

#### UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515 100 PENN SQUARE EAST PHILADELPHIA, PA 19107-3323 REGION III DELAWARE KENTUCKY MARYLAND PENNSYLVANIA WEST VIRGINIA

May 18, 2023

## IN RESPONSE, PLEASE REFER TO: 03221423

Dr. Cheryl L. Dyson Superintendent Central Office 191 South East Street Frederick, MD 21701

Via e-mail: <a href="mailto:superintendent@fcps.org">superintendent@fcps.org</a>

Dear Dr. Dyson:

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 Frederick County Public Schools (the District) in Maryland. The Complainant alleged that the District discriminated against her son (the Student) on the basis of disability by failing to appropriately accommodate XXXXXXXXXX.

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 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 Standard

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

The regulation implementing Section 504 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 or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance.

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.

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. The Section 504 regulation, at 34 C.F.R. § 104.35(c), also requires that a school district draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

### **Factual Background**

### Legal Analysis

### Conclusion

Before OCR completed its investigation of this complaint, the District requested to voluntarily resolve this complaint pursuant to Section 302 of the CPM. On May 12, 2023, the District signed the enclosed Voluntary Resolution Agreement which when fully implemented, will address the evidence obtained and the allegation investigated in this complaint. In accordance with the Agreement, the District will convene a Section 504 Team meeting to specifically examine

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.

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.

If you have any questions, please contact investigator Josh Galiotto at 215-656-8587 or by e-mail at joshua.galiotto@ed.gov.

Sincerely, /s/ Christina M. Haviland Supervisory Attorney

Enclosure

CC: Michelle S. Dauksha, Esq.