



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
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IN RESPONSE PLEASE REFER TO OCR #03-19-1220

September 2, 2020

Mr. Ryan S. Saxe
Superintendent
Cabell County Schools
2850 5th Ave.
Huntington, WV 25702

Sent Via E-mail: rsaxe@k12.wv.us

Dear Mr. Saxe:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 9, 2019 against the Cabell County Schools (the District). The Complainant, XXXXXXXXXXXX, alleged that the District discriminated against XXXXXXXXXXXXXXXXXXXXXXXX (the Student), on the basis of disability by not permitting her to ride the school bus because she is a student with a disability.

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.
- 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.

Because the District is a recipient of Federal financial assistance from the Department and a public entity, it 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 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.

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 regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified disabled person shall, on the basis on disability be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity which receives Federal financial assistance.

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. To determine whether a health care plan satisfies a school district's FAPE obligations under Section 504, OCR examines whether the school district complied with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards. The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.7(b), requires school district that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public entities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

Factual Background

XX – Paragraphs Redacted – XX

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on September 1, 2020 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation 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. As is our usual practice, OCR will monitor the District's implementation of the Agreement

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,

/s/

Supervisory Attorney
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Sherrone Hornbuckle, Esq.
Via email only: sherrone.hornbuckle@k12.wv.us