



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
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August 18, 2022

IN RESPONSE, PLEASE REFER TO: 03221174

VIA E-MAIL ONLY: masciav@southmoreland.net

Mr. Vincent Mascia
Southmoreland School District
Superintendent of Schools
200 Scottie Way
Scottsdale, PA 15683

Dear Superintendent Mascia:

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 Southmoreland School District (the District). The Complainant, XXXXXXXXXXXX, alleged that the District discriminated against her son, XXXXXXXXXXXX (the Student), on the basis of disability. Specifically, the Complainant alleged that from XXXXXXXXXXXXXXXX the District failed to implement the Student's Section 504 Plan because: (1) it did not notify her when he failed to complete assignments; and (2) it did not provide him with extra time on tests, as required by the Plan.

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.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint, pursuant to Section 302 of OCR's Case Processing Manual (CPM), by taking the steps set out in the enclosed Voluntary Resolution Agreement, which when fully implemented will resolve this complaint. 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.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130, require that no person, on the basis of disability, be excluded from participation in, be

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denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any program or activity. The Title II regulation 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.

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.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student’s plan or as otherwise agreed to by the student’s team. If OCR finds that a recipient has not implemented a student’s plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the recipient to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

Factual Background

During the XXXXX school year, the Student was in XX grade at Southmoreland XXXXXXXX. A Section 504 Plan was developed for the Student on XXXXXXXXXXXXX, and modified on XXXXXXXXXXXX. Both the XXXXXXXXXXXX Plan and the XXXXXXXX modified Plan include the provisions identified in allegations 1 and 2, above.

XX – Paragraphs Redacted – XX

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District requested to resolve the case through a voluntary resolution agreement on July 21, 2022. The District signed the enclosed Voluntary Resolution Agreement on August 10, 2022, which when fully implemented, will address the evidence obtained and all of the allegations investigated in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement.

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 Sarah Haake at sarah.haake@ed.gov; 215-656-6416.

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

Enclosure

cc: Daniel M. Krofcheck, Principal of Southmoreland High School