



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

June 19, 2015

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

RE: OCR Complaint No. 11-14-1214
Resolution Letter

Dear Ms. Henderson:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on May 8, 2014, against the District of Columbia Public Schools (the District). The Complainant filed the complaint on behalf of her son (the Student), a former student at XXXX School (the School) who now attends XXXX School. The Complainant alleged that the District discriminated against the Student on the basis of disability by failing to take appropriate action when the Student was harassed by his peers in XXXX.

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. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

A school district's failure to address disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of

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

discrimination prohibited by Section 504 and Title II. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the school district's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II. To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a school district must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a school district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Factual Background

During the 2013-2014 school year, the Student was enrolled in second grade at the School. He began the year with a Section 504 Plan for XXXX). On XXXX, the District developed an IEP that identified him as a student with a disability in the category of "Other Health Impairment." The IEP provided that he would remain in a general education setting with 2 hours of specialized instruction per week, 3 hours of behavior support per month, and occupational therapy. While the Student was not diagnosed with an autism spectrum disorder (ASD) until XXXX, the Complainant told OCR that he exhibited XXXX symptoms for several years and his classroom teacher reported to her that she noticed these symptoms.

The Complainant reported three incidents involving the Student during the week of March 31, 2014. According to the Complainant, during the first incident, staff observed two students assault the Student because they thought the Student was laughing at them. A School administrator (Administrator A) investigated the other two incidents. According to Administrator A, in the second incident, another student pushed the Student because the Student repeatedly hit her book bag. In the third incident, Administrator A observed the Student and two other students pushing each other and believed they were playing; nevertheless, he met with the students to "work it out." After the Complainant expressed her dissatisfaction with this investigation, the School scheduled a meeting with the Complainant on April 9, 2014. In her e-mails to the School regarding these incidents, the Complainant did not mention the Student's disability. However, she told OCR that she had conversations with the Student's teacher about the Student laughing at inappropriate times because of his disability, which triggered other students to lash out at him.

The Complainant told OCR that she also discussed the relationship between the Student’s disability and the bullying incidents at the April 9 meeting. According to the Complainant, she talked about how the Student laughed at other students because of his XXXX and that other students called him “retarded.” After the meeting, the principal e-mailed the Complainant to discuss the plan developed at the meeting. Specifically, the Student and another specific student would be separated during lunch and snack time and stopped immediately if they were “playing,” the Student would go to another class for the day if his regular teacher was absent, and Administrator A would e-mail the Complainant daily reports for the next two weeks.

The Complainant told OCR that she received no daily reports, as required by the plan, and that physical harassment of the Student continued. On XXXX, she told the principal that the Student was teased and chased the previous week during recess and reported it to staff, but the Complainant had received no communication from the School. The Complainant stated that the School was not implementing the plan and requested a follow-up meeting. Later that day, the Complainant e-mailed the School again to report that another student got mad at the Student because she thought he was laughing at her, so she grabbed the Student by his shirt and yanked him up, acted like she might throw him down the stairs, and teased him throughout the day, culminating in the Student putting his middle finger up at her and being referred to the office. The Complainant stated that the School did not contact her or discipline the other student. The Complainant’s e-mails did not mention the Student’s disability in relation to these alleged incidents.

Over the next few days, District staff attempted to schedule a meeting to discuss the Complainant’s concerns. On XXXX, the principal e-mailed the Complainant and stated that “we have looked into your concerns and need you to know that we do not believe that [the Student] was assaulted.” In response, the Complainant stated that School staff had already acknowledged that the Student had been assaulted on multiple occasions. The principal replied that School staff had never agreed the Student was assaulted and that this was the Complainant’s interpretation. The District provided a document to OCR from an administrator (Administrator B) dated May 2 that summarizes the Complainant’s concerns throughout the school year. After discussing the School’s efforts to address the Complainant’s special education concerns, Administrator B states:

XXXX 3 PARAGRAPHS XXXX

Other than the e-mails referenced above, the District did not provide records of any investigations conducted by School staff regarding harassment of the Student or records of any other students being disciplined for incidents involving the Student. The Student was promoted to third grade at the end of the school year. His final report card states that he was significantly below grade level XXXX, but does not show a clear pattern of declining grades during the third and fourth quarters when the harassment incidents allegedly occurred. The Complainant told OCR that harassment incidents continued during summer school, including a specific incident on July 21, though she did not provide additional information to OCR.

XXXX PARAGRAPH XXXX

XXXX PARAGRAPH XXXX

The Complainant also raised concerns that the District failed to follow its policies for addressing disability-based harassment. The regulations implementing Section 504 and Title II each require covered school districts to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action which would be prohibited those laws. 34 C.F.R. § 106.8(b); 35 C.F.R. § 35.107(b). OCR reviewed the District's procedures for investigating harassment allegations. Disability harassment and other forms of harassment and bullying are covered by the District's Bullying Prevention Policy (BPP). This policy states that when a student or parent reports a bullying incident, the report must be reduced to writing using the Bullying Incident Reporting form. The principal or designee must complete an investigation within 30 days. The BPP states that parties wishing to submit a formal complaint, or wishing to appeal the outcome of the District's initial investigation, may do so according to the Student Grievance Procedures (SGP), which are included in the appendix. However, the BPP does not specify which section or stage of the SGP the parties should refer to. The SGP contains two separate investigation procedures in sections 2405.4 and 2405.5. Section 2405.4 applies to all grievances brought under Section 504, Title II, or other identified statutes, whereas section 2405.5 only applies to bullying and harassment allegations. The SGP states that victims of bullying and harassment may follow either set of procedures:

- Section 2405.4 states that the grievant may make an informal complaint to the principal or other responsible official, who will attempt to investigate and resolve the problem through informal means within 10 school days. If the grievant is dissatisfied with or chooses not to use the informal process, the grievant may file a written grievance with the principal or other responsible school official, who will conduct a formal investigation and provide a written response within 10 school days. If the grievant is not satisfied with the response, the grievant may appeal to the appropriate Instructional Superintendent (IS), who will respond to the appeal in writing. Either the grievant or the IS may then request that the grievance be brought before a three-member grievance review panel, which will provide the IS with written findings and recommendations.
- Section 2405.5 states that a victim of bullying or harassment may complain orally or in writing to any teacher, administrator, or counselor. The complaint will then be reported to the principal, who will ensure that an investigation is completed within 10 school days and a written report of the findings issued. If the grievant is dissatisfied with the outcome, the grievant may then file a grievance with the appropriate IS in accordance with the procedures in section 2405.4, described above.

OCR notes that there are three separate procedures for investigating bullying and harassment allegations, one in the BPP and two in the SGP, and the interaction between these procedures is not clear. OCR also noted some inconsistencies between the procedures, such as timelines for the initial investigation (30 days in the BPP versus 10 school days in the SGP). The District agreed to resolve any concerns regarding these procedures in the attached Agreement.

Conclusion

Pursuant to Section 302 of OCR's Case Processing Manual, the District signed the enclosed Resolution Agreement on June 18, 2015 which, when fully implemented, will resolve the

allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant, the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Sarah Morgan, the OCR attorney assigned to this complaint, at 202-453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Tiffany Holodnak