



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

May 23, 2014

Kaya Henderson, Chancellor
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

RE: OCR Complaint No. 11-13-1009
Resolution Letter

Dear Ms. Henderson:

This letter is to advise you of the outcome of the complaint filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), on October 16, 2012, against the District of Columbia Public Schools (the District). The Complainant filed on behalf of students with disabilities in the District and alleged that the District's policy or practice at Dunbar High School (Dunbar) and Anacostia High School (Anacostia) requiring students who have been retained to attend the Twilight Programs is discriminatory because:

1. It has a disparate impact on students with disabilities since they are more likely to have been retained.
2. It does not provide a free appropriate public education (FAPE) to students with disabilities.

Additionally, the Complainant alleged that the District's policy or practice that bars students who have been retained from enrolling at Eastern High School (Eastern) is discriminatory because it has a disparate impact on students with disabilities since they are more likely to have been retained.

OCR initiated an investigation of the complaint under its authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public

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

entity, we have jurisdiction over it pursuant to Section 504 and Title II. Because the Complainant alleged discrimination under these laws, we have jurisdiction over the allegations.

During OCR's investigation, the District expressed a willingness to resolve the allegations regarding the Twilight Programs. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District. On May 20, 2014, the District signed the enclosed agreement which, when fully implemented, will resolve the concerns identified regarding the Twilight Programs. The provisions of the agreement are aligned with the issues raised by the Complainant and information obtained during the course of OCR's investigation, and are consistent with the applicable regulations. OCR will monitor implementation of the agreement.

OCR is closing the allegation regarding enrollment policies at Eastern because the individual examples presented by the Complainant were either resolved or untimely. After an extensive campus renovation, Eastern re-opened in fall 2011 with only a ninth grade class and has added one grade per year since then. The Complainant stated that XXXX was XXXX barred from enrolling in Eastern because he had been retained, XXXX. Therefore, the concern was resolved with respect to this student. The Complainant provided an example of another student with a disability who was denied enrollment in XXXX, but this example was not timely because the student was denied enrollment more than 180 days before the complaint was filed. The Complainant did not provide additional examples.¹ If the Complainant becomes aware of any other students with disabilities who were denied enrollment at Eastern because they were retained, the Complainant may re-file this allegation with OCR within 180 days of the denial of enrollment.

We note that the District provided the following information regarding Eastern's enrollment policies and the District's educational justification in a letter to OCR dated March 19, 2013:

In 2011-12, Eastern was re-launched with 300 first time ninth graders. DCPS did not enroll any 9th graders who had been retained because Eastern did not offer any tenth grade courses that school year (which most repeaters would need). This current school year (2012-2013), Eastern has enrolled in-boundary repeating 9th graders who are in their second year of high school. Presently, Eastern has close to 50 repeaters who joined the school community. <XXXX SENTENCE REDACTED XXXX> This school year [2012-2013], Eastern only enrolls first time tenth graders with a focus to enroll students in their first or second year of high school, regardless of their credit status.²

Furthermore, the District informed OCR that during the 2011-2012 and 2012-2013 school years students with disabilities were approximately 26% of Eastern's enrollment. This is similar to the percentage of students with disabilities at the District's other neighborhood high schools. According to data from the 2011-2012 Civil Rights Data Collection (CRDC), students with

¹ When queried, the District stated it had no information on the disability status of the students denied admission to Eastern.

² Eastern's website states that it enrolled ninth, tenth, and first time eleventh graders for the 2013-2014 school year and will enroll students in all grades for the 2014-2015 school year.

disabilities (i.e., students with an Individualized Education Program or Section 504 Plan) were 28% of the enrollment at Anacostia, 30% at Ballou, 26% at Cardozo, 25% at Coolidge, 21% at Dunbar, 26% at Roosevelt, 29% at Spingarn, 12% at Wilson, and 28% at Woodson. Therefore, Eastern’s policies barring certain retained students from enrolling did not result in a significantly lower percentage of students with disabilities than other neighborhood high schools.

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.

We have reminded the Complainant that the District is not permitted to intimidate, threaten, coerce, or discriminate against her or any other individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Please note that, 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, information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Christa Cothrel at 202-453-5926 or Christa.Cothrel@ed.gov, or Sarah Morgan at 202-453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

/S/

Rachel Glickman
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Conchita Hudson Hall
Kyoung Lee