolution agreement will address all of the allegations 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, 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.

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 individual may file another complaint alleging such treatment.

Thank you for your cooperation, particularly for the assistance of Ms. Alison Barmat in resolving this matter. If you have any questions, you may contact investigator Marcia Jones at (215) 656-8555 or by email at marcia.jones@ed.gov.

Sincerely,

/s/

Joseph P. Mahoney
Program Manager

Enclosure

cc: Alison Barmat, Esquire