



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

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**REGION V  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN**

October 20, 2017

Dr. Seth Miller  
Westville Community School District #2  
125 W Ellsworth Street  
Westville, Illinois 61883

Re: OCR Case No. 05-17-1352

Dear Dr. Miller:

This letter is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Westville Community School District #2 (District), alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District discriminated against Student A on the basis of disability (XXXXXXXXXX) when a XXXXX XXXXXXXX.

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, and 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. Section 504 prohibits retaliation by recipients of Federal financial assistance and Title II prohibits retaliation by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case under section 302 of OCR's *Case Processing Manual* (CPM). In light of the District's willingness to address the issues raised in the complaint allegation, OCR determined entering into a voluntary resolution agreement would be appropriate. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in this complaint.

### **Legal Standards**

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR determined that the Title II regulation applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulation. OCR has, therefore, applied the Section 504 standards in analyzing the issues raised in this complaint.

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides, in part, that no qualified person with a disability shall, on the basis of disability be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department.

The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(ii) and (iv), provide, in relevant part, that a recipient shall not deny a qualified individual with a disability an aid, benefit or service, or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting qualified students with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to persons with disabilities.

In determining whether a recipient subjected a student to different treatment based on disability, OCR considers whether there were any apparent differences in the treatment of similarly-situated students based on disability. If so, OCR assesses the recipient's reason for any differences in treatment of similarly situated students to determine whether the reasons are legitimate and non-discriminatory or whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and procedures and whether there is any other evidence of discrimination based on disability.

### **District Policies and Procedures<sup>1</sup>**

The District's Equal Educational Opportunities Policy, 7:10, states "Equal education and extracurricular opportunities shall be available for all students without regard disability."

The District's Uniform Grievance Procedures, SB Policy 2:260, states, in part, "A student, parent/guardian, employee, or community member can file a complaint if they believe the School Board, its employees, or agents have violated his or her rights under Section 504 or Title II." The SB Policy includes the identification of two Complainant Managers including contact information and titles, a complaint process including timeframes for investigation and responding to the complaint, and an appeal process.

The District's Education of Children with Disabilities, SB Policy, 6:120, states the District shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of The School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act.

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<sup>1</sup> The District's policies and procedures are available on its website at <https://www.westvillesd.com/policy/>.

The District's Accommodating Individuals with Disabilities, SB Policy, 8:70, states "Individuals with disabilities shall be provided an opportunity to participate in all school-sponsored services, programs, or activities and will not be subject to illegal discrimination. When appropriate, the District may provide to persons with disabilities aids, benefits, or services that are separate or different from, but as effective as, those provided to others. The District will provide auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program, or activity."

### **Background**

During the 2016-2017 school year, Student A was XXXXXXXX with a disability in the District's XXXX Elementary School (School), and has an Individualized Educational Program (IEP).

According to the School XXXX Handbook (Handbook), XXXXXXXX, and students may sign up for XXXXX for one semester or the whole school year. XXXXX meets as a class during the school day, and XXXXXXXX. There are XXX XXXXX at the School, XXXXXXXX. There are XXXX, one in XXXX and one in the XXXX. During the XXXX school year, XXXXXXXXXXXXXXXX.

The Handbook sets forth the requirements for participation in XXXXXXXX, such as attendance at XXXXXXXX students are expected to XXXXXXXX on a regular basis and document their XXXXXXXX etc. The Handbook indicates that the grades a student receives in XXXX are based on a combination of attendance and XXXXXXXXXXXX. The Handbook states that "any student who is trying their best can earn a good grade, XXXXXXXX.

According to the Handbook, there is a curriculum that students follow as XXXXXXXX members. The first XXX weeks the students XXXXX. The next XX weeks they XXXXXXXXXXXX. At the end of the XXX weeks, the teacher determines the student's XXXX and students who did not successfully complete all XXXX from the second quarter will repeat the lessons from the first semester. Students who are more successful in XXXXXXXX.

Student A enrolled in XXXXXXXX, and participated in the XXXXXXXX. According to the Complainant, at that XXXX, Student A and XX other students who also had an XXXX or a XXXXXXXX and were then removed to the bleachers while the remainder of XXXXXXXX. The Complainant informed OCR that Student A told XX that only XXXXXXXXXXXXXXXX. The Complainant contends only the XXXXXXXX. The Complainant stated at no time did the XXX teacher advise XX that Student A was not XXXXXXXXXXXXXXXX.

The District acknowledged that Student A was removed for the XXXXXXXX; however, the District contends that this decision was based on the student's XXXXXXXX. The District informed OCR that, while the Complainant reported XX concern about Student A not being XXXXXXXXXXXXXXXX. The District contends that the District followed its XX of for the XXXX similar to the process it followed in the past in which students who were not

XXXXXXXXXXXXXXXX. The District acknowledged that, for the XXXXXXXX, the only students who were not XXXX happened to be students with disabilities but the reason for not being XXXXXXXX. Prior to the conclusion of OCR's investigation, the District requested to resolve the complaint allegation through OCR's CPM Section 302 Voluntary Resolution Process.

### **Conclusion**

OCR has determined the allegation is appropriate for resolution under Section 302 of OCR's CPM.

The Agreement requires the District to take the following actions: provide training to Student A's XXXX teacher and all other relevant administrators, teachers, and staff at the School who are responsible for teaching students with disabilities and/or implementing their XXXXXXXX; investigate whether Student A was subjected to different treatment based on disability with respect to the student's participation in the XXXXXXXX at the School and provide Student A's parent with written notice of the outcome as allowed by law; and implement appropriate discipline and/or remedial actions, if any are warranted.

OCR will monitor the District's implementation of the Agreement.

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.

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 individual may file a 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.

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 for your cooperation and courtesy during our investigation. In particular, we would like to thank XXXXXXXX, counsel for the XXXX. If you have any questions, please contact Sandra Garcia, Senior Equal Opportunity Specialist, at (312) 730-1580 or by email at Sandra.L.Garcia@ed.gov.

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Sincerely,

Marcela Sanchez-Aguilar  
Supervisory Attorney

Enclosure

cc: XXXXXXXX