



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

May 16, 2023

By email only to lewis.ferebee@k12.dc.gov

Dr. Lewis Ferebee
Chancellor
District of Columbia Public Schools
1200 First Street, N.E.
Washington, D.C. 20002

Re: Case No. 11-22-1561
District of Columbia Public Schools

Dear Chancellor Ferebee:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against District of Columbia Public Schools, which we will refer to as the District. The Complainant filed the complaint on behalf of a student at XXXXX, whom we will refer to as the Student, and other middle and high school students placed in a self-contained setting in Ward XXXXX of the District. OCR investigated the following issues raised in the complaint:

1. Whether the District discriminated against the Student based on disability and/or retaliated against him by failing to provide him the XXXXX services required by his Individualized Education Program (IEP) during the first month of the current school year;
2. Whether the District discriminated against the Student based on disability and/or retaliated against him by automatically placing him in the XXXXX at the start of the current school year, effectively changing the location of his services from XXXXX to a high school outside of Ward XXXXX; and
3. Whether the District's decision to eliminate the XXXXX at XXXXX and XXXXX beginning in the current school was discriminatory based on disability because it was an effort to exclude students with high needs from those schools.

OCR enforces 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. 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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a

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complaint, testifies, assists, or participates in a proceeding under these laws. The District receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the District and the Complainant and also interviewed the Complainant's XXXXX, who offered to speak to OCR on the Complainant's behalf.

Before OCR completed its investigation, the District expressed interest in resolving the discrimination part of Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

OCR completed its investigation of the retaliation part of Allegation 1 and Allegations 2 and 3. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the retaliation part of Allegation 1 and Allegations 2 and 3. OCR's findings and conclusions are discussed below.

Factual Background

The Student is a student with a disability currently enrolled in the XXXXX grade at XXXXX. He has been diagnosed with XXXXX and is served under an IEP. The Student's IEP in place at the start of the current school year, dated XXXXX, indicates that he should be served in a self-contained, structured environment with a low student to teacher ratio, using XXXXX accommodations.

Based on his IEP, the Student was placed at the start of the school year in the XXXXX program. The District explained that the XXXXX program integrates an XXXXX instructional framework and is designed to meet the individual learning and behavioral needs of students with significant XXXXX and considerable to significant delays in XXXXX areas. Students placed in the XXXXX program receive XXXXX. For the 2021-2022 school year, the Student was enrolled in the XXXXX program at XXXXX, one of two feeder middle schools to XXXXX, the other being XXXXX. XXXXX and XXXXX are located in Ward XXXXX of the District, which the Complainant identified as an affluent neighborhood.

According to a District location of services letter to Complainant dated XXXXX, the District originally put the Student in the XXXXX program at XXXXX for the 2022-2023 school year. XXXXX is located in Ward XXXXX of the District, which the Complainant described as an area with a high crime rate as compared to Ward XXXXX. According to the District, the Student's placement at XXXXX was based on the District's three-year realignment plan for self-contained programs. The three-year realignment plan, adopted during the 2021-2022 school year, created K-12 self-contained program locations and movement that aligned with the District's comprehensive high school feeder patterns, with the goal of providing appropriate placements for students with disabilities at a school close to their home.

The Complainant asserts that she did not receive the location of services letter and therefore assumed that the Student would be attending XXXXX for XXXXX grade. On XXXXX, the District sent an updated location of services letter, requesting that the Complainant enroll the Student in XXXXX by XXXXX, followed by a third letter on XXXXX, identifying XXXXX as the Student's high school.

The District asserts that the Student was approved to attend XXXXX on XXXXX, the first day of the 2022-2023 school year. The Student's attendance records indicate that the Student attended the first 30 days of the school year at XXXXX, with the exception of eight days when he was absent. The Complainant does not dispute that the Student attended XXXXX since the first day of the school year; however, she claims that he did not receive the services required by his IEP for the first 30 days.

The Complainant told OCR that a District staff person informed her during a meeting that the CES program at XXXXX would be discontinued after the current school year and provided an audio recording of the meeting that supports her assertion. However, the Senior Director of Academic Programs for the District confirmed to OCR that the XXXXX program at XXXXX is not closing and that the Student will be able to attend the XXXXX program at XXXXX for the duration of high school. Beginning in the 2023-2024 school year, students in the XXXXX program in Ward XXXXX will attend XXXXX, a new high school currently being built to address over-enrollment, but students currently enrolled in the XXXXX program at XXXXX will be permitted to continue at XXXXX. The District expects the XXXXX program at XXXXX to continue through the 2029-2030 school year to accommodate these students.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. Because Title II provides no less protection than Section 504, as a general rule, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

If a school district fails to comply with a student's IEP, OCR determines whether that failure resulted in a denial of a FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

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. An essential element of a retaliation claim is that an individual experienced an adverse action.

