

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. 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.

In determining whether a recipient has subjected an individual to discrimination on the basis of disability, OCR looks at whether there were any apparent differences in the treatment of similarly situated individuals on the basis of disability. If different treatment is established, OCR then considers whether the recipient has a legitimate, nondiscriminatory reason for the apparent difference in treatment and whether the reason provided by the recipient is a pretext for discrimination based on disability. When examining pretext, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of disability discrimination.

Factual Background

The District operates three elementary schools for students in grades kindergarten through 6, one middle school, and one high school. For students in kindergarten through grade 6, the Autism Support program is located at C.M. Musser Elementary, the Life Skills program is located at West Hills Elementary, and the Emotional Support program is located at Case Avenue Elementary. The middle school and high school are contained in the same building. Middle school and high school students in the Autism Support program are placed together, and middle school students in the Life Skills program are placed separate from students in the high school Life Skills program. The District does not have an Emotional Support program for middle school or high school students.

XX – Paragraphs Redacted – XX

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on September 16, 2020 which, when fully implemented, will resolve the allegation 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 laws and regulations. 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 investigator Robert Ford at (215) 656-8537 or by e-mail at robert.ford@ed.gov or team Attorney, Amy Niedzalkoski at (215) 656-8571 or by email at amy.niedzalkoski@ed.gov.

Sincerely,
/s/

Craig D. Ginsburg
Supervisory Attorney
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Salvatore Bittner, Esq.
by email only: SBittner@andrewsandprice.com