



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 28, 2017

IN RESPONSE, PLEASE REFER TO: 03171130

Dr. Daniel D. Curry
Superintendent
Calvert County Public Schools
1305 Dares Beach Road
Prince Frederick, MD 20678

Dear Dr. Curry:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Calvert County Public Schools (the District). The Complainant alleged that the District discriminated against him on the basis of disability by denying XXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

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.

In reaching a determination in this complaint, OCR reviewed documentation provided by the Complainant and the District. Additionally, OCR conducted interviews with the Complainant and relevant District staff. Based on the information obtained by OCR during its investigation, OCR has determined that there is sufficient evidence to support the Complainant's allegations. The basis for our determination is summarized below.

Legal Standard

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Section 104.4(b) describes prohibited discriminatory actions as:

- (i) Denying a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Failing to afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others; and
- (iii) Providing a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others.

The Title II implementing regulation, at 28 C.F.R. § 35.160(b)(1), states that that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. In addition, § 35.160(b)(2) provides that:

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

In addition, the Section 504 implementing regulation, at 34 C.F.R. § 104.7(b), requires 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. § 35.107(b), similarly requires a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination. These include:

1. Notice of the procedure, including where complaints may be filed;
2. Application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
3. Adequate, reliable, and impartial investigation of complaints, 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 to the parties of the outcome of the complaint; and
6. An assurance that the recipient will take steps to prevent recurrence of any discrimination and to correct its discriminatory effects on the complainant and others, if appropriate.

Because Section 504 and Title II provide similar protections, OCR has applied the above Section 504 standards to the facts of this case.

Factual Summary

XX – paragraphs redacted -- XX

The investigation established that the District does not have a written policy relating to tape recording meetings nor a written policy or standard practice relating to parents requesting accommodations. The investigation further established that the District has two distinct grievance procedures to address complaints of disability discrimination, Administrative Procedures for Policy #1118 and Administrative Procedures for Policy #1130. OCR’s review of these procedures established that they do not fully comply with the requirements of Section 504 and Title II. Specifically, the procedures fail to include:

Administrative Procedure for Policy #1118:

- notice to the parties of the outcome of the complaint, and the basis for the decision in the Employee and Third Parties section

Administrative Procedure for Policy #1130:

- adequate, reliable, and impartial investigation, including the opportunity to present witnesses and other evidence;
- the outcome of the complaint, and the basis for the decision is not provided to the accused; and
- an assurance that the District will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

XXXXXX

XX – paragraph redacted – XX

Conclusion

OCR concludes, by a preponderance of evidence that the District discriminated against the Complainant on the basis of disability by denying XXXXXX.

On November 3, 2017, 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 and 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. 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.

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.

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.

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 Diane Riddick, Equal Opportunity Specialist, at 215-656-8583 or diane.riddick@ed.gov.

Thank you for your cooperation with this matter.

Sincerely,

/s/

Beth Gellman-Ber
Team Leader
Philadelphia Office

Cc: Rochelle Eisenberg