

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

During the course of the investigation, the District requested to resolve Allegation 1. Prior to OCR concluding the investigation of this allegation, the District signed the enclosed Resolution Agreement (Agreement) on March 4, 2021, which when fully implemented will resolve Allegation 1.

XX - Paragraph Redacted - XX

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides 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. The Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1)(i)-(v), states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, 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; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others; or aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an aid, benefit, or service to beneficiaries of the recipient's program or activity.

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.

The regulation implementing Section 504, at 34 C.F.R. § 104.34(b), states that in providing or arranging for the provision of non-academic and extracurricular services and activities, including recess periods, a recipient shall ensure that students with

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Resolution Agreement

OCR procedures provide that a complaint allegation 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 information obtained in our 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, the District requested to resolve this allegation through a Voluntary Resolution Agreement, which was executed on March 4, 2021. Accordingly, OCR is concluding its investigation of this allegation. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District’s implementation of the Agreement.

Allegation 2

The dimensions of the main playground are 32 feet by 75 feet. The surface of the playground is engineered wood fiber. There are 10 pieces of play equipment on this playground. Six pieces of equipment are free standing pieces offering a single play experience as follows: a swing set frame which can hold two swings; three climbing frames, a straight slide and a balance beam. The other four are play structures containing multiple play features, including “monkey” bars, spiral and straight slides, ladders, climbing frames and climbing nets. There is a basketball court which can be used by students during recess.

The dimensions of the fenced playground are 42 feet by 33 feet. The surface of the playground is engineered wood fiber. The fence has two gates to enter the playground. There is one large piece of play equipment on this playground, which has multiple play features. This structure has four slides (straight and spiral), two ladders, two climbing frames and a climbing net.

The District stated that the maximum number of students who use the main playground during any recess period is between 40 and 50 students, while the

maximum number of students who use the fenced playground during any recess period is 10 students or less. XXX
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Legal Analysis and Conclusion

Based upon OCR’s review of the information provided by the District, the main playground is larger in size than the enclosed playground; additionally, the fenced playground only has one piece of play equipment with multiple play features, while the main playground offers multiple pieces of play equipment with a greater variety of play features than are offered at the enclosed playground and includes a basketball court that is available for students to use during recess.

XX – Paragraphs Redacted – XX

This concludes OCR’s investigation of this 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.

The Complainant has a right to appeal OCR’s determination regarding Allegation 2 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.

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.

Page 6 – Dr. Monica Goldson

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.

If you have any questions, please contact Dale Leska at (215) 656-8562 or by email at dale.leska@ed.gov or me at 215-656-8522 or vicki.piel@ed.gov.

Sincerely,
/s/

Vicki Piel
Supervisory Attorney/Team Leader

cc: Gail Viens, Esq.
Enclosure