



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

August 16, 2018

Dr. Anitra D. Wells
Superintendent
Weldon City Schools
301 Mulberry Street
Weldon, NC 27890

Re: OCR Complaint No. 11-18-1256
Letter of Findings

Dear Dr. Wells:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on March 22, 2018 against Weldon City Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges that the District discriminated against the Student on the bases of race (XXXXX) and disability¹, and retaliated against her for her disability-related advocacy on behalf of the Student. Specifically, the complaint alleges the following:

1. During the 2017-2018 school year, the Student was subjected to a racially hostile environment, when the District failed to reasonably, timely, and effectively respond to incidents wherein other students subjected the Student to racial harassment by directing derogatory comments towards him on a daily basis.
2. During the 2017-2018 school year, the District discriminated against the Student on the basis of disability, when it failed to timely evaluate the Student to determine whether he was eligible for regular or special education and/or related aids and services XXXXX.
3. On XXXXX, 2018, in retaliation for the Complainant's disability-related advocacy on behalf of the Student, the District XXXXX.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. 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

¹ The Complainant informed OCR that the Student's disabilities included the following: XXXXX.

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. Finally, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title VI, Section 504, and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint, including concerns identified with regard to Allegations 1 and 2, pursuant to Section 302 of OCR's *Case Processing Manual*, and signed the enclosed Resolution Agreement on August 13, 2018. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to substantiate Allegation 3. OCR's findings and conclusions are discussed below.

Background

During the 2017-2018 school year, the Student was enrolled in XXXXX at the School. He has been diagnosed with XXXXX. According to the Complainant, during the 2017-2018 school year, the Student, who is XXXXX, was subjected to verbal harassment by other students. She identified one other student in particular whom she said referred to the Student as "XXXXX" and "XXXXX" and told him that "XXXXX." According to the Complainant, the Student has a number of disabilities and she has been seeking an individualized Education Program (IEP) for him since he was in XXXXX. She noted that on XXXXX. The School evaluated the Student for a disability during the 2017-2018 school year, and he was determined ineligible to receive special education and/or related aids and services under the Individuals with Disabilities Education Act (IDEA), but was found eligible under Section 504. Finally, the Complainant reported that in XXXXX 2018, the District XXXXX.

Allegation 1

The Complainant alleged that during the 2017-2018 school year, the Student was subjected to a racially hostile environment, when the District failed to reasonably, timely, and effectively respond to incidents wherein other students subjected the Student to racial harassment by directing derogatory comments towards him on a daily basis.

Legal Standard

A district's failure to reasonably, timely, and effectively respond to racial harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title VI. 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 or pervasive as to interfere with or limit a student’s ability to participate in or benefit from the district’s programs, activities, or services. When such harassment is based on race, it violates Title VI.

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 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 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.

Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment’s application to harassment, see the discussions in OCR’s Dear Colleague Letter: First Amendment (July 28, 2003), available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>, and OCR’s *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001), available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

Analysis

OCR reviewed various documents and correspondence relating to the Complainant informing School staff that other students bullied or harassed the Student because of his race. In many of the documents, the Complainant did not expressly complain that the bullying or harassment was based on the Student’s race. However, OCR also reviewed documentation reflecting that the Complainant at times attributed the bullying or harassment to the Student’s race. For example, on the day following a meeting the Complainant had with XXXXX on XXXXX, the Complainant specifically told XXXXX that students call the Student “XXXXX” and “XXXXX.” The next day, XXXXX spoke with the Student who reportedly confirmed that students had called him “XXXXX,” but, according to XXXXX, he was not able to identify the students by name or where the students sat in class. OCR also reviewed the District’s policies related to harassment, specifically the District’s Discrimination, Harassment and Bullying Complaint Procedure and the District’s Prohibition Against Discrimination, Harassment and Bullying. The Complaint Procedure as written provides for the prompt and equitable resolution of discrimination complaints, including those provided orally.

