



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

May 1, 2014

Superintendent Francisco Duran
Trenton Public School District
108 Clinton Avenue
Trenton, New Jersey 08609

Re: Case No. 02-14-1029
Trenton Public School District

Dear Superintendent Duran:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Trenton Public School District (the District). The complainant alleged that the District retaliated against her son (the Student) because she filed prior complaints with OCR (OCR Case Nos. 02-13-1191 and 02-13-1278) alleging discrimination on the basis of disability, by ceasing home instructional services for the Student after October 21, 2013.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant and the Director of Secondary Special Education. OCR made the following determinations.

The complainant alleged that the District retaliated against the Student because she filed prior complaints with OCR alleging discrimination on the basis of disability, by ceasing home instructional services for the Student after October 21, 2013. OCR determined that the complainant engaged in protected activity when she filed two previous complaints against the District with OCR in April and June 2013, complaining of disability discrimination. OCR determined that District staff was aware of the complainant's protected activity.

OCR determined that the Student was evaluated in February 2011, and provided with an Individualized Education Program. The Student is currently 15 years old, and enrolled in Trenton Central High School in the 10th grade for school year 2013-2014.

On September 9, 2013 (the first day of school), the complainant decided not to return the Student to school; instead, the complainant requested that the District provide the Student with home instruction for all of his classes. OCR determined that the District thereafter provided home instruction to the Student, until his home instructor stopped providing services on October 21, 2013. The extent of the home instruction provided until October 21, 2013, is unclear. The District submitted documentation indicating that home instructional services were provided to the Student on September 20, 21 and 22, 2013. The complainant acknowledged that home instruction was provided until October 21, 2013; however, the District had no documentation supporting how much home instruction was provided, except for the three dates listed above. It is unclear why the home instructor stopped providing services after October 21, 2013; however, it appears that the District attempted to get the home instructor to resume services.¹

The District provided documentation to OCR indicating that home instruction resumed as of November 12, 2013, and continued until at least January 10, 2014. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that

¹ OCR determined that a counselor in the District's Office of Student Personnel Services sent an interoffice communication, dated November 4, 2013, to the Student's home instructor. This communication directed the home instructor to provide home instruction to the Student from November 15, 2013, through December 18, 2013 (21 days).

the District retaliated because she filed discrimination complaints by ceasing home instructional services after October 21, 2013

The extent of the home instruction provided after November 12, 2013, however, is also unclear. The District submitted documentation indicating that home instructional services were provided to the Student on November 12, 13, 14, 15, 25 and 26, 2103; December 3, 5, 10, 11, 12, 16, 2013; and January 7, 8, and 10, 2014. On most of those dates, the Student did not receive the requisite number of hours of instruction; i.e., two hours per day. OCR did not obtain documentation regarding home instructional services past January 10, 2014.

Prior to the conclusion of OCR's investigation into whether the Student received all of the required home instructional services, the District requested to resolve the complaint under Section 302 of OCR's Case Processing Manual. On April 30, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concern identified in this letter.

OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the agreement, OCR will resume its 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 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Helen Whitney, National Equity Expert, at (646) 428-3838 or helen.whitney@ed.gov; or Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@ed.gov.

Sincerely,

/S/

Timothy C. J. Blanchard