



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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REGION III
DELAWARE
KENTUCKY
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September 17, 2020

IN RESPONSE, PLEASE REFER TO DOCKET #03201180

Sent via email only to bill.boblett@boyd.kyschools.us

Dr. William L. Boblett Jr.
Superintendent
Boyd County Public Schools
1104 Bob McCullough Drive
Ashland, Kentucky 41102

Dear Dr. Boblett:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Boyd County Public Schools (the District). The Complainant XXXXXXXXXXXXXXXXXXXX alleged that the District discriminated against XXXXXX XXXXXXXXXXXXXXXXXXXX (the Student), and retaliated against her. Specifically, the Complainant alleged that the District:

1. Discriminated against the Student on the basis of disability when, during the 2019-2020 school year, it XXX.

Additionally, she alleged that the District retaliated XXX:

2. A District staff member XXX,
3. The District XXX.

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 Section 504, Title II, and their implementing regulations.

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

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 September 14, 2020, which when fully implemented will resolve Allegation 1.

XX – Paragraphs redacted – XX

Legal Standards

FAPE

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.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact me at 215-656-8522 or vicki.piel@ed.gov

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Kimberly S. McCann Esq., District General Counsel (w/encl), via email only