



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

August 20, 2018

Dr. Sara Ahern
Superintendent
Franklin Public Schools
355 East Central Street
Franklin, Massachusetts 02038

Re: OCR Docket # 01-18-1157

Dear Dr. Ahern:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Franklin Public Schools (District).

The complaint alleged that 1) during the XXXXX school year, the District subjected two XXXXX students (Student A and Student B) to discrimination on the basis of disability when it failed to implement their plans that required the school to XXXXX; and 2) in XXXXX, the District subjected Student A's and Student B's parent (the Parent) to retaliation for advocating on behalf of both students, when the District reported the Parent to XXXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, and Title II prohibits discrimination on the basis of disability by public entities. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and the District. Prior to OCR's making a final determination as to allegation #1, the District expressed an interest in resolving the allegation by means of a Resolution Agreement (Agreement). On August 9, 2018, the District signed and submitted the attached Agreement, which, when fully implemented, will address allegation #1. OCR will monitor the implementation of the Agreement.

As to allegation #2, OCR has determined that the preponderance of the evidence does not establish a violation of the applicable regulations. The basis for OCR's conclusion as to allegation #2 is set forth below.

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

Legal Standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. When, as in this case, Title II does not provide greater protections than Section 504, OCR applies the Section 504 standards.

The regulation implementing Section 504 incorporates by reference the anti-retaliation requirements in the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-7, which provides at 34 C.F.R. § 100.7(e), that no recipient shall “intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by” the statute, or because the individual has asserted a right protected by, made a complaint, or participated in an investigation, hearing, or proceeding under the statute.

OCR uses the following standard to determine whether there is a *prima facie* case of retaliation: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity.

If all of the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

OCR determines whether the legitimate, non-retaliatory reason is credible by considering all relevant evidence such as changes in the treatment of the individual after the protected activity occurred, the proximity in time between the protected activity and the adverse action, the recipient’s treatment of the individual compared to similarly-situated individuals, and the recipient’s deviation from established policies or practices.

Facts

Student A and Student B, who are siblings, attended XXXXX. Student A, who was in XXXXX, has XXXXX. Student B, who was in XXXXX, has XXXXX. The Parent has worked with the District to establish educational plans, including health care plans, for Student A and Student B. The Parent and XXXXX have questioned the implementation of the plans for both students as they believe that District staff disagree with opinions of the medical providers and the requirements of the plans.

The Parent asserts that because of her ongoing advocacy for the rights of her children due to their disabilities, the District reported her to XXXXX. The Parent believes the District filed with XXXXX to question the decisions of both students’ medical providers, and to stop her from future advocacy for her children.

The District acknowledged that it reported the Parent to XXXXX but asserted as its nonretaliatory justification that it had information to support XXXXX. According to the District, Student B reported to the nurse on or about XXXXX, that XXXXX.

According to the District, staff members are XXXXX. Further, it asserted that it was not the nurse's job to evaluate the credibility of the student's claim, but rather to report the information to her supervisors. Therefore, in accordance with the District policy for reporting XXXXX, the same day, the nurse informed the School's principal and psychologist. After talking with Student B, on XXXXX, the psychologist filed the XXXXX.

The Parent does not dispute the XXXXX or the requirement to XXXXX. However, she claims that the report was a ruse to report concerns about the students' health care plans. Handwritten notes on the XXXXX form that was submitted by the District to OCR substantiate that the District documented its concerns with the students' health care plans as well as differences between the District and the Parent over the services provided to the students. Despite these notations, the basis for the XXXXX was that XXXXX.

Further, the District informed OCR that during her six year tenure at the District, the nurse has reported to her supervisors ten times XXXXX. According to the District, during the 2017-18 school year, the School's principal or psychologist made seven XXXXX reports. Among the other XXXXX reports, one indicated that the student had special needs, while others did not appear to indicate the students had special needs. Neither the Parent nor the District provided information to indicate that the District had failed to report XXXXX any other parents who XXXXX.

Analysis and Conclusion

In this case, OCR established the elements of a *prima facie* case of retaliation in that the Parent advocated for the rights of both students with disabilities before the District filed a XXXXX about her in XXXXX. Due to the temporal proximity between the protected activity and the adverse action, OCR determined that there was evidence of a causal connection between the XXXXX and the Parent's advocacy. The District presented as its legitimate, non-retaliatory reason for taking the adverse action that it was mandated to XXXXX.

While OCR acknowledges that the Parent and the District have had ongoing disputes about the District's implementation of the students' health plans, the weight of the evidence does not establish that the reports XXXXX were a pretext for retaliation. The XXXXX report indicates that the report was based on the student reporting XXXXX. There is no indication that the students were singled out for different treatment in the District filing the report as, consistent with their obligations XXXXX, School personnel have reported XXXXX other students, and no evidence indicated that the District failed to report XXXXX any other parents XXXXX. As OCR cannot establish that the District's asserted justification was a pretext for impermissible retaliation, OCR has concluded that there is insufficient evidence of a violation of Section 504 or Title II, as alleged, with regard to allegation #2.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you and your staff for the cooperation the District extended to OCR in its investigation of this complaint. In particular, we wish to thank Mr. Joshua R. Coleman, Counsel for the District. If you have any questions, please contact Sherry Rosenblum, Equal Opportunity Specialist, at 312-730-1601 or by email at Sherry.Rosenblum@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Joshua R. Coleman