



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

July 1, 2016

IN RESPONSE, PLEASE REFER TO: 03161095

Gregory E. Thornton, Ed.D.
Chief Executive Officer
Baltimore City Public Schools
200 East North Avenue
Room 405
Baltimore, MD 21202

Dear Dr. Thornton:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Baltimore City Public School (the District) by XXXXXX. The Complainant alleged that the District discriminated against XXXXXX (the Student), on the basis of disability and retaliated against XXXXXX. Specifically, the Complainant alleged that the District:

1. Retaliated against the Student by failing to timely evaluate him for disability-related services XXXXXX;
2. xx- paragraph-xx
3. Discriminated against the Student on the basis of disability by failing to timely evaluate him for disability-related services.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 504 also prohibits retaliation.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Title II also prohibits retaliation.

As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

The regulation implementing Section 504 prohibits the District from discriminating on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual 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 Federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34–104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education plan (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

Retaliation is prohibited under the Section 504 implementing regulation, at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d, *et seq.* The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation for engaging in a protected activity. The regulation implementing Title II, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

When investigating a retaliation claim, OCR must determine whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. If all of these elements establish a *prima facie* case, OCR then considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action, and whether the reason asserted is a pretext for retaliation.

In order for an activity to be considered to be "protected," the individual must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by the recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. Generally, the more time in between the protected activity and the adverse action, the weaker the presumption of a causal connection. Additional evidence that would demonstrate a causal connection includes: a change in treatment of the individual before and after engaging in the

protected activity; treatment of the individual that is different from treatment of other similarly situated individuals; and deviation from established practice or procedure.

Factual Background

xx-paragraphs redacted-xx

Conclusion

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement. The provisions of the Resolution Agreement must be aligned with the complaint allegations and information obtained during the investigation and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve this complaint through a resolution agreement, and on June 29, 2016, the District signed a Voluntary Resolution Agreement (Agreement) with OCR to resolve the allegations contained within the complaint. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504 or Title II, and their implementing regulations that may exist and are not discussed herein. 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, 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.

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If you have any questions, please contact Marcia Jones at (215) 656-8555 or by email at marcia.jones@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure

cc: Darnell L. Henderson, ESQ.