



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
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August 14, 2020

IN RESPONSE, PLEASE REFER TO: 03201075

Via E-mail Only (dlwilliams@bcps.org)

Darryl L. Williams, Ed. D.
Superintendent
Baltimore County Public Schools
6901 Charles Street
Towson, MD 21204

Dear Dr. Williams:

This is to advise you of the resolution of the above-referenced complaint that the Office for Civil Rights (OCR) of the United States Department of Education (Department) received on November 25, 2019, against the Baltimore County Public Schools (the District). The Complainant, XXXXXXXX, alleged that the District discriminated against her son, XXXXXXXX (the Student), on the basis of disability by failing to implement his 504 Plan during the 2019-2020 school year.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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 Section 504, Title II, and their implementing regulations.

In its investigation, OCR reviewed documentation from the Complainant and the District. OCR also interviewed the Complainant, the School Counselor, and the Student's Homeroom Teacher. Before the completion of OCR's investigation, the District requested to resolve the allegation. An explanation of our findings is detailed below.

LEGAL STANDARD

Free Appropriate Public Education (FAPE)

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 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.

FACTUAL FINDINGS AND LEGAL ANALYSIS

Background Information

During the 2019-2020 school year, the Student was enrolled in XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXX (the School). XX XXXXXXXXXXXXXXXXXXXX. The Student has been identified as a qualified individual with a disability by the District and received services pursuant to a Section 504 Plan until March 2020, when he began receiving services pursuant to an IEP. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder and Attention Deficit Disorder.

At the time the Student started the School in the fall 2019, he had a Section 504 Plan that provided for the following accommodations:

- 1) Preferential seating: Assign Student a spot in the classroom that is away from distractions (door, windows, pencil sharpener) and close proximity to the teacher;
- 2) Chunking: Segment assignments to ensure Student's understanding of directions as well as prevent him from rushing through assignments and not completing them to the best of his abilities;
- 3) Reminders/rephrasing: State directions clearly, provide additional reminders or reword directions to confirm Student understands the assignment or task;
- 4) Sensory fidgets: Allow Student to hold sensory fidgets during whole group instruction and independent work times;
- 5) Behavior chart: Create a system of communication between teacher and parent that displays XXXXX progress throughout the academic day;
- 6) Positive behavioral management strategies: frequently monitor, provide positive feedback, prompts, redirection, reinforcement and check-ins to promote appropriate on-task behavior; and
- 7) Breaks: Allocate time in the academic day for Student to have three brain breaks to assist with his focus.

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Legal Analysis and Conclusions

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 and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, 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 June 30, 2020, the District requested a Voluntary Resolution Agreement (Agreement) to resolve the allegation that it failed to implement the provisions of the Student’s 504 plan requiring preferential seating and chunking. On August 7, 2020, the District signed this Agreement. As is our standard practice, OCR will monitor the District’s implementation of the Agreement, a copy of which is enclosed. When fully implemented, the Agreement will fully address the allegation with respect to preferential seating and chunking of assignments.

XX – Paragraph Redacted – XX

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.

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.

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.

The complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case;

failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Thank you for your cooperation in this matter. If you have any questions, please contact Cheryl-Lyn Bentley, Team Attorney, at 215-656-6023 or cheryl-lyn.bentley@ed.gov.

Sincerely,

/s/

Christina M. Haviland
Supervisory Attorney

Cc: J. Stephen Cowles (via email)