



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
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October 11, 2019

IN RESPONSE, PLEASE REFER TO: 03191224

Jack R. Smith, Ph.D.
Superintendent
Montgomery County Public Schools
850 Hungerford Drive
Rockville, MD 20850
Via email only: Jack_Smith@mcpsmd.org

Dear Dr. Smith:

This is to advise you of the resolution of the above referenced complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on April 16, 2019, against the Montgomery County Public Schools (the District). XXXXXXXXXXXXXXXX (the Complainant) alleges that the District discriminated against her on the basis of disability at the XXXXXXXXXXXXXXXX High School (the School). Specifically, the Complainant alleges that the District discriminated against her on the basis of disability by:

1. Failing to implement the following provisions of her Section 504 Plan:
 - a. Extended time for missing assignments and assessments by 50%;
 - b. Modified workload of essential/critical assignments as determined by the teacher when absent frequently (excused); and
 - c. Copy of teacher notes, as requested.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by any recipient that receives 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.

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 October 9, 2019, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the issues 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.

Investigation to Date

During the 2018-19 school year, the Complainant was a senior at the District's XXXXXXXXXX XXXXXXXX (the School) and was eligible for a Section 504 Plan as a student with XXXXX and XXXXXXXXXXXXXXXXXXXXXXXX. The Complainant's disabilities affect her attendance, anxiety and time management, according to her Section 504 Plan XXXXXXXXXXXXXXX. The Complainant's Section 504 Plan included, among others, the following accommodations:

- Extended time for missing assignments and assessments by 50%
- Modified workload of essential/critical assignments as determined by the teacher when absent frequently (excused)
- Copy of teacher notes, as requested

XX – Paragraphs Redacted – XX

Legal Standard

Section 504 requires a District to provide a qualified student with a disability an opportunity to benefit from the District's program equal to that of students without disabilities. The Section 504 regulations at 34 C.F.R. Section 104.4(a) state 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 which receives Federal financial assistance. 34 C.F.R. Section 104.4(b)(1) provides that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service. Title II of the ADA prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II of the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 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 34 C.F.R. §§ 104.34–104.36 pertaining to educational setting, evaluation and placement, and due process protections. The implementation of a Section 504 Plan is one way to comply with the FAPE requirement. 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.

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.

In scheduling the meeting required under Action Step 2 of the Agreement, the District will make reasonable efforts to schedule the meeting for a time that is convenient for the Complainant.

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.

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. If you have any questions, please contact Gina DePietro at (215) 656-8595 or by email at gina.depietro@ed.gov.

Sincerely,

/s/

Joseph P. Mahoney
Program Manager

Enclosure

cc: Leslie Turner Percival, Esq. (via email only)