



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 14, 2017

Mr. Forrest Claypool
Chief Executive Officer
Chicago Public Schools, District #299
42 West Madison
Chicago, IL 60602

Re: OCR Docket #05-17-1168

Dear Mr. Claypool:

This is to advise you of the resolution of the above-referenced complaint against the Chicago Public Schools District # 299 (District) alleging that the District discriminated against Student A on the basis of disability. Specifically, the Complainant alleged that the District subjected Student A, a X grade student at XX Elementary School, to discrimination on the basis of disability (XXXXXXX) during the 2016-17 school year, when:

1. Teacher A and Student A's classmates made derogatory remarks about Student A's disability, and the District, which is aware of the harassment, has failed to respond appropriately.
2. Teacher B physically struck Student A on multiple occasions during the 2016-17 school year.¹

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, *et seq.*, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to OCR's jurisdiction under Section 504 and Title II.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

¹In its March 16, 2017 Letter of Notification to the District, OCR informed the District that it was opening an investigation into whether the District discriminated against Student A based on his disability (XXXXXX) during the 2016-17 school year when Teacher A and Student A's classmates allegedly made derogatory remarks about Student A's disability, and the District, which was allegedly aware of the harassment, failed to respond appropriately. Subsequently, during the course of OCR's investigation, OCR learned that Student A was allegedly hit by Teacher B, and broadened its investigation to consider whether that incident may have contributed to a hostile environment for Student A on the basis of disability.

Legal Authority

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person 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 or benefits from Federal financial assistance. The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

Disability Harassment

Harassment based on disability is a form of discrimination prohibited by the applicable regulations. Harassing conduct may take many forms, including verbal acts and name calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Disability harassment may constitute a hostile environment based on disability. OCR determines whether conduct constitutes a hostile environment by examining the totality of the circumstances to determine whether a hostile environment has been created, *i.e.* whether the conduct is sufficiently severe and pervasive, that it denies or limits a student's ability to participate in or benefit from the school's program based on disability. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment 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. When harassing conduct creates a hostile environment, it can violate a student's rights.

A recipient is responsible for addressing harassment incidents about which it has notice. Generally, a recipient has "notice" of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. In some situations harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extra-curricular activities, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the recipient on notice. In some situations, if the recipient knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents.

In considering whether the recipient had notice of harassment, OCR considers whether the alleged harasser is an agent or employee of the district, acting within the scope of his or her official duties. If so, then the recipient will be deemed to have constructive knowledge of the harassment. If a teacher or staff member is acting (or reasonably appears to be acting) in the

context of carrying out his or her official duties over students, OCR will consider a variety of factors in determining whether or not the harassment has taken place in this context. The factors include the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place; where and when the harassment occurred; the age and educational level of the student involved; and as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

In cases involving allegations of harassment of elementary and secondary school-age students by a teacher during any school activity, consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services. Even if the student is not in any of the teacher's classes, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

School districts have a legal responsibility to prevent and respond to disability harassment. When harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating the hostile environment if one has been created, preventing it from recurring and, where appropriate, remedying the effects on the student who was harassed.

Disability harassment, bullying and a free appropriate public education (FAPE)

While disability harassment must involve the bullying or harassing of a student "on the basis of" disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefits constitutes a denial of a FAPE that must be remedied, regardless of the nature of the bullying or harassment. Section 504 imposes on a recipient an ongoing obligation to provide FAPE to students with disabilities, and that obligation exists whether or not school officials know or reasonably know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

Further, whether the conduct in question is described as "bullying," "hazing," or "teasing," such labels do not determine how a recipient is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. Thus, when misconduct that falls

under a recipient's anti-bullying policy is on the basis of disability, the recipient is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR. In the event that a recipient limits its response to a specific application of its anti-bullying disciplinary policy, the recipient may fail to properly consider whether the misconduct also results in discriminatory harassment.

