



- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (Title II), and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Title II also prohibits retaliation.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II, and their implementing regulations.

XX – Paragraph Redacted – XX

### **Resolution Regarding Remaining Allegations**

Before OCR completed its investigation of Allegations 1(a) and (b), and 2, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed 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 Resolution Agreement.

#### Legal Standards

##### *FAPE*

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

The regulation implementing Section 504 at 34 C.F.R. § 104.35 (a) requires that a recipient 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 change in placement. The regulation implementing Section 504 at 34 C.F.R. § 104.36 that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. 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.

##### *Retaliation*

The regulation implementing Title VI of the Civil Rights Act at 34 CFR §100.7(e) provides that no recipient Federal financial assistance or other person 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 under this part. Section 504 at 34 C.F.R. § 104.61 incorporates the foregoing language by reference. The regulation implementing Title II, at 28 C.F.R. § 35.134, also prohibits retaliation.

When investigating a retaliation claim, OCR must determine whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. While OCR would need to address all of the elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If all of these elements establish a prima facie case, OCR then considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action, and whether the reason asserted is a pretext for retaliation.

XX – Paragraphs Redacted – XX

### Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on December 4, 2019 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues 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. Failure to implement the Agreement could result in OCR reopening the complaint.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Amy Niedzalkoski, the OCR attorney assigned to this complaint, at 215-656-8571 or amy.niedzalkoski@ed.gov.

Sincerely,

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Gellman-Beer".

Beth Gellman-Beer  
Chief Attorney/Team II Team Leader  
Office for Civil Rights  
Philadelphia Office

Enclosure

cc: Dr. Georgia L. Hampton, Director Compliance and Investigations  
By email only: [georgia.hampton@jefferson.kyschools.us](mailto:georgia.hampton@jefferson.kyschools.us)

Kevin C. Brown, Esq.  
By email only: [kevin.brown@jefferson.kyschools.us](mailto:kevin.brown@jefferson.kyschools.us)

Enclosure