

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.
- 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.

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

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. See 28 C.F.R. § 35.130.

In determining whether an individual with a disability was treated differently than a nondisabled person, OCR first determines whether there were any differences in the treatment of an individual and similarly situated individuals who do not have disabilities. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of disability discrimination. If different treatment is present, OCR then assesses the recipient's explanation for any difference in treatment to determine if the reasons offered are legitimate or merely a pretext for discrimination.

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

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 Mr. Tom Warner for his assistance with regard to this matter. If you have any questions, please contact Dale Leska at 215-656-8562 or dale.leska@ed.gov or me at (215) 656-8522 or by email at vicki.piel@ed.gov.

Sincerely,
/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure
cc: Tom Warner, Esq.