



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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April 3, 2018

IN RESPONSE, PLEASE REFER TO: 03171267

Dr. William P. Stropkaj, Ed.D
Superintendent
Keystone Oaks School District
1000 Kelton Avenue
Pittsburgh, PA 15216-1984

Dear Dr. Stropkaj:

This is to notify you of the determination made in the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Keystone Oaks School District (the District). The Complainant, XXXXXX, alleges that the District retaliated and discriminated against XXXXXX (the Student), on the basis of disability by failing to properly address his complaint that 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) and its implementing regulation, at 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities. Title II also prohibits retaliation.

As a recipient of Federal financial assistance and a public entity, the District is subject to the provisions of 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 documentation provided by both parties. XXXXXX The District has signed the enclosed resolution agreement (the Agreement) to remedy these deficiencies. An explanation of our findings follows.

Applicable Legal Standards

Retaliation

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 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.

Disability Harassment

The regulation implementing Section 504 prohibits a recipient of Federal financial assistance from discriminating on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual 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. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II.

Grievance Procedures

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients to notify participants, beneficiaries, applicants, and others that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, it shall include in those materials or publications a statement of the nondiscrimination policy.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by Section 504, including disability harassment. The regulation implementing Title II, at 28 C.F.R. § 35.107(b), includes similar requirements.

FACTUAL SUMMARY AND ANALYSIS

XX – paragraphs redacted – XX

Policy/Procedure:

Although the District provided OCR with a copy of its Anti-Bullying Policy, OCR notes that the District employs a separate disability discrimination/harassment policy (Policy 103.1). That Policy provides that complaints of discrimination or harassment shall be investigated promptly, and corrective action be taken for substantiated allegations. The Policy provides a specific complaint procedure in which students and/or parents/guardians are directed to report incidents to the Section 504 building administrator. Upon receipt of a complaint of discrimination, the Section 504 building administrator shall immediately notify the District's Section 504 Coordinator who shall authorize the Section 504 building administrator to investigate the complaint. The Policy states that the investigation may consist of individual interviews with the complainant, the accused and others with knowledge relative to the incident, and the investigator may also evaluate any other information and materials relevant to the investigation. The Section 504 building administrator shall prepare and submit a written report to the Section 504 Coordinator within fifteen (15) days, unless additional time is necessary. In addition, the complainant and the accused shall be informed of the outcome of the investigation. The complainant may submit a written appeal to the Section 504 Coordinator within fifteen (15) days. The Policy provides that, if the investigation results in a finding that the complaint is factual and constitutes a violation of policy, the District shall take prompt and corrective action to ensure that such conduct ceases and will not recur.

LEGAL ANALYSIS

XX – paragraphs redacted – XX

Grievance Procedures

Based upon our review, we have determined that the District's grievance procedures are deficient because they do not include the following provisions:

- application of the procedure to complaints alleging disability discrimination carried out by third parties;
- adequate, reliable, and impartial investigation, including the opportunity to present witnesses and evidence; and
- an assurance that the District will take steps to correct the discriminatory effects of the prohibited action on the complainant and others, if appropriate.

On March 14, 2018, the District signed an Agreement to address these deficiencies. When fully implemented, the Agreement will address all of OCR's compliance concerns. Consistent with our procedures, OCR will monitor the implementation of the agreement until the District is in compliance with the regulations implementing Section 504 and Title II, which were at issue in the case.

CONCLUSION

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.

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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.

Thank you for your cooperation in this matter. If you have questions or concerns about OCR's insufficient evidence finding, you may contact Randle Haley, Team II attorney, at 215-656-8532 or by e-mail at randle.haley@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader