



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

February 2, 2018

Todd H. Gazda
Superintendent
Ludlow Public Schools
t_gazda@ludlowps.org

Re: Complaint No. 01-15-1032
Ludlow Public Schools

Dear Superintendent Gazda:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Ludlow Public Schools (the District). The Complainant alleged that the District retaliated against her, by restricting her communications with staff at her son's (the Student's) out-of-district placement, the XXXXXXXXXXXXXXXXXXXX (the School) in XXXXX, because she had advocated for the Student's rights as a person with a disability. As explained further below, 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.

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.

Legal Standards

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.

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future¹; (2) the individual experienced an adverse action caused by the recipient²; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

Factual Background

During the 2014-2015 school year, the Student attended an out-of-district placement at the School pursuant to his IEP. Documentation provided by the District and the Complainant showed that the School and the Complainant communicated consistently by email, phone, home consultations, and the Student's daily communication log. On October XX, 2014, the Complainant emailed the Student's lead instructor with specific questions and concerns about the Student's educational programming and services (October XX Email).

Following the October XX Email, the Program Director of the School and the Student's lead instructor responded to the Complainant via email and suggested that the Student's IEP Team should meet. The IEP Team met on October XX, 2014, but the Complainant did not attend the meeting. Following the IEP Team meeting, the District sent the Complainant the following documents:

- A summary of the IEP Team meeting, which described the Complainant's communication with the School as "excessive."
- A letter dated October XX, 2014 from the District's Director of Student Support Services (October XX Letter). The October XX Letter described the new communication expectations that the District was imposing on the Complainant and the School. Specifically, the Complainant could only ask one question of School staff in response to information provided on the Student's daily communication log, and the School was instructed not to answer any additional follow up questions, not to spend more than five minutes writing the daily communication log, and not to respond to questions when the Complainant dropped the Student off at School.
- A proposed IEP Amendment that included the District's concerns about the Complainant's communication with the School.

¹ A "protected activity" is the exercise of a right that is protected under OCR's non-discrimination laws.

² An adverse action is something that could deter a reasonable person from engaging in further protected activity

The Complainant rejected the proposed IEP Amendment and continued to direct questions to School staff via email and on the daily communication sheet. However, in several instances in November 2014, the Complainant received conflicting responses from the School about how she should proceed with communicating with School staff and whether it was appropriate for her to ask additional questions.

Preliminary Concerns

Based on this information, the evidence obtained to date indicates that the District knew the Complainant engaged in a protected activity and believed the Complainant might engage in future protected activities, and that the Complainant experienced an adverse action caused by the District following this protected activity. The evidence does not establish whether or not the District had a legitimate, non-retaliatory reason for issuing the October XX Letter restricting the Complainant's communication with the School. Accordingly, OCR would also need to obtain additional evidence regarding whether the District proffered legitimate and non-retaliatory reasons for limiting the Complainant's communication, in addition to whether the reasons were a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons). Specifically, OCR would need to interview the District's Director of Student Support Services, the Complainant, and third party staff members at the School and review all correspondence (of which it currently has a portion) between the Complainant, the District, and the School during the relevant period of time. Lastly, OCR would need to obtain evidence regarding whether the District imposed any similar communication restrictions on other parents due to their communications and whether the District or School has any policy on when and how communication with parents can be restricted.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in this complaint. The terms of the Resolution Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District's implementation of the Resolution Agreement and continue to do so until it has determined that the District has complied with the terms of the Resolution Agreement. Failure to implement the Resolution 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.

If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

/s/

Meena Morey Chandra *w/p RA*
Acting Regional Director

Enclosure

cc: Rebecca L. Bouchard, r_bouchard@ludlowps.org