Analysis

Allegation 1: Whether the District discriminated against the Student based on disability and/or retaliated against him by failing to provide him the XXXXX services required by his IEP during the first month of the current school year.

The Student's IEP provides XXXXX, in addition to XXXXX of specialized instruction outside the general education classroom and various classroom accommodations.

The Complainant alleged that, for at least the first two to three weeks of the current school year, the Student sat in the XXXXX classroom at XXXXX and did not receive the XXXXX services required by his IEP. The Complainant also stated that the District failed to provide transportation services for the first 30 days of the school year. As a result, the Complainant drove the Student to and from school for that period of time, except for days when gas prices were exceptionally high.

The District provided OCR with a record of the related services the Student received during the first 30 days of school. The record reflects that the Student did not receive all of the services required by his IEP during this time period. Specifically, the Student received: XXXXX. The District told OCR the Student's full services were not provided because the Complainant did not enroll him at XXXXX, as directed by its location of services letters. To date, OCR has not found evidence indicating that transportation services were provided to the Student.

To address the service gaps, the District committed to provide the services the Student missed from the start of the current school year through January 2023. On XXXXX, the District sent the Complainant forms indicating the amount of missed XXXXX services to be made up and offering various options for compensatory instruction to fill these gaps. OCR determined that, to date, the District has not completed providing these compensatory services to the Student. Accordingly, OCR has concerns that the District failed to provide some related services and transportation to the Student, nor has it fully compensated the Student for these missed services.

On May 11, 2023, the District agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concerns regarding this portion of the allegation. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

The Complainant also claimed that the District's failure to provide the Student services at XXXXX in September 2022 was retaliation for her advocacy during the 2021-2022 school year, specifically the filing of a due process complaint on the Student's behalf in XXXXX, while the Student attended XXXXX. OCR did not find sufficient evidence to indicate that these actions, far apart in time at different schools, and involving different District administrators, were connected in a way that would suggest retaliation. The Complainant told OCR that she suspects that staff at XXXXX portrayed the Student in a negative light to staff at XXXXX, but she did not provide evidence to

support her suspicion. Accordingly, OCR will take no further action with respect to this portion of the allegation.

Allegation 2: Whether the District discriminated against the Student based on disability and/or retaliated against him by automatically placing him in a XXXXX program at the start of the current school year outside of Ward XXXXX.

The Complainant asserted to OCR that the District discontinued the XXXXX program at XXXXX beginning in the current school year, which meant that continuing the Student's placement in the XXXXX program precluded him from attending XXXXX, the XXXXX school in Ward XXXXX. As discussed above, the Student's IEP in place at the start of the current school year identified the XXXXX program as the appropriate placement for the Student based on his individual disability-related needs. The Complainant did not allege a procedural violation of Section 504/Title II with regard to the underlying placement decision, and the substantive placement decision is not at issue in this investigation; rather, the Complainant asserted that the Student's placement in the XXXXX program was motivated by a desire to place him in a high school outside of Ward XXXXX.

OCR finds insufficient evidence to support the Complainant's asserted belief. As discussed above, the District did not discontinue the XXXXX program at XXXXX, where the Student has been enrolled since the start of the school year. His continued enrollment at XXXXX for the current school year was confirmed in the District's XXXXX location of services letter. The District also confirmed that the Student will be able to complete high school in the XXXXX program at XXXXX.

Based on this information, OCR finds insufficient evidence that the facts occurred as alleged such that it could support a claim of discrimination or retaliation.

Allegation 3: Whether the District's decision to eliminate the XXXXX Program at XXXXX and XXXXX beginning in the current school was discriminatory based on disability because it was an effort to exclude students with high needs from those schools.

For the same reasons, OCR finds insufficient evidence to support allegation 3. The basis for this allegation was the Complainant's belief that the XXXXX program was eliminated from secondary schools in Ward XXXXX, specifically XXXXX and XXXXX. As discussed above, the facts OCR gathered indicate that the XXXXX program continues to serve students who are in middle school and high school in Ward XXXXX. The District moved the XXXXX program from XXXXX to XXXXX at the start of the current school, but XXXXX is also a feeder school for XXXXX, and beginning next year students at XXXXX will attend the XXXXX program at the new high school in Ward XXXXX, XXXXX.

Accordingly, OCR finds insufficient evidence to indicate that the facts occurred as alleged in allegation 3.

Conclusion

As previously noted, on May 11, 2023, the District agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concerns regarding the part of allegation 1 resolved under 302. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statute and regulation at issue.

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. OCR would like to make you aware that individuals who file complaints with OCR 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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation during the resolution of this complaint. If you have any questions, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-987-1386 or sara.clash-drexler@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team I
District of Columbia Office
Office for Civil Rights