

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION III DELAWARE KENTUCKY MARYLAND PENNSYLVANIA WEST VIRGINIA

THE WANAMAKER BUILDING, SUITE 515 100 PENN SQUARE EAST PHILADELPHIA, PA 19107-3323

IN RESPONSE, PLEASE REFER TO: 03221219

January 19, 2023

Dr. Jeffrey M. Taylor Superintendent Norwin School District 281 McMahon Drive North Huntingdon, PA 15642 Via E-mail Only: jtaylor@norwinsd.org

Dear Dr. Taylor:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Norwin School District (the District). The Complainant alleged that the District discriminated against her son (Student 1) and her daughter (Student 2) on the basis of disability. Specifically, she alleged that the District denied Students 1 and 2 a free appropriate public education (FAPE) when the District failed to:

- 1. Identify Student 1 as a student with a disability and convene a team to formulate a Section 504 Plan for him;
- 2. Timely identify Student 2 as a student with a disability; and

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. OCR also enforces 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 and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

OCR has completed its investigation with respect to allegations 1 and 2 and concludes there is insufficient evidence that the District discriminated against Student 1 or Student 2, as alleged. In reaching a determination regarding allegations 1 and 2, OCR reviewed documentation submitted by the Complainant and the District and interviewed the Complainant and District staff. The basis for our determination is set forth below.

With respect to allegation 3, on October 12, 2022, the District requested to resolve this allegation through a voluntary resolution agreement, which, when implemented, will address OCR's concerns. On January 12, 2023, the District signed the enclosed resolution agreement, which resolves this allegation. Specifically, the resolution agreement requires the District to convene a team of persons knowledgeable about Student 2 to discuss how her Section 504 plan is to be implemented XXXXXXXXXX, and also to determine whether the alleged failure to implement the Student's Section 504 plan constituted a denial of Student 2's right to a FAPE that needs to be remedied with compensatory education.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4 and the Title II regulation, at 28 C.F.R. § 35.130(a) provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipients to provide FAPE to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require recipients to provide a FAPE to the same extent required under the Section 504 regulation.

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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

Factual Background

Allegation 1 – Student 1

The evidence shows that the first time that the Complainant requested a Section 504 Plan for XXXXXXXXXXXXX. The following day, the District responded and requested that the Complainant provide Student 1's medical information so it could determine whether a Section 504 plan was appropriate. On XXXXXXXXXXXXXXX the Complainant submitted medical Special Education (Director) told OCR that she, the school nurse, and the NOA Principal considered the documentation provided by the Complainant, Student 1's academic performance, and whether Student 1's medical conditions were impeding any major life activities. The Director explained that because the medical documentation did not provide any recommendations for accommodations, the District did not believe that a Section 504 Plan was necessary. By email dated XXXXXXXXX, the District informed the Complainant that the information provided by the doctor did not warrant a Section 504 Plan for Student 1, but that the District was willing to provide accommodations in the form of a health plan. The Director also offered to discuss additional accommodations if the Complainant believed they were needed.

Allegation 1 – Legal Analysis

Upon receipt of Student 1's medical information in XXXXXXXX, the District reviewed it and determined that Student 1 did not qualify for a Section 504 Plan because the documentation provided by his physician did not indicate that he required accommodations in school. The District notified the Complainant of that determination, including notice of the District's procedural safeguards. Nonetheless, the District did implement a health plan for Student 1. The health plan was later amended to a Section 504 Plan based on updated medical documentation showing that Student 1 had a disability that impacted major life activities and required accommodations. The evidence shows that the District reviewed all information provided, made determinations based on the information available, and provided the Complainant with notice of the supports it was able to provide Student 1. OCR notes that the supports provided in Student 1's Section 504 plan were the same as those provided in his health plan. For these reasons, OCR cannot conclude that the District denied Student 1 FAPE by failing to identify him as a student with a disability and develop a Section 504 Plan.

Allegation 2 - Student 2

The Complainant also alleged that the District failed to identify Student 2 as a Student with a disability. She believes the District had the information necessary to identify and evaluate the Student as a student with a disability as early as XXXXXXXX.

In XXXXXXX, the Complainant emailed the District to provide documentation of her own medical condition to the District, and also stated that Student 2's medical condition was affecting

In a XXXXXXXXX email, the Complainant requested a Section 504 Plan for Student 2. District staff responded the following day and asked the Complainant to provide Student 2's medical documentation, which the Complainant provided on XXXXXXXXXXX. The District forwarded a draft Section 504 Plan to the Complainant on XXXXXXXXXXX, and included notice of procedural safeguards. The Complainant signed the Section 504 Plan on XXXXXXXXXXXXXX.

Allegation 2 – Legal Analysis

Once the Complainant requested a Section 504 Plan on XXXXXXXXX, and provided medical documentation of Student 2's disability, a Section 504 Plan was drafted within 15 days and executed. The evidence does not support that there was any delay in identifying Student 2 as a student with a disability or providing Student 2 with a Section 504 Plan. For this reason, OCR finds insufficient evidence that the District denied Student 2 FAPE as alleged.

Allegation 3 – Implementation of Student 2's Section 504 Plan

Allegation 3 – Resolution Agreement

As noted above, prior to OCR's completion of the investigation, the District expressed an interest in resolving this complaint under Section 302 of the CPM, and OCR determined that it would be appropriate to resolve preliminary concerns identified by OCR, including whether teachers were informed of Student 2's Section 504 Plan and whether it was being implemented consistently in all classes. The District signed the enclosed Resolution Agreement that, when fully implemented, will resolve the complaint. The Resolution Agreement requires the District to convene a Team of persons knowledgeable about Student 2 to discuss how Student 2's accommodations are to be implemented in online classes, and whether the alleged failure to implement constituted a denial of Student 2's right to FAPE that needs to be remedied with compensatory education. 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.

The Complainant has a right to appeal OCR's determination regarding allegations 1 and 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

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District 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.

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.

Thank you for your cooperation in this matter. If you have any questions, please contact Gina DePietro, Team Attorney, at (215) 656-8595 or Gina.DePietro@ed.gov.

Sincerely, /s/ Christina M. Haviland Supervisory Attorney

cc: Sal Bittner, Esq. (via email)