



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 27, 2018

IN RESPONSE, PLEASE REFER TO: 03161878

Dr. Nancy Hines
Superintendent
Penn Hills School District
260 Aster Street
Pittsburgh, PA 15235-2059

Dear Dr. Hines:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the complaint we received on September 23, 2016 against the Penn Hills School District (the District). The Complainant alleged that the District discriminated against XXXXXX (the Student) on the bases of disability and race and retaliated against her because XXXXXX by:

1. XXXXXX, and
2. XXXXXX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (Title II), 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.
- Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, Title IV, and their implementing regulations.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff. After carefully considering all of

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 information obtained during the investigation, OCR determined that the District discriminated against the Student on the basis of disability by XXXXXX. The District agreed to resolve this issue through the enclosed resolution agreement. However, OCR found insufficient evidence to support the other allegations in this complaint. OCR's findings and conclusions are discussed below.

Background

XX – paragraphs redacted – XX

Legal Standards

Free Appropriate Public Education (FAPE)

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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.

Different Treatment

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals of a different race or without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Retaliation

In order for OCR to investigate a complaint of retaliation, the complainant must allege (or OCR must be able to infer from the facts given) whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If any of these elements are not present, then OCR cannot investigate the claim of 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. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, whether the action reasonably acted as a deterrent to further protected activity, or if the individual was precluded from pursuing his or her discrimination claims. 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.

Legal Analysis

XX – paragraphs redacted – XX

Conclusion

To resolve the area of non-compliance identified above, District entered into the attached Resolution Agreement, signed on July 26, 2018. Once the Resolution Agreement is fully implemented, the District will be in compliance with Section 504 and Title II with respect to the issues addressed in this letter. OCR will monitor the District's implementation of the Resolution Agreement until the District is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy Niedzalkoski, the OCR attorney assigned to this complaint, at 215-656-8571 or amy.niedzalkoski@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Philadelphia Office