



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 1, 2019

IN RESPONSE, PLEASE REFER TO: 03-17-1298

Ms. Eugenia Koo
Head of School
5301 Tacony St.
Philadelphia, PA 19137

Dear Ms. Koo:

This is to notify you of the resolution in the complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Franklin Towne Charter High School (the School). XX
XXXXXXXX (the Complainant) alleged that the School discriminated against students in the English as a
Second Language (ESL) program, Limited English Proficiency (LEP) parents, XXXXXXXXXXXXXXXXXXXX
XX. Specifically, the Complainant alleged that the School discriminated on the bases of race and national
origin as:

1. ESL students are not provided the same or equivalent resources, including textbooks, whiteboards, projectors and classroom space, as non-ESL students are provided;
2. Instruction time for ESL students is often interrupted by fire drills, mandatory statewide testing, and assemblies; and
3. The School does not communicate with the parents of ESL students in a language and mode they understand.

In addition, the Complainant alleged that the School discriminated on the bases of race, national origin, and disability when:

4. The School failed to properly develop testing accommodations for ESL students with disabilities for the February 2017 ACCESS test, an English language proficiency exam given to ESL students.

XX – Paragraphs Redacted – XX.

OCR enforces:

- Title VI of the Civil Rights Act of 1964, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance.
- 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, which prohibit discrimination on the basis of disability by public entities.

The Department of Education's mission is to promote Complainant achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

As a recipient of financial assistance from the Department and a public entity, the School is subject to Title VI, Section 504, Title II and their implementing regulations.

Legal Standards

National Origin Discrimination

The Title VI implementing regulation, at 34 C.F.R. §100.3(a), provides that no person shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. Under 34 C.F.R. §100.3(b)(1), a recipient may not, on the ground of race, color, or national origin, restrict or deny an individual any service or benefit or provide any service or benefit to an individual which is different, or is provided in a different manner from that provided to others.

In order to establish a violation of Title VI in this case, OCR would have to find that the ESL students were treated differently than similarly-situated students of other races/national origins in a way that limited the students' opportunity to participate in or benefit from a school program or activity, and that either the recipient cannot articulate a legitimate nondiscriminatory reason for the different treatment or that the recipient has articulated a legitimate nondiscriminatory reason for the different treatment, but the reason is pretext for discrimination. Additionally, OCR examines whether the recipient treated the students in a manner that was consistent with established policies and practices and whether there is any other evidence of discrimination based on race or national origin.

In addition, the OCR policy memorandum issued on May 25, 1970, entitled, Identification of Discrimination and Denial of Services on the Basis of National Origin (May 1970 Memorandum), 35 Fed. Reg. 11,595, articulates OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to ELL students. The May 1970 Memorandum states, in part, "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." Concerning a district's obligations to provide effective notice to parents, the May 1970 Memorandum provides that recipients must adequately notify national origin minority group limited-English proficient parents of school activities that are called to the attention of other parents and that such notice in order to be adequate may have to be provided in a language other than English. Additionally, OCR considers the issue of communication with limited-English proficient parents in a manner consistent with Executive Order 13166, Improving Access for Persons with Limited-English Proficiency, issued August 11, 2000 (Executive Order 13166). The U.S. Department of Justice Guidance issued on June, 18, 2002, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons (DOJ Guidance), provides specific guidance about the method and manner (including translation and interpretation) for delivering information to ELL individuals in a timely and effective manner.

Disability Discrimination

Section 504 at 34 C.F.R. § 104.4 and Title II at 28 C.F.R. § 35.130, require that no person, on the basis of disability, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any program or activity. The Title II regulation, at 28 C.F.R. § 35.103, does not set a lesser standard than those under Section 504. Accordingly, OCR interprets the Title II regulation to require public entities to provide services to students with disabilities (including a free appropriate public education) to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j), defines a person with a disability as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Any mental or psychological disorder is considered to be a mental impairment under 34 C.F.R. § 104.3(j)(2)(i)(B). Learning is considered to be a major life activity under 34 C.F.R. § 104.3(j)(2)(ii). With regard to public elementary and secondary educational services, such an individual is deemed “qualified” when he or she is of an age during which it is mandatory under state law to provide such services, or of an age during which it is mandatory under state law to provide such services to persons with disabilities. 34 C.F.R. § 104.3(l)(2)(i),(ii).

Additionally, the Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

In evaluating an issue of whether a recipient failed to provide services called for in a plan, OCR considers: whether the recipient has identified the student as a student with a disability; whether the student had a plan, and whether the recipient provided the services in the plan; if the recipient did not fully implement the terms of the plan, whether the failure limited the student’s educational opportunity.

XX – Paragraphs Redacted – XX

Conclusion

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 School, nor does it constitute a determination by OCR of any violation of our regulations.

Prior to the conclusion of OCR’s investigation, on April 16, 2019, the School requested to resolve Allegations #1 through #4 through a Voluntary Resolution Agreement (the Agreement). This complaint is appropriate for resolution via a Resolution Agreement because OCR would need to obtain and analyze additional information to make compliance determinations regarding Allegations 1-4 in this complaint. On September 30, 2019, the School signed this Agreement. In light of the commitments the School has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the School’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the School’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 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 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Michael Branigan at (215) 656-8516 or at michael.branigan@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office