Before completing our investigation, including interviewing District and School staff with regard to this allegation, and before making a compliance determination, the District requested to resolve Allegation 1 pursuant to Section 302 of OCR’s *Case Processing Manual*.

Allegation 2

The Complainant alleged that during the 2017-2018 school year, the District discriminated against the Student on the basis of his disability, when it failed to timely evaluate the Student to determine whether he was eligible for regular or special education and/or related aids and services XXXXX.

Legal Standard

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the IDEA as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. North Carolina state regulations require initial evaluations to be completed and placement determined within 90 days of receipt of a written referral (NC 1503-2.2(c)(1)).

Analysis

At some point during the fall 2017 semester, the Complainant requested that the District evaluate the Student for services under the IDEA. A School Assistance Team (SAT) meeting was held on XXXXX, and the SAT determined "that due to [the Student's] academic performance and potential, he would not go through exceptional children's testing/evaluation at this time." Two days later, on XXXXX. Thereafter, in XXXXX, the Complainant began requesting XXXXX for the Student, initially by submitting a doctor's letter. Ultimately, the District determined that it did not have enough information to support the provision of XXXXX for the Student.

On XXXXX, the District sent the Complainant an invitation to a meeting scheduled for XXXXX to discuss a special education referral. On XXXXX, the Student was found eligible for a Section 504 Plan due to the Student's diagnoses of XXXXX; that he "XXXXX"; and that his disability affects the major life activities of performing and learning. His Section 504 Plan provides for XXXXX.

Before completing the investigation, including interviewing District and School staff members with regard to this allegation, the District requested to resolve Allegation 2 pursuant to Section 302 of OCR's *Case Processing Manual*.

Allegation 3

The Complainant alleged that on XXXXX, 2018, in retaliation for her disability-related advocacy on behalf of the Student, the District XXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

When analyzing a claim of retaliation, OCR will consider: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took an adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the District has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the District's reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

OCR first considered whether the Complainant engaged in a protected activity, and determined that her disability-related advocacy on behalf of the Student, particularly as it relates to her frequent requests for the Student to receive an IEP, a Section 504 Plan, or XXXXX due to his disability, constitutes protected activities. OCR also determined that the District engaged in an adverse action when it XXXXX. Finally, OCR considered whether the protected activity and the adverse action were causally connected, and determined that due to the temporal proximity between the Complainant's advocacy and the District XXXXX, that there is sufficient evidence of a causal connection. As these three elements are present, an initial, or prima facie, case of retaliation has been established.

Next, OCR examined the District's legitimate non-retaliatory reason for XXXXX, and whether that reason is a pretext for unlawful retaliation. The District asserts that it XXXXX.

OCR reviewed correspondence and documentation provided by the District, including contemporaneous notes from meetings, and its narrative response, and interviewed the Principal. The District asserted the following regarding XXXXX:

- XXXXX
- XXXXX
- XXXXX
- XXXXX

The District explained in its narrative response, and the Principal confirmed, that after the Principal XXXXX.

OCR also reviewed notes from calls between XXXXX.

Finally, the District provided OCR with information indicating that it similarly XXXXX.² The Principal told OCR that the parent had not engaged in a protected activity prior to XXXXX. Therefore, based on the foregoing, OCR determined that the District's reason for XXXXX is not a pretext for unlawful retaliation. Accordingly, OCR determined that there was insufficient evidence to substantiate that the District retaliated against the Complainant as alleged, and will take no further action regarding Allegation 3.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on August 13, 2018, which, when fully implemented, will resolve Allegations 1 and 2. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms 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, assists, or participates in a proceeding under a law enforced by OCR. 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 Shana Heller or Betsy Trice, the OCR attorneys assigned to this complaint. You may contact Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov or Ms. Trice at 202-453-5931 or Betsy.Trice@ed.gov.

² The District informed OCR that during the 2017-2018 school year, thus far, XXXXX.

Sincerely,

Letisha Morgan
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXXX