



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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February 11, 2020

IN RESPONSE, PLEASE REFER TO: 03161106

Dr. Daryl L. Williams
Superintendent of Schools
Baltimore County Public Schools
6901 Charles Street
Towson, Maryland 21204

Dear Dr. Williams:

This is to notify you of the resolution of the above-referenced complaints filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Baltimore County Public Schools (the District). The Complainant, XXXXXXXXXXXX, alleged that the District discriminated against XXXXXXXXXXXXXXXXXXXXXXXXXXXX (the Student) on the basis of disability and retaliated against him because she filed disability discrimination complaints with the Maryland State Department of Education against the District. Specifically, the Complainant alleged that the District discriminated against the Student and retaliated against him by:

1. Denying the Student a free appropriate public education (FAPE) during the 2015-16 and 2016-17 school years by:
 - a. Failing to conduct appropriate pre-placement evaluation meetings to determine the Student's placement;
 - b. Failing to provide academic and nonacademic services to the Student in the least restrictive environment with students without disabilities to the maximum extent appropriate to the needs of the Student; and
 - c. Failing to implement the Student's behavior improvement plan in October 2016.
2. Subjecting the Student to a hostile environment when staff members used excessive force to restrain him in December 2015.

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.

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

- 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.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and their implementing regulations.

Legal Standards:

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Investigation to Date and Conclusion

On or about December 2, 2014, the Complainant filed a grievance with the Maryland State Department of Education (MSDE) alleging in part that the District had denied the Student a FAPE and had not ensured that proper procedures were followed as a result of excessive use of exclusion with the student since the start of the 2014-2015 school year. During the 2015-2016 school year, the Student received special education services pursuant to an Individualized Education Plan (IEP) and was enrolled in the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (the School), wherein he was placed in a Behavioral Learning Support (BLS) program, a self-contained educational setting for students with behavioral disabilities. The Student's IEP referenced and incorporated a Behavioral Intervention Plan (BIP). The Complainant asserted that the Student's educational placement in the BLS within the School was decided without conducting pre-placement evaluation meetings and without considering available testing data and support and accommodations in less-restrictive settings. Within the BLS, the Complainant stated that the Student's BIP was not implemented.

XX – Paragraphs Redacted – XX

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 the issues investigated 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 through a voluntary resolution agreement, which was executed on January 30, 2020. When fully implemented, the resolution agreement will address all of the allegations investigated. 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 and their implementing regulations that may exist and are not discussed herein. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has the right, pursuant to the regulation at 34 C.F.R. § 110.39 implementing the Age Act, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Resources, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Act by the same recipient is the subject of a pending action in any court of the United States.

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.

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If you have any questions, you may contact investigator Josh Galiotto at (215) 656-8587 or by email at joshua.galiotto@ed.gov.

Sincerely,
/s/

Joseph P. Mahoney
Program Manager

Enclosure

cc: Stephen Cowles, Esq.