



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
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WEST VIRGINIA

November 18, 2022

IN RESPONSE, PLEASE REFER TO: 03-22-1300

Via email only laperad@lmsd.org

Dr. Khalid N. Mumin
Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dear Dr. Mumin:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved this complaint against the Lower Merion School District (the District). The Complainant alleges that the District discriminated against his daughter (the Student) on the basis of disability. Specifically, the Complainant alleges that the District discriminated against the Student on the basis of disability when it failed to implement the Student’s Individualized Education Plan (IEP) by not providing the Student with a nurse XX.

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.
- 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.

As a recipient of Federal financial assistance from the Department and public entity, the District is subject to these laws.

Before the completion of OCR’s investigation, on September 27, 2022, the District requested to resolve the complaint under Section 302 of OCR’s Case Processing Manual. On November 17, 2022, the District signed the enclosed resolution agreement, which when fully implemented will resolve the allegation in this complaint.

FACTUAL SUMMARY

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XX. The IEP required that the District provide a nurse for field trips and school sponsored events. Specifically, the Student’s IEP stated: “Nurse will accompany [the Student] on field trips to respond to seizure

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and administer emergency medication if needed. Parents may opt to attend field trips instead of nurse. Nurse will be available to [the Student] for school sponsored events that may occur before/after school. When notified that [the Student] will be participating in a before/after school event, teacher will notify school nurse to arrange for nursing support.”

On February 8, 2022, the Student was invited to attend XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX. District staff attempted to find a nurse by inquiring among District nurses, as well as through outside agencies that provided nursing services. However, the District was unable to find a nurse to attend XXXXX with the Student. The District updated the Complainant as to the status of its search and informed him, on XXXXXXX, that the District was unable to secure a nurse XXXXXXX. The Complainant ultimately attended XXXXX with the Student.

The District maintains that its inability to secure a nurse for the XXXXXXXXXXXX, which was scheduled only three days in advance, was the only instance during the XXXXX school year that the District was unable to provide nursing services to the Student. The District asserts that it provided nursing services to the Student for extracurricular activities on 59 other occasions during the XXXXX school year, in full compliance with the Student’s IEP.

LEGAL STANDARD

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district’s programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a).

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 procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

CONCLUSION

OCR has preliminary concerns that the District did not implement the Student’s IEP with regard to the basketball game in February 2022. Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on November 17, 2022, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with 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 until the District is in compliance with the terms of the Agreement and regulations implementing Section 504 at 34 C.F.R. Part 104.4 and the Title II regulation at 28 C.F.R. Part 35 at issue in this case.

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.

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 Catherine Nguyen (Catherine.Nguyen@ed.gov; 215-656-5954) or Dale Leska (Dale.Leska@ed.gov; 215-656-8562.)

Sincerely,

/s/

Catherine C. Deneke
Supervisory Attorney
Philadelphia Office

Enclosure

cc: Amy Cleary, Esquire, via email only with Enclosure