



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

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

June 23, 2015

Dr. James Merrill
Superintendent
Wake County Public School System
5625 Dillard Drive
Cary, North Carolina 27518

Re: OCR Complaint No. 11-15-1138
Resolution Letter

Dear Dr. Merrill:

This letter is to notify you of the outcome of the complaint that you filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), against North Carolina State University at Raleigh (the University) and Wake County Public School System (the District), specifically XXX School (the School). On January 13 and 26, 2015,¹ the Complainant filed a disability discrimination complaint on behalf of herself (the Complainant), alleging that the District and University discriminated against her on the basis of disability. Specifically, the Complainant alleged that, based upon the comments and actions of the principal of the School, the University removed her from her student teaching placement because of her disability.

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 University and the District receive Federal financial assistance from the Department and are public entities, OCR has jurisdiction over them pursuant to Section 504 and Title II.

¹ OCR received three separate cases filed against the University and District, including the complaints you filed and a second complaint filed by a family member on your behalf. Based on a call with you on February 12, 2015, we have consolidated the complaints and you are the primary contact for all three complaints.

During OCR's investigation, the University and the District, through their respective counsel, expressed a willingness to resolve the complaint. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the University and the District. On June 2, 2015, the University signed the enclosed agreement, while on June 4, 2015, the District signed the other enclosed agreement which, when fully implemented, will resolve the allegation raised in the complaint. The provisions of the agreements are aligned with the issue you raised and information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the University and District's implementation of the agreements.

Legal Standards

Under Section 504, a qualified individual with a disability at the postsecondary education level is someone who meets the academic and technical standards requisite to admission to or participation in an education program or activity. 34 C.F.R. § 104.3(l)(3). Under the ADA Title II, a qualified individual with a disability is someone who meets essential eligibility requirements for participation in programs or activities, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services. 28 C.F.R. § 35.104.

Section 504 prohibits a postsecondary institution from excluding a qualified individual with a disability from participation in any academic program or activity or from any course, course of study, or other part of the program or activity. 34 C.F.R. § 104.43(a) & (c). It also is discriminatory for a postsecondary institution to fail to make modifications to academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability, except that academic requirements the institution can demonstrate are essential to the program of instruction or directly related to any licensing requirement will not be regarded as discriminatory. 34 C.F.R. § 104.44(a). Furthermore, an institution may not discriminate in the provision of academic or vocational counseling, guidance, or placement services, but this does not preclude providing factual information about licensing and certification requirements that may present obstacles to a qualified individual with a disability in the pursuit of particular careers. 34 C.F.R. § 104.47(b).

Title II provides that it is discriminatory for a public entity to fail to make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination, unless the public entity can demonstrate that doing so would fundamentally alter the nature of the program or activity. 28 C.F.R. § 35.130(b)(7). It also is discriminatory for a public entity to impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability from fully and equally enjoying a program or activity, unless the criteria are shown to be necessary for the program or activity. 28 C.F.R. § 35.130(b)(8).

The regulations implementing Section 504 and Title II also provide that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment. 34 C.F.R. § 104.11(a); 28 C.F.R. § 35.140(a). OCR assesses allegations of employment discrimination under Section 504 and Title II by using regulatory standards established by the Equal Employment Opportunity Commission (EEOC) to implement Title I of the Americans with Disabilities Act of 1990 (Title I), at 29 C.F.R. Part 1630, if the public entity is also subject

to Title I jurisdiction. 28 C.F.R. § 35.140(b)(1). As the District is a public school system employing 15 or more employees, it is subject to the requirements of Title I.

Facts

Based on the information received during OCR's limited investigation, there is evidence the Complainant is a person with a disability. The Complainant has Spinocerebellar Ataxia 7, which is a degenerative disability that affects her vision, motor skills, and speech. In the fall of 2014, the Complainant started student teaching at the School. A few days into her placement, the Complainant was told by University staff that her student teaching placement was terminated. Based on the limited information OCR has it appears to be due to concerns about student safety, though it is not clear whether there was any further inquiry regarding whether she was qualified for the student teaching placement and what reasonable accommodations, if any, would be necessary for the Complainant to participate in the student teaching placement.

On June 2 and June 4, 2015, the University and the District entered in to the enclosed agreements, prior to OCR's completion of this investigation. These agreements require a determination as to whether the Complainant is qualified for the student teaching placement, and then. If the Complainant is found to be qualified, a determination as to what reasonable accommodations, if any, are necessary for the Complainant to participate in the student teaching placement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University'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. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University and District 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 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 Judith Risch, the OCR attorney assigned to this complaint, at 202-453-5925 or judith.risch@ed.gov.

Sincerely,

/s/

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

Enclosure