



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

January 16, 2019

Dr. William H. Kerr
Superintendent
Norwin School District
281 McMahon Drive
North Huntingdon, PA 15642

IN RESPONSE, PLEASE REFER TO: 03-18-1337

Dear Dr. Kerr:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the Norwin School District (the District). XXXXX (the Complainant) alleged that the District discriminated against XXXXXX (the Student) on the basis of disability at the XXXXXX (the School). Specifically, the Complainant alleged that XXXXXX.

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. Section 504's regulation prohibits retaliation at 34 C.F.R. § 104.61.
- 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. Title II's regulation at 28 C.F.R. § 35.134 prohibits retaliation.

As the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction pursuant to Section 504 and Title II. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and District. Prior to the completion of OCR's investigation, the District asked to resolve this complaint. On January 2, 2019, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the issue in the complaint.

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 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 standards when analyzing the same claims under Title II.

Disability Based Harassment

A District's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A District may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the District had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the District's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a District must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a District must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Investigation to Date

XX – paragraphs redacted – XX

As noted above, prior to the completion of our investigation, the District signed an agreement with OCR. 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 issue raised.

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.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance extended to OCR in resolving this complaint. If you have any questions, please contact Cynthia Wesley at (215) 656-8548 or Cynthia.wesley@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure: Resolution Agreement