

# 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: 03-23-1007

March 14, 2023

Dr. Jeffrey A. Lawson, Ed.D.
Superintendent
Cecil County Public Schools
201 Booth Street
Elkton, MD 21921
Via E-mail Only: jalawson@ccps.org

Dear Dr. Lawson:

The U.S. Department of Education, Office for Civil Rights (OCR) has reached a resolution in the above complaint filed against Cecil County Public Schools (District) in Maryland. The Complainant alleged that the District discriminated against his son (the Student) on the basis of disability by failing to timely respond to his request for an evaluation of the Student under Section 504.

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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement, which the District signed on February 24, 2023. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

#### **Legal Standards**

Section 504 requires recipients to provide a qualified student with a disability an opportunity to benefit from the recipient's program equal to that of students without disabilities. The Section 504 regulation, at 34 C.F.R. Section 104.4(a), states that no qualified person 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 Federal

financial assistance. The Section 504 regulation, at 34 C.F.R. Section 104.4(b)(1), provides that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action regarding the person's initial placement or any subsequent significant change in placement. School districts must reevaluate a student with disabilities periodically and before any significant change in placement. The Section 504 regulation, at 34 C.F.R. § 104.35(c), further provides that in making placement decisions the recipient shall draw upon information from a variety of sources, including aptitude and achievement tests and teacher recommendations. Additionally, a recipient must ensure that placement decisions are made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. Although the Section 504 regulation does not set forth specific timeframes by which recipient school districts must complete evaluations of students, a recipient school district must ensure that qualified students with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay.

## **Factual Background**

During the XXXXXXXX year, the Student attended high school in the District. In the XXXX XXXX, the Student was diagnosed with XXXX and his physician recommended a screening for accommodations. In response, on XXXXXXXXXX, the Complainant emailed the District for the Guidance Counselor's contact information to so he could request an evaluation for a Section 504 Plan or an individualized education program (IEP) for the Student. On XXXXXXXXXX, the Complainant left a voicemail for the Guidance Counselor, and on XXXXXXXXXX, the Complainant emailed the Assistant Principal because he had not yet received a response from the Guidance Counselor. On XXXXXXXXXX, the Complainant and the Guidance Counselor spoke by telephone and the Complainant requested an evaluation for the Student. The District told OCR that the Guidance Counselor relayed the Complainant's request to the Building Coordinator on that same date. The Complainant states did not hear anything after this, and so he reached out again after roughly 45 days.

The District acknowledged receiving the Complainant's XXXXXXXXX, email but stated that it read the Complainant's email as his "direction to continue [the Student's] current educational model and monitor [his] progress for declines or challenges" and that a meeting would be scheduled if it became necessary to do so. In addition, the District reported that on XXXXXXXX XXXXXX, the Guidance Counselor met with the Student to check on his progress and that the Student was passing all of his classes and did not report any challenges. On XXXXXXXXX, the Guidance Counselor checked the Student's grades in the PowerSchool portal and found he was passing all of his classes.

The District reported that during a XXXXXXXXXX, meeting with the Complainant regarding the Student's suspension for an incident earlier that month, the Complainant stated that he believed the school had been continuing the Section 504 process and was concerned that a Section 504 meeting had not yet been held. Documents also show that on XXXXXXXXXX, the Student's mother emailed the District asking why they had not yet been contacted regarding a Section 504 meeting. The District told OCR that attempts to hold the Section 504 meeting during this time period were unsuccessful due to the limited availability of school psychologists.

## **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), the District requested to resolve the case through a voluntary resolution agreement. The District signed the enclosed Agreement on February 24, 2023 which when fully implemented, will address OCR's concerns regarding the allegation of this complaint. To address OCR's concerns, the Agreement requires that the District will convene a multidisciplinary team meeting to include relevant education specialist who have knowledge about the Student to determine whether the Student suffered any educational loss as a result of the District's alleged failure to timely respond to the Complainant's request for an evaluation. The Agreement also requires the District to issue a written memorandum for all staff at North East High School regarding its Child Find responsibilities. The Agreement further requires the District to provide training to all administrators, guidance counselors, and staff involved in the special education referral process at North East Hight School regarding the District's Child Find obligations and its special education referral process under Section 504, including all members of the Student's Section 504 Team.

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

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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 thank you for your cooperation during the resolution of this complaint. If you have any questions, you may contact Shannon Zipkin, Paralegal at 215-656-6909 or by email at <a href="mailto:shannon.zipkin@ed.gov">shannon.zipkin@ed.gov</a>.

Sincerely,

/s/

Christina M. Haviland Supervisory Attorney Office for Civil Rights

Enclosure