



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
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REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

September 30, 2015

Re: OCR Docket #03151231

Dr. Damaris Rau, Superintendent  
The School District of Lancaster  
251 S. Prince Street  
Lancaster, PA 17603

Dear Dr. Rau:

This is to notify you of the resolution of the complaint filed against the Lancaster School District (the District) alleging discrimination on the basis of disability. Specifically, XXXXXX (the Complainant) alleged that the District:

1. Discriminated against XXXXXX (the Student) on the basis of XXXXXX disability by failing to XXXXXX; and
2. Retaliated against the Complainant for complaining about disability and/or 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. 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, which prohibit discrimination on the basis of disability by public entities, including public elementary and secondary school systems. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race by recipients of Federal financial assistance. Section 504, Title II, and Title VI also prohibit 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.

**LEGAL STANDARDS:**

*Disability Discrimination*

The regulation implementing Section 504 prohibits the District 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.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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 (IDEA) is one means of meeting this standard.

### *Retaliation*

To establish a prima facie case of retaliation, 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 some kind of adverse action; and 4) there was a causal connection between the protected activity and the adverse action. While OCR would need to address all the elements in order to find a violation, it is not necessary to address all these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If all of these elements establish a prima facie case, OCR then considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action, or whether the reason asserted is a pretext for retaliation.

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. In determining whether an action taken by a 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. 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.

### **FACTUAL SUMMARY:**

xxx – paragraphs redacted – xxx

### **RESOLUTION:**

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement. The provisions of the agreement must be aligned with the complaint allegations 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 the complaint allegations through a voluntary resolution agreement (the Agreement) which was executed on September 15, 2015. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II, or Title VI and their implementing regulations that may exist and are not discussed herein.

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, it 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, you may contact Victoria Springs of our staff, at 215-656-3249 or by email [victoria.springs@ed.gov](mailto:victoria.springs@ed.gov).

Sincerely,

/s/

Beth Gellman-Beer  
Team Leader

Enclosure