



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

IN RESPONSE, PLEASE REFER TO: 03181045

Dr. Maria Edelberg
Executive Director
Delaware County Intermediate Unit #25
200 Yale Avenue
Morton, PA 19070-1918

Dear Dr. Edelberg:

This refers to the complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Delaware Intermediate Unit #25 (DCIU25). The Complainant, XXXXXX, alleges the DCIU25 retaliated 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, DCIU25 is subject to the provisions of Section 504, Title II, and their implementing regulations.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Voluntary Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

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 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.

FACTUAL SUMMARY

The Student is enrolled in the Ridley School District in a program administered by DCIU25. He has a disability as XXXXXX and an Individualized Education Program (IEP) including a Behavior Support Plan (BSP). The Ridley School District is the Local Education Agency responsible for providing the Student a FAPE; the DCIU25 was contracted by the Ridley School District to provide services to the Student, and has been doing so since XXXXXX. The Complainant alleges that DCIU25 has threatened to XXXXXX.

XX – paragraph redacted – XX

CONCLUSION

Pursuant to Section 302 of OCR's *Case Processing Manual*, DCIU25 signed the enclosed Voluntary Resolution Agreement on April 4, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor DCIU25's implementation of the Agreement until DCIU25 is in compliance with the statutes and regulations at issue in the case.

This concludes OCR's investigation and should not be interpreted to address DCIU25'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.

Please be advised that DCIU25 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 rande.haley@ed.gov.

Sincerely,

/s/

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Beth Gellman-Beer
Team Leader

Enclosure: Voluntary Resolution Agreement