



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
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September XX, 2017

IN RESPONSE, PLEASE REFER TO: 03171242

Miles H. Shore, Esq.
Interim General Counsel
School District of Philadelphia
440 North Broad Street
Philadelphia, PA 19130

Dear Mr. Shore:

This is to advise you of the resolution of the above-referenced complaint investigation of Shepherd District (the District) by the United States Department of Education (Department), Office for Civil Rights (OCR). The Complainant alleges that the District fails to maintain Section 504 Grievance Procedures.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. OCR also enforces 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. The District is a recipient of financial assistance from the Department and a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

Legal Standard

The Section 504 regulation, at 34 C.F.R. Section 104.8(a), and the Title II regulation, at 28 C.F.R. Section 35.106, require that recipients and public entities provide notice that it does not discriminate on the basis of disability. In addition, the Section 504 and Title II regulations require that recipients designate an individual(s) to coordinate its compliance efforts with these statutes. See 34 C.F.R. Section 104.7(a) and 28 C.F.R. Section 35.107(a).

The Section 504 implementing regulation, at 34 C.F.R. Section 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. Section 35.107(b), similarly requires a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

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 parents of elementary and secondary school 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's website contains at least two (2) relevant Board Policies that are applicable to harassment and discrimination based on disability. A preliminary review of these policies show they provide information regarding to whom a complaint of disability harassment or disability discrimination may be made, as well as information regarding the process that will take place once such a complaint is made.

Request to Resolve Complaint through a Voluntary Resolution Agreement

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on August 3, 2017, the District requested to resolve the complaint through a Resolution Agreement. On September 14, 2017, the District signed this Agreement. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the District's compliance with Section 504 or Title II which may exist and 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.

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.

Page 3 – Miles H. Shore, Esq.

We look forward to your cooperation during the monitoring of this complaint. If you have any questions, please do not hesitate to contact me at (215) 656-6935 or by e-mail at: beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader
Philadelphia Office