



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 8, 2022

Via Email @ nenglish@rsd.k12.pa.us

Dr. Neil English
Superintendent of Schools
Riverview School District
701 Tenth Street
Oakmont, PA 15139

Re: OCR Complaint No. 03-21-1256

Dear Dr. English:

This is to advise you of the resolution of this complaint that was filed with the U.S. Department of Education's Office for Civil Rights (OCR) against the Riverview School District, which will be referred to as the District throughout this letter. The Complainant alleged that the District discriminated against her son, whom we will refer to as the Student, on the basis of disability when in XXXXXXXX, the Student was not allowed to return to in-person instruction until a Section 504 plan was finalized.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. 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.

Prior to the completion of OCR's investigation, the District requested to resolve this complaint under Section 302 of OCR's *Case Processing Manual* (CPM). OCR had identified various issues and determined that it was appropriate to resolve them pursuant to a Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

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

Legal Standards

The Section 504 regulation, at 34 C.F.R § 104.4(a), provides that no qualified individual 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 FFA. The Title II regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 regulation, at 34 C.F.R § 104.4(b)(1) and the Title II regulation at 28 C.F.R. § 35.130(b) say that a recipient or public entity, respectively, may not, on the basis of disability, deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others; or provide different or separate aid, benefits, or services to disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others.

When investigating an allegation of different treatment based on disability, OCR first determines whether there is sufficient evidence to establish a *prima facie* case of discrimination. Specifically, OCR determines whether the recipient treated an individual with a disability less favorably than similarly situated persons without disabilities. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

The regulation implementing Section 504 at 34 C.F.R. §104.33 requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. 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 Section 504 procedural requirements pertaining to educational setting, evaluation and placement, and due process protections that are specified in 34 C.F.R. §§ 104.34, 104.35, and 104.36.

An individual with a disability under Section 504 is any person who has a physical or mental impairment which substantially limits one or more major life activities. 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.

a result, the Student requires compensatory education and remedial services. As is our usual practice, OCR will monitor the District's implementation of the Resolution Agreement.

CONCLUSION

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 please contact Connor Lacy, the OCR attorney assigned to this complaint, at 215-656-6459 or Connor.Lacy@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure