



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
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

April 4, 2016

IN RESPONSE, PLEASE REFER TO: 03161061

Stanley G. Rakowsky
Superintendent
Shenandoah Valley School District
805 West Centre Street
Shenandoah, PA 17976

Dear Mr. Rakowsky:

This is to advise you that we have completed our investigation and reached a determination in the complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Shenandoah Valley School District (the District). The Complainant, XXXXXX, alleged that the District fails to maintain adequate grievance procedures to address complaints of disability discrimination.

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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the provisions of 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.

During our investigation, we reviewed documents submitted by the Complainant and the District. As a result of our investigation, OCR has identified areas of non-compliance regarding the District's grievance procedures to address complaints of disability discrimination. On March 30, 2016, the District signed a Resolution Agreement to address these violations.

Legal Standard

The regulations implementing Section 504 at 34 C.F.R. Section 104.7(b) require a recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaint allegations

of any prohibited actions under Section 504. OCR has identified essential components to providing prompt and equitable resolution of complaints. These include:

- 1) notice to students and employees of how and where to file a complaint;
- 2) application of the procedures to complaints against students, employees, or third parties;
- 3) provision for an adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence;
- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- 5) notice of the outcome; and
- 6) an assurance that the recipient will take steps to prevent recurrence and correct the discriminatory effects on the complainant.

FACTUAL SUMMARY AND LEGAL ANALYSIS

The District provided OCR with Policy Number 248 regarding Unlawful Harassment, which is also located on the District's website. In addition, the District advised OCR that the District's Section 504 Coordinator is the acting Superintendent/Business Manager.

Policy 248 is published on the District's website and prohibits all forms of unlawful harassment, including disability harassment, by all District students and staff members, contracted individuals, vendors, volunteers and third parties in the schools. The Policy states that complaints shall be investigated promptly and corrective action be taken when allegations are substantiated. A student or employee who believes s/he has been subject to conduct that is a violation of the policy is encouraged to immediately report the incident to the building principal or a District employee. If the building principal is the subject of a complaint, the student shall report the incident directly to the Compliance Officer (the acting Superintendent). Upon receipt of a complaint, the building principal shall immediately notify the Compliance Officer, who shall authorize the building principal to investigate the complaint. The investigation may consist of individual interviews with the complainant, the accused and others with knowledge relative to the incident. The investigator may also evaluate any other information and materials relevant to the investigation. The building principal shall prepare a written report within fifteen (days), which will include a summary of the investigation, a determination of whether the complaint has been substantiated as factual and whether it is a violation of the policy, and a recommended disposition of the complaint. The findings of the investigation shall be provided to the complainant, the accused and the Compliance Officer. If the investigation results in a finding that the complaint is factual and constitutes a violation of the policy, the District shall take prompt, corrective action to ensure that such conduct ceases and will not recur.

If the complainant is not satisfied with the finding, s/he may submit a written appeal to the Compliance Officer within fifteen (15) days. The Compliance Officer shall review the investigation and investigative report, and may also conduct a reasonable investigation. The Compliance Officer shall prepare a written response to the appeal within fifteen (15) days. Copies of the response shall be provided to the complainant, the accused and the building principal who conducted the initial investigation.

Based upon our review of Policy 248, we have determined that it does not contain the essential components to providing prompt and equitable resolution of complaints. Specifically, OCR has identified the following compliance concerns regarding Policy 248:

- The Policy does not state that the investigation will be adequate, reliable, and impartial, and does not specifically state that both the complainant and the accused student will be provided with the opportunity to present witnesses and other evidence;
- While Policy 248 states that the District will take corrective action when allegations are substantiated, it does not state that it will take steps to correct the discriminatory effects on the complainant specifically; and
- Policy 248 does not provide an equal opportunity to both the complainant and the accused student to appeal the investigative findings.

CONCLUSION

OCR concludes, by a preponderance of evidence, that the District fails to maintain adequate grievance procedures to address complaints of disability discrimination. Thus, OCR concludes that the District did not comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and 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. On March 30, 2016, the District provided OCR with the enclosed signed Resolution Agreement (the Agreement). When fully implemented, the Agreement will address all of OCR's compliance concerns. OCR will monitor the implementation of the Agreement until the recipient is in compliance with the statute(s) and regulations at issue in the case.

This concludes OCR's investigation of this complaint. This letter is not intended, nor should it be construed, to cover any issues regarding the College's compliance with Section 504, Title II of the ADA that may exist, but are not discussed herein. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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 College 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's insufficient evidence finding, you may contact Victoria Springs, Equal Opportunity Specialist, at 215-656-3249 or by e-mail at victoria.springs@ed.gov.

Thank you for your cooperation in this matter.

Very truly yours,

/s/

Beth Gellman-Beer
Team Leader