



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

REGION III  
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January 24, 2017

**IN RESPONSE, PLEASE REFER TO: 03161241**

Mr. Ronnie A Dotson  
Superintendent  
Carter County Schools  
228 S. Carol Malone Blvd  
Grayson, KY 41143

Dear Mr. Dotson:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), against the Carter County Schools (the District). The Complainant, XXXXXX, alleges that the District discriminated XXXXXX (the Student), on the basis of disability. XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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, which prohibit discrimination on the basis of disability by public entities, such as public school systems. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II and their implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In our investigation, OCR reviewed documentation submitted by the Complainant and the District, and interviewed the Complainant and District personnel. OCR has determined that the District failed to respond promptly and equitably to the Complainant's report of disability-based harassment in May 2015, as alleged. In addition, OCR has determined that the District's grievance procedures failed to comply with the requirements of Section 504 and Title II. The District signed an Agreement on January 10, 2017, to address these violations.

## **LEGAL STANDARDS**

### **Disability Harassment**

The regulation implementing Section 504 prohibits a recipient of Federal financial assistance 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.

Disability harassment that is severe, pervasive or persistent can result in the denial or limitation of a student's ability to participate in or receive benefits, services or opportunities from the school's program. If a recipient receives information indicating that a student may have been harassed on the basis of disability, the recipient is responsible for investigating the allegations and, if a hostile environment is found, to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To establish a violation under the hostile environment approach, OCR must determine whether the conduct constitutes a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and equitable action to eliminate the hostile environment and prevent its recurrence.

### **Section 504 Grievance Procedures**

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients to notify participants, beneficiaries, applicants, and others that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, it shall include in those materials or publications a statement of the nondiscrimination policy.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination and harassment. These include:

- Notice of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;

- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint; and
- An assurance that the recipient will take steps to prevent recurrence of any discrimination and to correct its discriminatory effects on the complainant and others, if appropriate.

## **FACTUAL FINDINGS**

XXX – paragraphs redacted – XXX

### **Section 504 Grievance Procedures**

The District has two policies addressing Section 504/Title II complaints: (1) Harassment/Discrimination Procedures (09.42811 AP.1, AP. 2, AP. 22 and AP. 24) and Bullying/Hazing (09.422 AP. 1). In addition, a condensed version of the Harassment/Discrimination Procedures are publicized in the District's Code of Acceptable Behavior and Discipline.

OCR reviewed each policy, and identified the following deficiencies:

1. Harassment/Discrimination (09.42811, 09.42811 AP.1, 09.42811 AP.2, 09.42811 AP.22, 09.42811 AP.24)

The procedures do not contain the following provisions:

- *The procedures do not make clear that they apply to complaints of disability discrimination carried out by employees.*
- *The procedures do not state that the investigation will be adequate, reliable and impartial.*
- *The procedures only allow for the opportunity for the complainant to present witnesses and other evidence.*
- *The procedures do not include timeframes for the major stages of the complaint process.*

2. Bullying/Hazing (09.422), Bullying Reporting Form (09.422 AP.21)

The procedures do not contain the following provisions:

- *notice to students, parents, and employees of the procedure, including how and where to file a complaint;*
- *adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence;*
- *designated and reasonably prompt timeframes for the major stages of the complaint process;*
- *an assurance that the District will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.*

In addition, OCR notes that the version of the harassment/discrimination procedures that are published in the Code of Acceptable Behavior and Discipline, do not include the following provisions:

- *The procedures appear to apply only to conduct carried out by students and third parties, not employees*
- *The procedures state only that the District shall conduct a prompt and equitable resolution of complaints, not that the investigation will be adequate, reliable and impartial.*
- *The procedures do not provide an opportunity to the parties to present witnesses and other evidence.*
- *No timeframes are provided for the investigation of the complaint.*
- *Notice is only provided if the Board of Education is involved in the grievance, and in such cases, notice is only provided to the complainant.*
- *No assurance is provided that the District will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.*

## **LEGAL ANALYSIS**

XXX – paragraph redacted – XXX

Thus, OCR concludes that the District failed to respond promptly and equitably to the Complainant's XXXXXX report of disability-based harassment of the Student. In addition, for the reasons cited above, OCR further concludes that the District's grievance procedures for resolving complaints of disability-based discrimination do not include all of the necessary provisions to provide for a prompt and equitable resolution.

On January 10, 2017, the District signed an Agreement to address these violations. When fully implemented, the Agreement will address all of the areas of non-compliance. Consistent with our procedures, OCR will monitor the implementation of the agreement until the District is in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.7(b), and the regulation implementing Title II, at 28 C.F.R. § 35.107(b), which were at issue in the case.

This concludes OCR's investigation of this complaint, and 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, 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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns regarding OCR's finding, you may contact Mr. Randle Haley at 215-656-8532 or by email at [randle.haley@ed.gov](mailto:randle.haley@ed.gov).

Sincerely,

/s/

Beth Gellman-Beer  
Team Leader