



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  
PENNSYLVANIA  
WEST VIRGINIA

October 17, 2019

IN RESPONSE, PLEASE REFER TO: 03191286

Dr. Trent Lovett  
Superintendent  
Marshall County Schools  
86 High School Road  
Benton, KY 42025

Dear Dr. Lovett:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Marshall County Public Schools (the District) alleging discrimination on the basis of disability. The Complainant (XXXXXXXXXXXX) alleges that the District discriminated against XXXXXXXXXXXXXXXXXXXXXXXX (the Student), on the basis of disability. Specifically, the Complainant alleged that the District discriminated against the Student on May 23, 2019 when it failed to implement a provision of her Individualized Education Plan (IEP), which permitted her to visit the School Nurse as needed XXXXXXXXXXXXXXXX XXXXXXXXXXXX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. Section 504 also prohibits retaliation.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 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. Title II also prohibits retaliation.

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

**Legal Standards**

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## **Free Appropriate Public Education**

Section 504 at 34 C.F.R. § 104.4 and Title II at 28 C.F.R. § 35.130, requires that no person, on the basis of disability, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any program or activity. The Title II regulation, at 28 C.F.R. § 35.103, does not set a lesser standard than those under Section 504. Accordingly, OCR interprets the Title II regulation to require public entities to provide services to students with disabilities (including a free appropriate public education) to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j), defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Learning is considered to be a major life activity under 34 C.F.R. § 104.3(j)(2)(ii). With regard to public elementary and secondary educational services, such an individual is deemed “qualified” when he or she is of an age during which it is mandatory under state law to provide such services, or of an age during which it is mandatory under state law to provide such services to persons with disabilities. 34 C.F.R. § 104.3(l)(2)(i),(ii).

The Section 504 implementing regulation, 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.

## **Failure to Implement**

In evaluating an issue of whether a recipient failed to provide services called for in an IEP, OCR considers: whether the recipient has identified the student as a student with a disability; whether the student had a IEP, and whether the recipient provided the services in the IEP; and, if the recipient did not fully implement the terms of the IEP, whether the failure limited the student’s educational opportunity.

XX – Paragraphs Redacted – XX

## **Request to Resolve Complaint through 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 Resolution

Agreement. The provisions of the Resolution Agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on July 25, 2019, the District requested to resolve this complaint through a Resolution Agreement. The District made this request prior to submitting data in response to this complaint. This complaint is appropriate for resolution via a Resolution Agreement because OCR would need to obtain and analyze additional information to make compliance determinations regarding the allegations in these complaints.

On August 21, 2019, the District signed a Voluntary Resolution Agreement (Agreement) with OCR in order to resolve the matter. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed.

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 or their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private lawsuit in Federal court whether or not OCR finds a violation.

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 Complainant may file another complaint alleging such treatment.

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, we 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.

Thank you for your cooperation in this matter. Additionally, we would also like to take this opportunity to thank Stephen Flatt, Director of Special Education for his assistance and cooperation with regard to this matter. If you have any questions, please feel free to contact Dale J. Leska, Investigator, at (215) 656-8562 or by email at [dale.leska@ed.gov](mailto:dale.leska@ed.gov).

Sincerely,

/s/

Vicki Piel  
Team Leader/Supervisory Attorney  
Philadelphia Office

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Enclosure

cc: Stephen Flatt, Director of Special Education (via email only w.encl.)