

February 23, 2015

Dr. Judith A. DeMuth  
Superintendent  
Monroe County Community School Corporation  
315 E. North Drive  
Bloomington, IN 47401

Re: OCR Docket # 05-14-1326

Dear Dr. DeMuth:

This is to advise you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on August 28, 2014, against Monroe County Community School Corporation (Corporation) alleging discrimination on the basis of disability.

Specifically, the complaint alleged that the Corporation subjected a student (Student A) to discrimination based on disability (XXXXXX) during the 2013-2014 school year, in that the Corporation did not permit her to participate on the Corporation's softball team.

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. § 12131-12134, 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.

#### **Legal Standards and Policy Guidance**

The regulation implementing Section 504, at 34 C.F.R. § 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 or benefits from Federal financial assistance.

The Section 504 implementing regulation, at 34 C.F.R. § 104.37(a) and (c), states that a recipient that offers extracurricular activities must do so in such a manner as is necessary to afford

qualified students with disabilities an equal opportunity for participation. This requires making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the recipient can show that doing so would be a fundamental alteration to its program.<sup>1</sup>

The Title II regulation, at 28 C.F.R. § 35.130(b)(7), requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

In considering whether a reasonable modification is legally required, the school district must first engage in an individualized inquiry to determine whether the modification is necessary, based on disability. If the modification is necessary, the school district must allow it unless doing so would result in a fundamental alteration of the nature of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it alters such an essential aspect of the activity or game that it would be unacceptable even if it affected all competitors equally. Alternatively, a change that has only a peripheral impact on the activity or game itself might nevertheless give a particular player with a disability an unfair advantage over others and, for that reason, fundamentally alter the character of the competition. Even if a specific modification would constitute a fundamental alteration, a school district is still required to determine if other modifications might be available that would permit the student's participation.

A school district's legal obligation to comply with Section 504 and the Department's regulations supersedes any rule of any association, organization, club, or league that would render a student ineligible to participate, or limit the eligibility of a student to participate, in any aid, benefit, or service on the basis of disability. It would violate a school district's obligations under Section 504 to provide significant assistance to any association, organization, club, league, or other third party that discriminates on the basis of disability in providing any aid, benefit, or service to the school district's students. To avoid violating their Section 504 obligations in the context of extracurricular athletics, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics.

### **Factual Summary**

The Corporation's athletic handbook, available on the Corporation's website,<sup>2</sup> says, "Only students who attend MCCSC schools are eligible to participate in extracurricular activities."

Student A is a student with a disability who resides within the Corporation's educational jurisdiction, but attends the XXXXXXXXXX online public school, which is not affiliated with the Corporation. According to Student A's parent, Student A previously attended school in the Corporation, but the parent removed her to place her in the online school due to a belief that the

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<sup>1</sup> For additional information about a recipient's obligations to ensure that students with disabilities have opportunities to participate in extracurricular activities, see OCR's Dear Colleague Letter, issued January 25, 2013, and available on-line at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>

<sup>2</sup> <http://www.mccsc.edu/cms/lib07/IN01906545/Centricity/Domain/35/BHSS%20Athletic%20Handbook2014.pdf>

Corporation was not providing Student A an appropriate education and had not responded appropriately to bullying of Student A. The Corporation indicated to OCR that it was providing an appropriate education and can and would respond to any bullying of Student A. Student A was in 9<sup>th</sup> grade in the 2013-2014 school year.

Beginning in February 2013 and continuing into the 2013-2014 school year, Student A's parent contacted the Corporation asking that Student A be permitted to play XXXXXX in spring 2014 at Bloomington South High School (School). The Corporation advised the parent that Corporation policy said that "a student must be enrolled in a [Corporation] school to participate in extracurricular activities." On November 15, 2013, the parent wrote in an email to Corporation officials that she understood the Corporation's rule but that an exception should be allowed for Student A. She wrote, "[U]nder Section 504 of the federal law, your rule of enrollment is null and void as it pertains to my daughter. You are required to provide sports program to her or be in violation of discrimination ... I am just stating that you need to allow [Student A] to play XXXXXX because under those circumstances, your rules are discriminatory." In response, the Corporation advised the parent that Student A must be enrolled in the Corporation to participate in sports at the School. Corporation personnel interviewed by OCR stated that the Corporation did not consider whether Student A, based on her disability, warranted a modification of the Corporation's policy that only students who are enrolled in Corporation schools can participate in extracurricular activities. They said the policy is applied to all students, regardless of disability status, and that no exceptions are made.

### **Conclusion**

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 interest in resolving the complaint. Subsequent discussions with the Corporation resulted in the Corporation signing the enclosed Resolution Agreement (Agreement) on February 20, 2015, which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and 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.

We wish to thank you and the Corporation staff for their cooperation during OCR's processing of this case. In particular, we wish to thank the Corporation's counsel, Mr. James Whitlatch and

Ms. Kathryn DeWeese. If you have any questions, please contact Geraldo Perez, Equal Opportunity Specialist, at 312-730-1646 or by e-mail at [geraldo.perez@ed.gov](mailto:geraldo.perez@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: James Whitlatch  
Kathryn DeWeese