

Legal Standards

Disability harassment that creates a hostile environment is a form of disability discrimination prohibited by Section 504 and Title II. When investigating an allegation of disability harassment or hostile environment, OCR determines whether: (1) a student was subjected to harassment on the basis of disability; (2) the harassment rose to a level that denied or limited the student's ability to participate in or benefit from the educational program, service or aid; (3) the recipient had actual or constructive notice of the harassment; and (4) the recipient failed to take prompt and remedial action to end the harassment and prevent its reoccurrence.

To establish a violation under the hostile environment approach, OCR must determine whether the collective incidents and social atmosphere constitute a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment was severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students and/or staff involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual, infrequent, or isolated incidents to constitute a hostile environment on the basis of disability. Harassment based on disability, if sufficiently severe, denies or limits a student's ability to participate in or benefit from the school program. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent its recurrence.

Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.7(e), prohibits retaliation. This provision is incorporated by reference into Section 504 at 34 C.F.R. 104.61. To establish a prima facie case of retaliation, OCR must determine whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If any of those elements cannot be established, then OCR cannot find evidence of a retaliation violation. 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 these elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

XX – Paragraphs Redacted – XX

Analysis and Conclusion

Under OCR procedures, complaint allegations may be resolved before the conclusion of an investigation if a recipient asks to resolve them 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 as request does not constitute an admission of liability on the part of the recipient, nor does it constitute a determination by OCR of any violation of our regulations.

OCR determined that these allegations were appropriate for an Agreement at this stage of OCR's investigation, as there was additional necessary information for OCR to obtain from the District and analyze before OCR could make a compliance determination regarding these allegations.

XX – Paragraphs Redacted – XX

Accordingly, OCR is concluding its investigation of these complaints. 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 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.

XX – Paragraphs Redacted – XX

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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, we 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.

Please be advised that the District 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.

We would like to thank the District and its legal counsel for their cooperation throughout the complaint process. If you have any questions, feel free to contact me at (215) 656-8522 or by email at vicki.piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Cc: Tracey Eberling, Counsel for District
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