



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 14, 2014

IN RESPONSE, PLEASE REFER TO: 03141155

Dr. S. Dallas Dance, Ph.D
Superintendent
Baltimore County Public Schools
6901 Charles Street
Towson, MD 21204

Dear Dr. Dance:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Baltimore County Public Schools (the District). The Complainant alleged that the District discriminated against xxx on the basis of disability by:

1. X—sentence redacted --x to provide; and
2. Failing to appropriately respond to x—sentence redacted--x.

The Complainant further alleged that the District retaliated xxxxxxxx xxx because of complaints xx previously filed with OCR. xx alleged that the District retaliated by:

3. Failing to appropriately respond to xx—sentence deleted--xx; and
4. Xx—sentence deleted--xx.

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. Section 504 prohibits 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. Title II prohibits discrimination on the basis of disability by public entities. These laws prohibit retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. 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.

OCR reviewed the information submitted by the Complainant and the District and conducted interviews of the Complainant and District staff and administrators. Prior to the conclusion of the investigation, the District requested to resolve Allegations 2 and 3 by signing a voluntary resolution agreement. With respect to Allegations 1 and 4, OCR has determined there is insufficient evidence to support a conclusion that the Complainant was discriminated or retaliated against, as alleged. The bases for OCR's determination are summarized below.

Legal Standards

Reasonable Accommodation

The regulations implementing Section 504, at 34 C.F.R. § 104.11(a), and Title II, at 28 C.F.R. § 35.140(a), provide that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment. The Section 504 regulation, at 34 C.F.R. § 104.12(a) requires a recipient to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee with a disability. In investigating complaints of employment discrimination on the basis of disability, OCR applies the legal standards applied under Title I of the Americans with Disabilities Act of 1990 (Title I) and the provisions of sections 501 through 504, and 510 of the ADA as such sections relate to employment, if the recipient is subject to the provisions of Title I. See 28 C.F.R. § 37.12, 29 C.F.R. § 1640.12 and 28 C.F.R. § 35.140. Further, OCR considers the regulations and appendix implementing Title I of the ADA set forth at 29 C.F.R. Part 1630, and case law arising under such regulations. See 28 C.F.R. § 37.12 and 29 C.F.R. § 1640.12. Because the District employs fifteen or more employees, it is subject to the requirements of Title I.

Title I prohibits covered employers from discriminating “against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a); 29 C.F.R. § 1630.4. Under Title I it is unlawful to take an adverse employment action against an otherwise qualified individual with a disability on the basis of disability. Additionally, Title I specifically defines discrimination to include “not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would pose an undue hardship on the operation” of the employer's business. 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9.

Reasonable accommodations include modifications or adjustments to the work environment or to the manner or circumstances under which the position is customarily performed that enable a qualified individual with a disability to perform the essential functions of her position. 29 C.F.R. § 1630.2 (o)(1). The essential functions of a position are the fundamental duties of the job position. 29 C.F.R. § 1630.2 (n)(1). Evidence of whether a job function is essential includes, the employer's judgment as to which functions are essential, written job descriptions, and the consequences of not requiring the employee to perform the function. 29 C.F.R. § 1630.2 (n)(3). An accommodation is “reasonable” if it “seems reasonable on its face,” appears to be “feasible” or plausible, and would

enable the employee to perform the essential functions of her position. Reasonable accommodations can, in some circumstances, include the provision of part-time or modified work schedules. Additionally, providing the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an individual's disability. An employer cannot be required to eliminate an essential function or duty of the job or reassign an employee's essential job duties to another employee.

Retaliation

Retaliation is prohibited under Title VI, at 34 C.F.R. §100.7(e), and 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134. In analyzing retaliation allegations, OCR determines: whether the individual engaged in a protected activity (that is, exercised a right or took some action that is protected under the Federal laws that OCR enforces); whether the recipient had notice of the individual's protected activity; whether the recipient took an adverse action against the individual at the same time or sometime after the individual engaged in the protected activity; and whether there is a causal connection between the protected activity and the adverse action. If one of the above elements cannot be established, then OCR finds insufficient evidence of a violation. If these four elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory 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 "protected," the Complainant 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. An adverse action is one that causes a lasting and tangible harm or has a chilling effect on an individual's ability to pursue his/her rights. Merely unpleasant actions would not be considered to be adverse.

Factual Background

The Complainant is xx—sentence deleted--xx. The Complainant has xx—sentence deleted--xx, among others. The Complainant has filed two prior complaints with OCR against the District (xx—sentence deleted--xx) alleging disability discrimination and retaliation with regard xx xxx xxxxxxxxxxxx.

Allegation 1 – Facts

The Complainant asserted that xx—phrase deleted--xx were not working from xx—phrase deleted--xx. The District previously agreed to provide the Complainant with an accommodation which required that xx—sentence deleted--xx. Xx—sentence deleted--xx. Xx—sentence deleted--xx.

xx—paragraph deleted--xx

xx—paragraph deleted--xx

Allegation 1 – Analysis and Conclusion

xx—paragraph deleted--xx

Based on a preponderance of the evidence, OCR finds insufficient evidence to support a violation of Section 504 or the ADA regarding Allegation 1.

Allegation 4 – Facts

The Complainant alleged that the District retaliated against xx—paragraph deleted—xx.

xx—paragraph deleted--xx

xx—paragraph deleted--xx

xx—paragraph deleted--xx

Allegation 4 – Analysis and Conclusion

Applying the legal standards for retaliation noted above, OCR determines that the Complainant engaged in a protected activity when xx filed two complaints with OCR. Moreover, OCR notes that the District had notice of the Complainant’s protected activity.

However, OCR cannot establish that the Complainant suffered an adverse action. xx—sentence deleted—xx. As such, OCR cannot establish that the District retaliated against the Complainant with regard to this allegation.

Allegations 2 and 3

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

Consistent with OCR’s procedures, the District requested to resolve Allegations 2 and 3 through a Voluntary Resolution Agreement (the Agreement), which was executed on November XX, 2014. A copy of the signed Agreement is enclosed. Accordingly, OCR is concluding its investigation of these complaint allegations. As is our standard practice, OCR will monitor the District’s implementation of the Agreement.

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. 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 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.

We would like to thank your staff for their cooperation throughout this matter. OCR is committed to a high-quality resolution of every case. If you have any questions or concerns about OCR's findings, please contact Dannelle Walker at (215) 656-5711 or at dannelle.walker@ed.gov or Jacques Toliver at (215) 656-8512 or jacques.toliver@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosure

cc: Assata N. Peterson, EEO Officer