



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
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March 24, 2016

**IN RESPONSE, PLEASE REFER TO DOCKET #03151207**

Dr. George Arlotto, Ed.D.  
Superintendent  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, MD 21401

Dear Dr. Arlotto:

This is to advise you that we have resolved the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Anne Arundel County Public Schools (the District) alleging retaliation and discrimination on the bases of disability and race. Specifically, XXXXXX, (the Complainant) alleged that (the District) discriminated against XXXXXX (the Student), on the basis of his disability by:

1. During the 2014-2015 school year, failing to implement the provisions of XXXXXX IEP which require that the Student XXXXXX;
2. XXXXXX;
3. XXXXXX; and,
4. XXXXXX.

The Complainant also alleged that the District discriminated against the Student on the basis of his race by:

5. XXXXXX; and,
6. XXXXXX.

The Complainant further alleged that the District retaliated against the Student following the complaint of racial and disability harassment XXXXXX by:

7. XXXXXX;
8. XXXXXX; and,

9. 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. 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.
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. Title VI 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, Title VI 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.

During our investigation, we interviewed the Complainant, the Student and District personnel and reviewed documents submitted by the Complainant and the District. Prior to the conclusion of OCR's investigation of Allegation 4, the District requested to resolve Allegation 4 through a Voluntary Resolution Agreement (the Agreement). OCR finds insufficient evidence to support Allegations 1-3 and 5-9.

### **Legal Standards**

#### *IEP Implementation - Allegation 1*

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.

#### *Hostile Environment – Disability - Allegation 2*

When investigating an allegation of disability harassment or hostile environment, OCR determines whether: (1) a student was subjected to harassment on the basis of disability; (2) the harassment rose to a level that denied or limited the student's ability to participate in or benefit from the educational program, service or aid; (3) the recipient had actual or constructive notice of the harassment; and (4) the recipient failed to take prompt and remedial action to end the harassment and prevent its reoccurrence.

To establish a violation under the hostile environment approach, OCR must determine whether the collective incidents and social atmosphere constitute a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment was 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 and, or, staff involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual, infrequent, or isolated incidents to constitute a hostile environment on the basis of disability. Harassment based on disability, if sufficiently severe, denies or limits a student's ability to participate in or benefit from the school program. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent its recurrence.

If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out responsibilities over students engages in disability harassment and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of disability, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment.

*Different Treatment – Allegations 3-6*

In cases alleging different treatment on the basis of race and disability, OCR first determines whether there were any differences in the treatment of an individual and similarly situated individuals of other races and individuals who do not have disabilities. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there is any other evidence of race or disability discrimination. If different treatment is present, OCR then assesses the recipient's explanation for any difference in the treatment to determine if the reasons offered are legitimate or merely a pretext for discrimination.

*Retaliation Claims – Allegations 7-9*

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), prohibits recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint. This requirement is incorporated by reference into the Section 504 Regulations at 34 C.F.R. § 104.61 Procedures. The regulation implementing Title II, at 28 C.F.R. § 35.134, includes a similar provision.

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 these four elements are present, then a prima facie case of retaliation is established, and OCR considers whether the District 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 retaliation.

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 or her rights. Merely unpleasant actions would not be considered to be adverse.

OCR follows the general principle that as the time period between the protected activity and the materially adverse action increases, the likelihood that there is a causal link between these two activities decreases. Other evidence of a causal connection may include the recipient's treatment of the complainant compared to other similarly situated individuals, the recipient's deviation from established policies or practices, and changes to the treatment of the complainant after the protected activity occurred.

## **General Background**

During the 2014-2015 school year and the events that are the subject of this complaint, the Student was XXXXXX. The Student is identified as a student with a disability and has an individualized education plan (IEP). The Student's disability is specified as XXXXXX. The Student's IEP states that his disability affects the following areas: XXXXXX. The Student identifies as being XXXXXX races: XXXXXX.

## **The Student Support Center (SSC)**

The Student Support Center (SSC) is a room in the school where students are sent for the following reasons:

- **Disciplinary purposes:** Students may be sent to the SSC for a violation of the Student Code of Conduct. In these situations, it is considered a minor disciplinary referral and the student is issued a pass on which the student's teacher communicates what occurred in the classroom to the SSC staff. Once at SSC, students are given an opportunity to talk with SSC staff about the incident that led to the referral. The SSC staff may also conduct investigations of incidents which could potentially lead to disciplinary consequences.
- **Breaks from the classroom, initiated by a student or a teacher:** The District also uses the SSC as a place where students can take self-regulation breaks on their own initiative and/or teacher-directed breaks. This system is set up to provide opportunities for students to move to a different environment and work to manage their emotions so that they can return to the classroom and access the learning environment. When in SSC for these reasons, students participate in activities, share concerns or give their mind a break, before returning to their classrooms.

The District advised OCR that there is no instruction provided in the SSC. Students can work on their class assignments in this setting.

## **District's Grievance Procedure for Discrimination Complaints**

The District has a complaint form for "Bullying, Harassment or Intimidation," on the basis of disability, race and other protected bases.

### **Facts - Allegation 1**

xx - paragraphs redacted -- xx

### **Analysis - Allegation 1**

xx - paragraph redacted -- xx

**Facts - Allegation 2**

xx - paragraphs redacted -- xx

**Analysis - Allegation 2**

xx - paragraph redacted -- xx

**Facts - Allegations 3 and 5**

xx - paragraphs redacted -- xx

**Analysis - Allegations 3 and 5**

xx - paragraphs redacted -- xx

**Facts - Allegation 4**

xx - paragraphs redacted -- xx

**Analysis - Allegation 4**

xx - paragraph redacted -- xx

With regard to the period of time prior to the revision to the Student's IEP, the District requested to resolve this allegation through a Voluntary Resolution Agreement. Under OCR procedures, a complaint allegation 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 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.

On March 21, 2016, the District signed an agreement to address XXXXXX. XXXXXX.

**Facts - Allegations 6 and 8**

xx - paragraphs redacted -- xx

**Analysis - Allegations 6 and 8**

xx - paragraphs redacted -- xx

**Allegations 7-9 - Retaliation**

**General Background and Analysis**

xx – paragraphs redacted -- xx

**Facts - Allegation 7**

xx – paragraphs redacted -- xx

**Analysis - Allegation 7**

xx – paragraph redacted -- xx

**Analysis - Allegation 8**

xx – paragraph redacted -- xx

**Facts - Allegation 9**

xx – paragraphs redacted -- xx

**Analysis - Allegation 9**

xx – paragraph redacted -- xx

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

With regard to XXXXXX, the District has signed the enclosed Agreement. As is our standard practice, OCR will monitor the District’s implementation of the Agreement until we have determined that the District is in compliance with the regulations implementing Section 504 and Title II with respect to this issue.

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.

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 any questions or concerns, please contact me at 215-656-8522 or by email at [vicki.piel@ed.gov](mailto:vicki.piel@ed.gov).

Sincerely,

/s/

Vicki Piel  
Team Leader

Enclosure