Factual Information

Allegation # 1

Student A was a XXX student at the School during the 2016-17 school year. At the time that the Complainant filed this complaint with OCR on February 15, 2017, Student A had been diagnosed with XXXXXX but the Complainant had not yet requested an evaluation for special education and related aids and services for Student A. She formally requested an evaluation under Section 504 and the Individuals with Disabilities Education Act (IDEA) on May 25, 2017. The Complainant told OCR that in November 2016, she had a conference with Teacher A regarding Student A's difficulty completing classroom assignments. During this meeting, the Complainant reportedly told Teacher A that Student A had XXXX. The Complainant alleged that in February 2017, Student A told her that Teacher A told Student A in the presence of other students that Teacher A and the Complainant had met and that the Complainant had advised Teacher A that Student A was "special." The Complainant told OCR that after this alleged remark, Student A's classmates began started calling him "retarded" and teased him excessively. The Complainant told OCR that she complained to the Principal about Teacher A's conduct but did not get a response.

OCR was not able to interview Teacher A because her employment with the District ended during the 2016-17 school year. The Complainant told OCR during a phone call on March 10, 2017 that Teacher A was no longer at the School. The District did not provide OCR with any information regarding Teacher A's alleged conduct.

Allegation # 2

The Complainant advised OCR during the investigation that another teacher, Teacher B, had struck Student A on multiple occasions. The District provided OCR an incident report stating that Student A's parents met with the Principal and Assistant Principal on XXXXX, to discuss Teacher B's conduct towards Student A on multiple occasions during a two-week period, including slapping his glasses off his face and punching him in the chest. According to the incident report, Teacher B "openly admitted in the presence of the parents, student, and administrators that she did hit [Student A] multiple times during the last two weeks." Teacher B was sent home on XXXX and no is longer employed by the District. OCR did not interview Teacher B and has not received a copy of her personnel file.

Resolution

Allegation #1

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving allegation #1. In order to conclude OCR's investigation of this allegation, OCR would have had to interview Teacher A and the Principal, and request parental permission to interview Student A's classmates.

Allegation #2

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving allegation # 2. In order to conclude OCR's investigation of this allegation, OCR would have had to interview Teacher B and District staff to determine what steps the District took to determine whether Teacher B's actions subjected Student A to a hostile environment based on disability.

On August 11, 2017, the District submitted a signed Resolution Agreement to resolve the allegations. The District committed to take actions such as:

- Provide training to the School principal, assistant principal and any other School staff directly involved in processing, investigating, and/or resolving complaints or other reports of disability discrimination, including disability harassment, and any other School counselor or other School personnel who are likely to receive reports of disability harassment.
- Conduct an investigation to determine whether Teacher A and/or Student A's classmates made derogatory remarks about Student A's disability during the 2016-17 school year.
- Conduct an investigation to determine whether Student A was subjected to a hostile environment based on a disability as the result of either Teacher A's alleged conduct and/or classmates' derogatory remarks regarding Student A's disability, or as a result of Teacher B's physical altercations with Student A.
- Provide the Complainant with a consent form for the District to conduct an evaluation to determine whether Student A is eligible for special education and related aids and services through a Section 504 plan or an Individualized Education Program (IEP), and conduct an evaluation and make a placement determination within 60 days of receiving the signed consent form.
- Convene a group of persons knowledgeable about Student A, including Student A's parent or guardian, to determine whether Student A requires compensatory and/or remedial services, such as counseling and/or social work or tutoring services, as a result of (a) Teacher A's and/or Student A's classmates' derogatory remarks about Student A's disability (if such allegations are substantiated); and/or (b) a hostile environment based on disability (if a hostile environment is found to have been created during the 2016-2017 school year).

Please be advised that the District may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under

a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance that the District extended to OCR in resolving this complaint. We look forward to receiving the District's first report about its implementation of the Agreement by October 30, 2017. If you have any questions, please contact Lauren Lowe at Lauren.Lowe@ed.gov or (312) 730-1584.

Sincerely,

Aleeza M. Strubel
Supervisory Attorney

Enclosure

cc: Kathleen Gibbons, Senior Assistant General Counsel
Susan Best, Assistant General Counsel
Dalila Bentley, EOCO Administrator