



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION III
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August 22, 2017

IN RESPONSE, PLEASE REFER TO OCR # 03161263

Superintendent Ryan S. Saxe
Cabell County Schools
2850 5th Avenue
Huntington, WV 25702

Dear Superintendent Saxe:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint that was filed against the Cabell County Schools (the District). The Complainant, XXXXXX, alleges that the District discriminated on the basis of disability XXXXXX:

1. XXXXXX;
2. XXXXXX; and
3. 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, such as public elementary and secondary education systems. Title II 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 and their implementing regulations.

Allegation 1

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

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulation, at 28 C.F.R. § 35.134 also prohibits retaliation.

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Factual Background

The District has Section 504 grievance procedures to address complaints of discrimination on the basis of disability and it submitted these procedures to OCR for its review. Prior to OCR making a determination as to whether these procedures contained all of the elements to provide for a prompt and equitable procedure under Section 504, the District requested to resolve this allegation through a Voluntary Resolution Agreement.

Analysis and Conclusion

Under OCR procedures, complaint allegations may be resolved before the conclusion of an investigation if a recipient asks to resolve it by signing a Resolution Agreement. The provisions of the Agreement must be aligned with the complaint allegations or the information obtained during the investigation 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 University requested to resolve Allegation 1 through a Voluntary Resolution Agreement (the Agreement), which was executed on August 16, 2017. Accordingly, OCR is concluding its investigation of this complaint allegation. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

XX – paragraphs redacted – XX

This concludes OCR’s investigation of this complaint. This letter is not intended, nor should it be construed, to cover any issues regarding the District’s compliance with Section 504 that may exist, but 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.

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.

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 constitute an unwarranted invasion of privacy.

Federal regulations prohibit recipients of Federal financial assistance from taking actions which intimidate, threaten, coerce, or discriminate against individuals who exercise their rights under the statutes which OCR enforces, or because they have filed a complaint with OCR or taken part in the complaint resolution process.

If you have any questions, please contact Dale Leska at 215-656-8562 or dale.leska@ed.gov

Sincerely,

/s/

Vicki Piel
Supervisory Attorney/Team Leader

Enclosure

cc: Tim Hardesty via email w/encl.