



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, DC

December 19, 2014

James A. Griffin
Principal/CEO
Somerset Prep DC
3301 Wheeler Road, SE
Washington, D.C. 20032

RE: OCR Complaint Nos. 11-14-1021 and 11-14-1040
Letter of Findings

Dear Mr. Griffin:

This letter is to inform you of the disposition of the above-referenced complaints that were filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against Somerset Prep DC (the School). The complaints allege the following:

1. <XXXX SENTENCE REDACTED XXXX>
2. <XXXX SENTENCE REDACTED XXXX>
3. <XXXX SENTENCE REDACTED XXXX>
4. Since the start of the 2013-2014 school year, the School has discriminated against students with disabilities by failing to ensure the provision of a free appropriate public education. Specifically the School:
 - a. Failed to implement students' individualized education programs (IEPs) and/or Section 504 Plans;
 - b. Failed to provide services in the least restrictive environment as required by students' IEPs; and
 - c. <XXXX SENTENCE REDACTED XXXX>
5. During the 2013-2014 school year, the School treated students with disabilities differently than students without disabilities by penalizing them for leaving the general education classroom to receive the specialized instruction required by their IEPs.
6. <XXXX SENTENCE REDACTED XXXX>

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

7. <XXXX SENTENCE REDACTED XXXX>

8. During the 2013-2014 school year the School discriminated against students based on their disability when it failed to hold manifestation meetings after they were suspended for more than ten days.

OCR's Jurisdiction

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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) 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. OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II, and Title IX.

Prior to the completion of the investigation, the School expressed interest in resolving allegations 4(a), 4(b), 5 and 8. The provisions of the resolution agreement are aligned with the complaint allegations and the information obtained during the investigation, and are consistent with applicable regulations. With respect to the remaining allegations, OCR found insufficient evidence of noncompliance; however, during the course of the investigation OCR identified a violation with regard to the School's grievance procedures and nondiscrimination statement. The School has agreed to take action to address all concerns identified, as set forth in this letter and in the enclosed resolution agreement (the Agreement). OCR will monitor the Agreement, which when fully implemented will resolve the compliance issues identified. An explanation of our analysis and conclusions follows.

Background

The School opened and began providing services to students for the first time at the beginning of the 2013-2014 school year. Its charter is approved to serve students in grades 6-12 but for the 2013-2014 school year the School initially accepted students in grades 6-8.

<XXXX 2 PARAGRAPHS REDACTED XXXX>

Analysis and Discussion

<XXXX 17 PARAGRAPHS REDACTED XXXX>

Allegations Covered by the Resolution Agreement

Allegations 4a, 4b, 5, and 8: *Failure to Provide FAPE*

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts and charter schools to provide a FAPE to all students with disabilities. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulation to require districts to provide a FAPE to the same extent required under the Section 504 regulation.

The Complainants' raised several allegations which asserted that the School failed to provide FAPE to students in the School. These allegations included: (1) failure to consistently implement students' IEPs; (2) different treatment of students with disabilities by penalizing them when they left the classroom to receive specialized instruction; and (3) failure to convene manifestation determination meetings after students were excluded from school for more than ten days. The School expressed a willingness to resolve the issues in the complaint prior to the completion of OCR's investigation and, pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the School.

On December 17, 2014 the School signed a resolution agreement (copy enclosed), which, when fully implemented, will resolve the complaint. OCR will monitor implementation of this agreement, which includes provisions that are consistent with the applicable regulations, and are aligned with the allegation raised in the complaint and information obtained during the course of OCR's investigation.

Additional Concerns

During the course of our investigation OCR also identified concerns with the School's Section 504 and Title IX grievance procedures and its notice of nondiscrimination.

Notice of Nondiscrimination

The Section 504 regulation at 34 C.F.R. § 104.8 requires that recipients publish a notice of nondiscrimination that states that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated to coordinate compliance with Section 504. Similarly, the Title IX regulation at 34 C.F.R. § 106.9 also requires a notice that recipients publish a notice of nondiscrimination that states that the recipient does not discriminate on the basis of sex in any educational program or activity that it operates and that questions about the application of Title IX may be directed to the employee designated to coordinate Title IX

compliance or to the Assistant Secretary for Civil Rights. Additionally, under Title IX, recipients are also required to designate at least one employee to coordinate its efforts to complaint with the regulation, including any investigation of any complaint Pursuant to Section 504 and Title IX, the notice must specify the bases for non-discrimination and identify the name or title, address, and telephone number of the School personnel who coordinate the School's complaint with these regulations (i.e., the Title IX and Section 504 Coordinators). OCR found that the School is not in compliance with the Section 504 and Title IX regulations with regard to its notice of nondiscrimination. Specifically, the statement does not include any reference to or contact information of the Title IX and Section 504 Coordinators.

Section 504

The regulation implementing Section 504, at 34 C.F.R. § 104.7, requires a recipient that employs fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. When evaluating a recipient's Section 504 grievance process, OCR considers a number of factors, including whether the procedure provides for: 1) clear notice of how, when, and where to file a complaint; 2) a thorough and objective investigation of complaints, including the opportunity to present evidence; 3) designated and reasonably prompt timeframes for the major stages of the complaint process; 4) notice to the parties of the outcome of the complaint; and 5) appropriate due process. In this case, the School does not maintain grievance procedures to respond to disability related complaints under Section 504 and Title II.¹ OCR therefore found that the School is not in compliance with the Section 504 regulations with regard to its grievance procedures to respond to disability related complaints.

Title IX

Additionally, OCR identified concerns with the School's Title IX grievance procedure. The Title IX regulations, at 34 C.F.R. § 106.8, require schools to designate at least one employee to coordinate its efforts to comply and implement Title IX, including the investigation of complaints alleging sex discrimination. The School is required to notify all its students and employees of the contact information of the employee or employees appointed as the Title IX Coordinator. The Title IX regulations also require schools to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. 34 C.F.R. § 106.8(b). OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including at a minimum:

- whether the procedures provide for notice to students, parents, and employees of the procedure, including where complaints may be filed;

¹ The School's 2013-2014 Student/Parent Handbook contains, procedures that only refer to complaints of "harassment generally and sexual harassment specifically."

- application of the procedure of complaints alleging harassment carried out by employees, other students, or third parties;
- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- written notice to the parties of the outcome of the complaint; and
- an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

OCR finds the School's grievance procedures to be deficient. In reviewing the Handbook, the School's grievance procedures for complaints of harassment and sexual harassment simply state that such complaints may result in an allegation of denial or abridgement of student rights and that, when necessary, student and parents may avail themselves of the student grievance procedures. Although the procedures state that reports of harassment are to be made to the Dean of Students and/or another member of the Leadership Team, they do not include the elements listed above, which OCR has identified when evaluating whether a school's grievance procedures are prompt and equitable. OCR therefore found that the School is not in compliance with the Title IX regulations with regard to its grievance procedures to respond to disability related complaints.

Conclusion

As noted previously, with regard to the issues raised in Allegations 4(a)(b), 5, 8 and the concerns regarding the grievance procedures the School entered into the enclosed resolution agreement. OCR will monitor the School's implementation of the resolution agreement.

This concludes OCR's investigation of this complaint. OCR is closing this complaint investigation effective the date of 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.

Please be advised that the School may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. 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. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions, you may contact attorney Kendra Riley at (202) 453-5905 or kendra.riley@ed.gov and Duane Scott (202) 453-6596 or duane.scott@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader, Team III
District of Columbia Office
Office for Civil Rights