



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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February 9, 2016

IN RESPONSE, PLEASE REFER TO: 03151229

D. Dusty Blakey, Ed.D
Superintendent
Colonial School District
318 E. Basin Road
New Castle, DE 19720

Dear Dr. Blakey:

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 Colonial School District (the District) alleging disability discrimination. The Complainant, Ms. XXXXXXX, alleged that the District discriminated against XXXXXXXXXX (the Student) on the basis of disability by failing to promptly and equitably respond to her complaints of disability harassment XX.

OCR enforces 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 in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities. 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's grievance procedures fail to comply with the requirements of Section 504 and Title II. The District signed an Agreement on February 9, 2016, to address this compliance concern. OCR has determined that there is insufficient evidence to support the Complainant's allegation that the District discriminated against the Complainant's XXXXXXX by failing to promptly and equitably respond to her complaints of disability harassment XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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.

When investigating an allegation of disability harassment 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 recurrence.

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 effective action to eliminate the hostile environment and prevent its recurrence.

The extent of a recipient's responsibilities if an employee harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in disability harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – 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. Whether or not harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- The degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;

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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. Robert Ford at 215-656-8537 or by email at Robert Ford @ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader
Philadelphia Office

Enclosure

cc: Elizabeth P. Fleetwood