



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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August 20, 2020

IN RESPONSE, PLEASE REFER TO: 03-19-1265

Via Email Only

Dr. Sonja Brookins Santelises
Chief Executive Officer
Baltimore City Public Schools
200 E. North Avenue
Baltimore, MD 21202
CitySchoolsCEO@bcps.k12.md.us

Dear Dr. Santelises:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Baltimore City Public Schools (the District) alleging discrimination on the basis of disability. XXXXXXXXXXXX (the Complainant) alleges the District discriminated againstXXXXXXXXX (the Student), who attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX (the School), on the basis of disability by:

XX – Paragraphs Redacted – XX

The Complainant also alleges the District retaliated against him and the Student during the XXXXXXXX school year because he filed a complaint with the District concerning XXXXXXXX by:

XX – Paragraphs Redacted – XX

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, which 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, which prohibits discrimination on the basis of disability by public entities.

Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II. Title II also prohibits retaliation.

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

Legal Standards

Disability Harassment

The Section 504 implementing regulation, at 34 CFR 104.4(a), prohibits discrimination on the basis of disability. Disability harassment that is severe, pervasive or persistent can result in the denial or limitation of a student's ability to participate in or receive benefits, services or opportunities from the school's program. If a recipient receives information indicating that a student may have been harassed on the basis of disability, the recipient is responsible for investigating the allegations and, if a hostile environment is found, to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

To establish a violation under the hostile environment approach, OCR must determine whether the conduct constitutes a hostile environment from the totality of the circumstances, including a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability. In addition, where a recipient has notice of the conduct, we determine whether it took prompt and effective action to eliminate the hostile environment and prevent its recurrence.

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under Section 504. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE. Title II contains similar provisions to the Section 504 regulations cited above.

Different Treatment on the Basis of Disability

Under the Section 504 regulations at 34 C.F.R. § 104.4(a) and (b), no qualified individual with a disability 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. The Title II regulations, at 28 C.F.R. § 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. § 104.4(b)(1) and 28 C.F.R. § 35.130(b)(1) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit or service. Under 34 C.F.R. § 104.4(b)(2) and 28 C.F.R. § 35.130(b)(2), a recipient may not afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others.

Retaliation

Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. § 100.7(e), prohibits retaliation. This provision is incorporated by reference into Section 504 at 34 C.F.R. § 104.61. The Title II regulation, at 28 C.F.R. § 35.134, also prohibits retaliation. To establish a prima facie case of retaliation, OCR must determine whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If any of those elements cannot be established, then OCR cannot find evidence of a retaliation violation. While OCR would need to address all the elements in order to find a violation, it is not necessary to address all these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established. If these elements are present, then a prima facie case of retaliation is established, and OCR next considers whether the University has identified a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination.

Summary of Investigation

XX – Paragraphs Redacted – XX

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. The provisions of the Resolution Agreement must be aligned with the complaint allegations 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.

On August 19, 2020, the District signed a Voluntary Resolution Agreement (Agreement) with OCR in order to resolve the matter. When fully implemented, the Agreement will address all of the allegations investigated. Accordingly, OCR is concluding its investigation of this complaint. As is our standard practice, OCR will monitor the District's implementation of the Agreement, a copy of which is enclosed.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District's compliance with Section 504, Title II or their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private lawsuit in Federal court whether or not OCR finds a violation.

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. 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.

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

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

CC: Gerald Loiacono, ESQ. (Via Email Only)
GLLoiacono@bcps.k12.md.us