



Frank Hackett
Superintendent
Braintree Public Schools
By Email: fhackett@braintreema.gov

Dear Superintendent Hackett:

OCR enforces the following federal laws that prohibit discrimination in programs and/or activities that receive federal financial assistance from the Department: Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin; and Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Summary of Preliminary Investigation

During the XXXXXX school year, the Student attended the XXXXXXXXXXXXXXXXXXXXXXXX in the District. In the XXXXXXXX, the Student had a Section 504 plan, which incorporated a behavior plan. In the XXXXXXXX, the team determined the Student was eligible for an Individualized Education Program (IEP), the IEP was created, and her behavior plan was modified. The IEP and behavior plan allowed XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XX. The Student is XXXXXXXX XXXX.

Legal Standards

A District's failure to respond promptly and effectively to disability-based harassment about which it knew or should have known, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the District's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II. When responding to harassment, a District must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a District must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI. Similarly, the Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation. In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity;¹ (2) the individual experienced an adverse action caused by the recipient;² and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation;

¹ A "protected activity" is the exercise of a right that is protected under OCR's non-discrimination laws.

² An adverse action is something that could deter a reasonable person from engaging in further protected activity.

conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

Analysis

The complaint alleged the Student was subjected to disability-based harassment because XXXX
XX. According to the
Complainant, she raised her concerns at various times but the District never responded. XXXXX
XX
XX. Additionally, the complaint alleged the Student
was subjected to national origin-based harassment because XXXXXXXXXXXXXXXXXXXXXXX
XX
XX.

According to the District, the Complainant raised other allegations of bullying in XXXXXX,
which the District investigated, but those allegations did not concern any harassment related to
disability or national origin. XXX
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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Because OCR has not completed this investigation, it has
not made a determination as to whether the District had sufficient notice of either kind of alleged
harassment to trigger a duty to respond.

The Complainant also alleged that the District retaliated against her by XXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXXXX. Because OCR has not completed this investigation, it has not made a
determination as to whether there is sufficient evidence of retaliation.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR

determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations investigated. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at Catherine.Deneke@ed.gov.

Sincerely,

/s/

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Joshua R. Coleman, jcoleman@mlmlawfirm.com