



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

**REGION V
ILLINOIS
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MINNESOTA
NORTH DAKOTA
WISCONSIN**

October 6, 2014

Mr. Jediah Behny
Superintendent
Charles A. Beard Memorial School Corporation
8139 West US 40
Knightstown, IN 46148

Re: OCR Docket # 05-14-1191

Dear Mr. Behny:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on April 14, 2014, against Charles A. Beard Memorial School Corporation (Corporation) alleging discrimination based on disability.

Specifically, the complaint alleged that the Corporation subjected a middle school student with diabetes, ADHD, and ODD (Student A) to discrimination based on disability during the 2013-2014 school year when (1) the Corporation failed to implement Student A's Section 504 plan by not testing his blood sugar on several occasions, testing his blood sugar late on several occasions, not treating issues with his blood sugar correctly on several occasions, and not having a person designated to provide services for his diabetes on a school overnight and (2) the Corporation failed to implement the requirement in Student A's Individualized Education Program (IEP) that teachers use a voice amplification system.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the Corporation is subject to these laws.

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 Section 504 regulation, at 34 C.F.R. § 104.33, states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. It also defines an appropriate education as the provision of regular or special education and related

aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met. Implementation of a properly developed IEP or Section 504 plan is one means of providing a student FAPE.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Corporation expressed an interest in resolving the complaint. On October 3, 2014, the Corporation signed the enclosed agreement (Agreement) which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the Agreement are aligned with the issues raised by the allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the Corporation's implementation of the Agreement.

Please be advised that the Corporation 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.

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.

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 file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you and your staff, and particularly the Corporation's counsel, Ms. Amy Mathews, for the cooperation extended to OCR during the processing of this complaint. If you have any questions, please contact Dan Altschul, Senior Attorney, at (312) 730-1563 or by email at Dan.Altschul@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

cc: Amy Mathews, Esq.

Enclosure