



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION III
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July 12, 2018

IN RESPONSE, PLEASE REFER TO: 03171230

Dr Diana Mitchell
Superintendent of Schools
Dorchester County Public Schools
700 Glasgow St
Cambridge, MD 21613

Dear Dr. Mitchell:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Dorchester County Public Schools (the District). The Complainant, XXXXXX, alleged that the District retaliated against her by 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 school 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.

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.

During our investigation, we interviewed the Complainant and District staff and reviewed relevant data and documentation provided by both parties. As a result of our investigation, OCR finds sufficient evidence to support the Complainant's allegation. An explanation of our findings follows.

Applicable Legal Standards

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. 100.7(e), which is incorporated by reference in the Section 504 regulation, at 34 C.F.R. Part 104.61, prohibits recipients from intimidating, threatening, coercing or discriminating against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint. The regulation implementing Title II, at 28 C.F.R. Part 35, includes a similar requirement.

When investigating a retaliation claim, OCR must determine whether: (1) the 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; (3) there is some evidence of a causal connection between the adverse action and the protected activity. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. While OCR would need to address all of the elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If all of these elements establish a prima facie case, OCR then considers whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action, and whether the reason asserted is a pretext for retaliation.

FACTUAL SUMMARY AND ANALYSIS

Background

XX – paragraph redacted – XX

Factual Findings

XX – paragraphs redacted – XX

Legal Analysis

XX – paragraphs redacted – XX

CONCLUSION

OCR concludes that the District retaliated against the Student, based on the Complainant engaging in a protected activity, in violation of the Section 504 regulation, at 34 C.F.R. Part 104.61, and the regulation implementing Title II at 28 C.F.R. Part 35. On June 27, 2018, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of 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 Randle Haley, attorney, at 215-656-8532 or by e-mail at randle.haley@ed.gov.

Thank you for your cooperation with this matter.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

cc: Rochelle Eisenberg, Esq.

Enclosure