

Discrimination Prohibited

My son has a disability and attends the school district summer program, which includes a weekly trip to the beach. My son has been going for the last several years, and has been looking forward to the beach trip this week. I was notified today that there is a new 'behavior' policy that if children do not meet a certain behavior criteria they cannot attend. This policy seems designed to exclude children like my son and other more severely affected Autism Spectrum Disorder children from the field trips. He will never make the behavior criteria and will probably miss all the field trips. I'm really upset - any ideas what I can do? Is this legal?

Probably not. By law, your school must make a reasonable effort to accommodate your son (at no charge to you) in any school sponsored program or activity. This is not a special education issue, it's a discrimination issue. Section 504 of the Rehabilitation Act of 1973 (which applies to programs that receive federal funds, like public schools) and the Americans with Disabilities Act protect students from discrimination based on disability. Even if your son were not on an IEP, his qualifying disabilities would trigger the protections of these two laws. Your school must attempt to make 'reasonable accommodations' so that your son can participate meaningfully with his peers. Whether or not an accommodation will be considered 'reasonable' depends on several things including the financial burden it places on the program, and whether the accommodation will fundamentally alter the nature of the program or service. In this particular case it would seem that neither the financial burden nor the nature-of-the-program exemption would apply.

In cases such as these parents may wish to begin by sending a certified letter, return receipt requested, to the person in charge of the program or activity, stating the following:

My child is a student with disabilities enrolled in your _____ program. A behavior policy has been put in place which I believe is discriminatory

because it has the effect of preventing him from fully participating in the program on the basis of his disability. It is my understanding that, as a recipient of federal financial assistance, the _____ Public School District must comply with Section 504 regulations which prohibit discrimination on the basis of disability. Specifically, I call your attention to the following regulations at 34 CFR 104.4:

No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.

I am requesting that accommodations be put in place immediately to prevent this policy from subjecting my child to discrimination based on disability. Please advise me no later than [date] what action your program will take on this request.

If you do not get a satisfactory response, you should file a complaint with:

Office for Civil Rights, Boston Office
33 Arch Street, Suite 900
Boston, MA 02110-1491
Tel (617) 289—0111

Go to

<http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>

for details on how to file the complaint.

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