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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

Regarding all of the Student’s accommodations except for XXXXXXXXXXXXXXXXXXXXXXX
XXX, OCR did not find sufficient evidence to conclude that the District failed to implement these accommodation during the XXXXX school year, as was alleged. Interview responses from teachers indicate that they provided these accommodations on a continuous basis, and the

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.

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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

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)