



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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September 29, 2015

IN RESPONSE, PLEASE REFER TO: 03131218

Dr. Michael J. Martirano
Superintendent
Saint Mary's County School District
P.O. Box 641
Lenardtown, MD 206500

Dear Dr. Martirano:

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 (Department), Office for Civil Rights (OCR), against Saint Mary's County Public Schools (the District). The Complainant alleged that the District discriminated against XXXXXX (the Student), on the basis of disability and retaliated XXXXXX. Specifically, the Complainant alleged that the District discriminated on the basis of disability by:

1. XXXXXX;
2. XXXXXX; and
3. XXXXXX.

The Complainant also alleged that the District retaliated against XXXXXX by:

3. XXXXXX;
4. XXXXXX; and
5. 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. 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, which prohibit 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 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

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evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. If OCR receives conflicting information from the complainant and the recipient regarding key elements of our legal analysis, and the differences between the two accounts cannot be reconciled by available evidence, then OCR will not be able to establish that a violation occurred.

OCR's investigation included a review of information submitted by the Complainant and the District and interviews with the Complainant and District staff. XXXXXX. However, OCR finds that the District does not have Section 504 grievance procedures that comply with Section 504. The District has signed a resolution agreement to address this concern. OCR's findings and analysis are discussed below.

Legal standards

Disability Discrimination

The Section 504 implementing regulation at 34 C.F.R. § 104.4 (a) states that no qualified person with a disability 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 or benefits from Federal financial assistance.

The Title II implementing regulation at 28 C.F.R. § 35.130(a) provides that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity. The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504.

When investigating an allegation of different treatment based on disability, OCR first determines whether the evidence is sufficient to establish an initial or *prima facie* case of discrimination. To do so, the evidence must show that a student was subjected to adverse treatment on the basis of disability. OCR considers direct evidence of different treatment as well as other facts that may provide evidence of bias against individuals with a disability. If OCR finds an initial or *prima facie* case of different treatment, we then determine whether the recipient had a legitimate, nondiscriminatory reason for taking the action, and, if so, whether the recipient's reason is a pretext, or an excuse, for unlawful discrimination.

Disability Harassment

Disability harassment is a form of discrimination prohibited by Section 504 and Title II. School districts are prohibited from engaging in or permitting harassment of students on the basis of disability that creates a hostile environment. Harassment can include unwelcome verbal, nonverbal, or physical conduct related to an individual's disability. Harassment of a student can deny or limit, on the basis of disability, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. If the conduct is sufficiently serious to deny or limit the student's ability to participate in or enjoy the benefits of the program or activity provided by the recipient, through both a subjective and objective perspective, it is a form of disability discrimination prohibited by Section 504 and Title II. OCR considers the totality of the circumstances and examines the context, nature, scope, frequency, duration, and location of incidents as well as the identity, number, and relationships of the persons involved in determining whether a hostile environment exists.

The Section 504 implementing regulation requires a school district to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504 (the Section 504 coordinator). A school district must ensure that the Section 504 coordinator has adequate training on what constitutes disability harassment and that he/she understands how the school district's grievance procedures operate. Section 504 also requires a school district to adopt and publish grievance procedures providing for a prompt and equitable resolution of complaints alleging disability discrimination.

Retaliation

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.

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

During the 2012-2013 school year, the Student, who was XXXXXX, XXXXXX.

Allegation #1

xxx – paragraphs redacted – xxx

Analysis

xxx – paragraphs redacted – xxx

However, OCR finds that the District is in violation of Section 504 because the District does not have Section 504 grievance procedures. On August 28, 2015, the District provided OCR with the enclosed signed Resolution Agreement (the Agreement). When fully implemented, the Agreement will address the compliance concerns identified in OCR's investigation.

xxx – paragraphs redacted – xxx

This concludes OCR's investigation of the 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. As is our standard practice, 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. Section 104.7(b), and Title II, at 28 C.F.R. § 35.107, which were at issue in this case.

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.

If you have questions about OCR's determination in this complaint, please contact Ms. Marcia Jones at (215) 656-8555 or marcia.jones@ed.gov.

Sincerely,

/s/

Judith O'Boyle
Acting Team Leader
Philadelphia Office

Enclosure