



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
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September 15, 2023

IN RESPONSE, PLEASE REFER TO OCR DOCKET #03231310

Sent via E-mail Only: mstauffe@wcboe.org

Dr. Micah Stauffer
Superintendent of Schools
Wicomico County Public Schools

Dear Dr. Stauffer:

This letter is to advise you of the outcome of the complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Wicomico County Public Schools (the District) located in Maryland. The Complainant alleges that the District is discriminating against students with hearing disabilities on the basis of disability. Specifically, the Complainant alleges that the District is denying students sign language interpreting services by not employing outside providers, specifically when its own interpreter-employees have reached their weekly hour limit or to relieve them.

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. Section 504 prohibits 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. Title II prohibits discrimination on the basis of disability by public entities. 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.

OCR reviewed information obtained from the Complainant and the District, and identified a concern in the provision of sign language interpreting services provided to students during the 2022-2023 school year for after-school activities. Before OCR completed its investigation, the District expressed a willingness to resolve this 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 Agreement.

LEGAL STANDARDS

Free Appropriate Public Education

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a Free Appropriate Public Education (FAPE) to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. 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 students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36.

Facts

The complaint alleged that the District failed to provide sign language interpreting services for after-school activities when District interpreters were not available or had reached their weekly hourly threshold of 40 hours.

The District provided information for all its students who required sign language interpreting during the [Redacted content] school year ([Redacted content] in total) and identified the interpreters assigned to each student. In addition to the [Redacted content] interpreters assigned to the [Redacted content] students, the District employed a “floater” interpreter who was used to provide additional support, as well as a contracted substitute, as-needed interpreter. The District explained that it provides sign language interpretive services for students to participate in after-school activities. However, the District does not keep a list of the after-school activities that were requested and at which interpretive services were provided for the [Redacted content] school year.

The District reported that during the investigation of this complaint, it discovered that during the [Redacted content] school year, a student¹ was not provided with sign language interpreting services for after-school activities on several occasions. The District told OCR that the student was provided alternative accommodations to enable them to access and engage in the after-school activity, such as electronic communications and sign language communication by a fellow student. In response to this information, the District reported to OCR that it is taking the following steps:

- Revising District procedures for the assignment of interpreting services to ensure coverage for all after-school activities (the Revised Procedures). The revised procedure require:
 - Notification to the school community of an afterschool activity.
 - Parent/guardian or the student themselves will inform school staff (such as case manager or the assigned sign language interpreter) that the student will be participating in the after-school activity.
 - School staff notify the Office of Special Education about the student’s need for sign language interpreter services. The Office of Special Education will then assign an interpreter for the activity.
- The Office of Special Education conducted an orientation session with all sign language interpreters during the professional development activity on [Redacted content], to discuss work expectations, communication of absences, coverage, continuing education opportunities and review of the Revised Procedures discussed above.
- The District reviewed the Revised Procedures with the joint Elementary and Secondary School Leaders during training on [Redacted content].

¹ [Redacted content]

- The District provided the Revised Procedures to all special education teachers during the back-to-school professional development events on [Redacted content].
- The District will post on its website an ongoing advertisement for “Sign Language Interpreter for After School Activities” in order to compile a pool of available candidates, who will be used to provide coverage for an after-school activity when there are no available full-time interpreters to cover the assignment.
- Parents/guardians will be individually notified by the assigned supervisor and student’s case manager to explain the Revised Procedures. The Office of Special Education will also provide an electronic copy of the Revised Procedures to those families.

Analysis and Conclusion

OCR acknowledges that the District has developed and implemented the Revised Procedures to address requests for sign language services for after-school activities. However, OCR has concerns that the District only learned after the conclusion of the [Redacted content] school year and through an OCR investigation that a [Redacted content] student was not provided sign language interpreting services for after-school activities during the [Redacted content] school year.

Before OCR completed its investigation of this complaint, pursuant to Section 302 of OCR’s CPM, the District requested to resolve the case through a voluntary resolution agreement, and OCR determined such a resolution was appropriate. The District signed the enclosed Agreement on September 12, 2023, which when fully implemented, will address the evidence obtained and all of the allegations investigated in this complaint. The Resolution Agreement requires that the District: (1) provide information confirming that all actions to disseminate the Revised Procedure have been completed and (2) track the requests and assignments for sign language interpreters for after-school activities.

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

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 appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Michael Branigan at Michael.branigan@ed.gov, or by phone at 215-656-8516.

Sincerely,

/s/

Craig D. Ginsburg
Supervisory Attorney
Philadelphia Office

Enclosure

CC: Claude de Vasty Jones (by email only)