



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

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February 24, 2020

Via Email Only (millard.house@cmcss.net)

Millard House II
Director of Schools
Clarksville-Montgomery County School System
621 Gracey Avenue
Clarksville, Tennessee 37040

RE: OCR Complaint No. 04-20-1147
Resolution Letter

Dear Mr. House:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) received on December 6, 2019, against the Clarksville-Montgomery County School System (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District is not providing the Student an equal opportunity to participate in physical education (PE).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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.

Based on the allegation, OCR investigated whether the District is denying the Student an equal opportunity to participate in PE, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.33, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

OCR's investigation to date consists of an interview with the Complainant and a review of documents produced by the Complainant and the District. The documents reviewed to date include the Student's Section 504 records and records of communications between the Complainant and the District, and internally amongst District staff, relevant to the issue under investigation.

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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 (Agreement). Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation."

Set forth below is a summary of the facts obtained to date and the Section 302 resolution of the complaint.

Legal Standard

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards.

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

Facts

The Student is in the ninth grade at the School. The Student is enrolled in the Lifetime Wellness course (Course), a year-long academic requirement. The Course is divided into four nine-week segments. The first and third segments are comprised of three days a week in the classroom and two days of physical fitness, consisting of run, push up and sit up tests. The second and fourth segments of the Course are taught in the gym five days a week.

The Student has a Section 504 plan (504 Plan), identifying "spinal cord injury" as the Student's impairment. Minutes of Section 504 meetings for the Student reflect that the meetings have included discussion of the Course. The 504 Plan contains no accommodations for the physical fitness portions of the Course.

Conclusion

Prior to OCR's completion of the investigation, the District expressed an interest in resolving the allegation and issue under Section 302 of the CPM and OCR determined that resolution with an agreement during the course of the investigation was appropriate. Accordingly, to remedy the allegation raised by OCR's complaint, the District agreed to implement the provisions of the enclosed Agreement, which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will conduct an individualized evaluation of the Student to ensure the Student has an equal opportunity to participate in the physical fitness

components of the curriculum; convene a meeting with the Complainant and a group of persons knowledgeable about the Student, the meaning of the evaluation data and the placement options to discuss the results of the evaluation and make a decision regarding what accommodations and/or services are necessary for the Student to have an equal opportunity to participate in the physical fitness components of the curriculum; and, convene a Section 504 meeting to determine whether the Student requires compensatory and/or remedial services.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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, assists, or participates in a proceeding under a law enforced by OCR. 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 Claudia Campo, the OCR attorney assigned to this complaint, at 404-974-9378, or me, at 404-974-9376.

Sincerely,

/s/

Arthur Manigault
Compliance Team Leader

Enclosure

cc: Carol Joiner, Esq. (via email only to Carol.Joiner@cmcss.net).