

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 MARYLAND PENNSYLVANIA WEST VIRGINIA

IN RESPONSE, PLEASE REFER TO: 03221172

November 15, 2022

Dr. Michael J. Martirano Superintendent Howard County Public Schools 10910 Clarksville Pike Ellicott City, Maryland 21042

Via email only: superintendent@hcpss.org

Dear Dr. Martirano:

This is to advise you of the resolution of the above-referenced complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on March 14, 2022, against the Howard County Public Schools (the District). The Complainants alleged that the District discriminated against their son (the Student) on the basis of disability and retaliated against him. Specifically, the Complainants allege that:

- 1. The District discriminated against the Student by failing to implement the following provisions of his Section 504 plan during the school year:

 - c. XXXXXXXXXXXXXXXXX
 - d. XXXXXXXXXXXXXXXX
 - e. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 prohibit discrimination on the basis of disability by recipients of Federal financial assistance. 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, which prohibit discrimination on the basis of disability by public entities. Section

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504 and Title II also prohibit retaliation. As a recipient of federal financial assistance from the Department of Education and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

OCR has completed its investigation with respect to the Complainants' remaining allegations, and concludes that there is insufficient evidence that the District discriminated and retaliated as alleged. In reaching a determination in this case, OCR reviewed documentation submitted by the Complainants and the District and interviewed the Complainants and District staff. The basis for our determination is set forth below.

ALLEGATION 1

Factual Background and Findings: FAPE

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c. XXXXXXXXXXXXXXXXX

d. XXXXXXXXXXXXXXXX

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Legal Standard: FAPE

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of disability.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipients to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require recipients to provide a FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a recipient has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the recipient to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

Legal Analysis: FAPE

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Districts data response is consistent with the information that the teachers provided. XXXXXXX ***** ***** ****** ***** ***** ***** ****** XX. Overall, although the Student's teachers may have implemented certain accommodations in different ways, the evidence on balance indicates that each accommodation was provided in some form that conformed to the requirements Section 504 Plan. OCR thus finds that there is insufficient evidence under Section 303(a) of the CPM to support allegations 1(b)-(f).

Resolution Agreement: FAPE

As noted above, prior to OCR's completion of the investigation, the District expressed an interest in resolving this complaint under Section 302 of the CPM, and OCR determined that it would be appropriate to resolve the preliminary concerns OCR had identified. The District signed the enclosed Resolution Agreement that, when fully implemented, will resolve the complaint. The Resolution Agreement requires the District to convene the Student's multi-disciplinary team, including the Complainants, to determine if the Student was denied a FAPE when he was not provided XXXXXXXXXXXXXX, as required by her Section 504 plan and whether, as a result, the Student requires compensatory education and remedial services. As is our usual practice, OCR will monitor the District's implementation of the Resolution Agreement.

ALLEGATION 2

Factual Background and Findings: Retaliation

The Complainants stated that on XXXXXXXXX, they attended an IEP meeting to discuss the Student's eligibility for an IEP. They stated that at that meeting, they advocated for the Student's eligibility for an IEP and that they raised a concern that the Student's Section 504 Plan was not

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being implemented by the XXXXX teacher. The Complainants told OCR that the following day, the XXXXX teacher told the Student that he would not accept any assignments that were turned in late, even though he had previously allowed the Student flexible due dates. Moreover, the Complainants asserted that, although the XXXXX teacher had previously stated via email at the beginning of the school year that the Student would have flexible due dates, the teacher told him on XXXXXXX that rigid due dates including his extended time calculation would be applied retroactively, and that assignments the Student had turned in after those dates would not be graded.

Documents show that on XXXXXXXXX, the Complainants emailed the Assistant Principal, alleging that a teacher had told the Student that he had been reprimanded following the IEP meeting and that changes were being made to the grading policy. The Principal responded to the Complainants on that same day stating that there had not been and would not be any changes to grading policies and that any staff member who wished to make a change would need to have it approved by the Principal and the change would need to begin at the start of a grading period.

Documentation and the XXXXX teacher's statements confirmed that the XXXXX teacher continued to provide extended time for all of the Student's assignments, and continued to accept late work from the Student without penalty. The XXXXX teacher also stated that immediately after the Student's parent complained about the alleged change in policy, he contacted the parent via phone and explained that there had been no change in the grading policy.

Legal Standard: Retaliation

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e) 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. This requirement is incorporated by reference into the Section 504 regulations at 34 C.F.R. § 104.61. The regulation implementing Title II, at 28 C.F.R. § 35.134, includes a similar provision.

In order for OCR to make a finding that prohibited retaliation occurred, OCR must determine that: (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 these elements are not present, then OCR cannot make a finding of prohibited retaliation. If all of these elements are present, OCR would then consider whether the recipient has a legitimate, non-retaliatory reason for taking the action. If so, OCR then considers whether the reason asserted is a pretext for retaliation.

Legal Analysis: Retaliation

The Complainants' advocacy in the Student's IEP meeting is protected activity. There is insufficient evidence, however, for OCR to conclude that the Student or the Complainants suffered an adverse action, as alleged. On balance, the record shows that the XXXXX teacher continued crediting the Student for late submitted assignments. Although the XXXXX teacher's calculation of grades in Canvas inadvertently made it appear as though the Student was receiving 0 grades, the incident was quickly rectified and explained, and thus amounted to no more than a merely unpleasant or transient incident that OCR cannot conclude was adverse. There is therefore insufficient evidence that retaliation occurred with respect to Allegation 2, as alleged.

* * *

This concludes OCR's investigation of the complaint. This letter 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. 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination regarding allegations 1(b)-(f) and 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or

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written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

Thank you for your cooperation in this matter. If you have any questions, please contact attorneys Bradley Moore at (215) 656-8502 or Bradley.Moore@ed.gov or Gina DePietro at (215) 656-8595 or Gina.DePietro@ed.gov.

Sincerely,

/s/

Christina M. Haviland Supervisory Attorney

Enclosure cc: J. Stephen Cowles, Esq. (via email)