



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION III  
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July 3, 2023

**IN RESPONSE, PLEASE REFER TO: 03231120**

Mr. Matthew Turner  
Superintendent of Schools  
Boone County Schools  
8330 US Highway 42  
Florence, KY 41042

Via E-mail: [matthew.turner@boone.kyschools.us](mailto:matthew.turner@boone.kyschools.us)

Dear Mr. Turner:

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 Boone County Schools (the District) in Kentucky. The Complainant filed the complaint on behalf of her daughter (the Student). The Complainant alleged that:

1. The District denied the Student a free appropriate public education (FAPE) during the XXXXXXXX school year by failing to implement the following provisions of her health plan:

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2. The District treated the Student differently based on disability by XXXXXXXXXXXXXXX  
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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

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness  
by fostering educational excellence and ensuring equal access.*

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 these laws.

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 Section 504 regulations, at 34 C.F.R. §§ 104.4(a) and (b), apply to recipients and state that no qualified individual 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. Further, the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1), prohibits a public recipient from directly or through contractual, licensing, or other arrangements, discriminating on the basis of disability by denying a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit, or service or afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service or affording a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others.

The regulation implementing Section 504, at 34 C.F.R. §104.33, requires public school districts to provide a 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**

The Student was in the XXXXXX and attended XXXXXXXXXXXXXXXXXXXXXXXX (the School) during the XXXXXX school year. She received services pursuant to Section 504 Plans dated XX, to address her XXXXXXXXXX, which included the requirements listed in allegations 1a.-f. above.

### **Allegation 1**

#### *Allegation 1.a*

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#### *Allegation 1.b-1.e*

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the District provided documentation establishing that the School's guidance counselors/504 coordinators, communicated with teachers and coaches regarding the Student's 504 plan and all procedures surrounding the plan from the start of the school year. It is unclear whether "travelling teachers" who use the classrooms in which the Student attends class were provided complete information about the XXXXXXXXXX protocols in place for the Student. The



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The Complainants raised concerns about this issue at the XXXXXXXXXX, Section 504 meeting, alleging that the Section 504 plan had not been followed. The Section 504 team adjusted the 504 plan to ensure that any host or activity sponsor during extracurriculars would be informed of the Student's XX. The Student ultimately quit the XXXXXXXXXX, citing feelings of embarrassment. At a XXXXXXXX Section 504 Team meeting the District offered to collaborate with the Coach to rectify the XXXXXXXX situation so that the Student would feel comfortable returning to the team, but the Complainant declined.

*Allegation 1.f*

[illegible][illegible]

## Allegation 2

[illegible]

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### **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 June 29, 2023, the District signed the enclosed Voluntary Resolution Agreement which when fully implemented, will address the evidence obtained and the allegations investigated in this complaint. In accordance with the Agreement, the District will convene a Section 504 Team meeting to specifically examine XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, through the date of the Section 504 team meeting, and if necessary, amend the Student's Section 504 plan and Healthcare plan if the Team determines that the current 504 plan and Healthcare plan are not effectively XXXXXXXXXXXXXXXXXXXXXXX XXX The Section 504 Team will also determine whether the District failed to implement the Student's Section 504 plan during the XXXXXX school year, whether that resulted in an educational loss, and if so, determine whether any compensatory education and/or other remedial services for the Student are necessary from XXXXXXXXXXXX, through the date of the 504 team meeting.

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](mailto:joshua.galiotto@ed.gov).

Sincerely,

/s/

Christina M. Haviland  
Supervisory Attorney

Enclosure

CC: Olivia Amlung, Esq.