



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

September 11, 2020

Katherine Ericson

By email: kericson@learn.k12.ct.us

Re: Complaint No. 01-17-1307
LEARN Regional Educational Service Center

Dear Executive Director Ericson:

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 LEARN Regional Educational Service Center (Center). The Complainant alleged that after she contacted the Connecticut Department of Children and Families (DCF) and the New London police department in XXXXXXXX regarding the Center's treatment of her sons (Student 1 and Student 2), the Center retaliated against her by filing a complaint with DCF against her. The DCF action evolved into a court action. As explained further below, before OCR completed its investigation, the Center expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (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. In addition, 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 Center receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Because OCR determined that it has jurisdiction and that the allegation was timely filed, OCR opened the following allegation for investigation:

- Whether the Center retaliated against the Complainant for reporting the Center's treatment of Student 1 and Student 2 to DCF and the New London police department in XXXXXXXX regarding by filing a complaint with DCF against the Complainant, in violation of 34 C.F.R. Section 104.61 (incorporating 34 C.F.R. Section 100.7(e) by reference) and 28 C.F.R. Section 35.134.

Legal Standard

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

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;¹ (2) the individual experienced an adverse action caused by the recipient;² 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.

Summary of Preliminary Investigation

During the 2016-2017 school year, Student 1 and Student 2 attended an inter-district magnet school (School) that is operated by the Center. They were both receiving special education services pursuant to Individualized Education Programs.

The Complainant filed a DCF complaint against the Center on XXXXXXXXXX, reporting that Student 1 and Student 2 were being neglected, bullied, and harassed at the Center. The Complainant further stated that on XXXXXXXXXXXXXX, she reported similar concerns to the local police department about the Center’s treatment of Student 1 and Student 2.

The Center informed OCR that it filed four reports with DCF against the Complainant during the 2016-2017 school year. The Complainant alleged that the Center filed these DCF complaints against her in retaliation for the DCF and police reports that she filed against the Center. The Center filed its first DCF complaint against the Complainant on XXXXXXXXXX, regarding Student 1’s school attendance. The Center told OCR that DCF accepted this report for services; however, OCR does not have information about the ultimate outcome of DCF’s investigation.

Throughout XXXXXXXX, DCF interviewed the Complainant, and several members of the Center’s staff as part of its investigation into the Complainant’s DCF report against the Center. On the same day as DCF’s interviews of certain Center staff, the Center filed its second DCF report against the Complainant, alleging medical neglect as to Student 1 and Student 2.³

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.

³ The Center told OCR that it did not know the outcome of this report.

On XXXXXXXXX, DCF issued its outcome letter and investigative report regarding the DCF complaint that the Complainant had filed against the Center. DCF found the Complainant's allegations to be unsubstantiated and closed her case.

On XXXXXXXXX, the Center confirmed that it filed a third report with DCF against the Complainant, regarding school attendance for Student 1 and Student 2.⁴ The Center represented to OCR that, on XXXXXXXXX, the Center filed its fourth (and final) DCF report against the Complainant, which alleged abuse/neglect related to an injury sustained by Student 1. According to the Center, DCF accepted this report for services. The Complainant alleged that the fourth report resulted in a court action against her. The Complainant informed OCR that she withdrew Student 1 and Student 2 from the Center in XXXXXXXX.

The Center informed OCR that during the 2016-2017 school year, it filed 17 reports of abuse or neglect with DCF including the 4 reports involving the Complainant. While the Center asserted that it was not aware of whether any of the suspected perpetrators filed prior complaints against the Center, OCR notes that three of the DCF reports filed against the Complainant occurred after DCF initiated its investigation into the Complainant's DCF complaint against the Center.

The Center's Procedures for Reporting Suspected Child Abuse require staff members who report suspected abuse and/or neglect to DCF by phone or in-person to submit a follow-up written report to DCF and to the Center's executive director. The Center did not provide any such written reports to OCR related to the oral reports filed against the Complainant.

Resolution

OCR has identified items that require further investigation prior to making a compliance determination. For example, OCR has not fully evaluated the Center's motivation for filing the DCF reports against the Complainant. The Center denies that any retaliation occurred in this case. Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the Center expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the Center resulted in the Center signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the Center's implementation of the Agreement.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Center'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.

⁴ DCF purportedly did not accept this complaint for services because it was a duplicate report.

Please be advised that the Center 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.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure

cc: Leander A. Dolphin, Esq.