



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
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July 26, 2016

**VIA U.S. MAIL**

Mr. XXXX  
Director of Schools  
Lewis County Schools  
206 S. Court St.  
Hohenwald, TN 38462

**Re: Complaint # 04-16-1292**

Dear Mr. XXX:

On March 2, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the complaint filed by the Complainant (Complainant) on behalf of her son (Student) against the Lewis County School District (District), alleging retaliation. Specifically, the Complainant alleged that the District, in retaliation for her advocacy on behalf of the Student, issued a written directive to her limiting her communications about the Student to only specific District/School personnel.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. 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.

Based on the allegation, OCR investigated whether the District retaliated against the Complainant for the Complainant's advocacy on behalf of the Student by issuing the Complainant a written directive limiting her communications about the Student to only specific District/School personnel, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.61 and Title II and its implementing regulation at 28 C.F.R. § 35.134.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an

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investigation.” Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the Resolution Agreement entered into by the District.

### **Legal Standards**

Retaliation is prohibited under the regulation implementing Section 504 at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.* The regulation implementing Title VI at 34 C.F.R. § 100.7(e) provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws enforced by OCR, or because he or she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing. The regulation implementing Title II at 28 C.F.R. § 35.134 similarly prohibits retaliation by public entities.

To establish a *prima facie* case of retaliation, OCR determines the following:

1. Was the individual engaged in a protected activity;
2. Did the recipient have notice of the individual’s protected activity;
3. Did the recipient take an adverse action contemporaneous with or subsequent to the protected activity; and
4. Was there a causal connection between the protected activity and the adverse action.

If these elements establish a *prima facie* case, OCR next considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action and, if so, whether the reason asserted is a pretext for discrimination.

### **Summary of Investigation to Date**

The Student, who has Attention Deficit Hyperactivity Disorder (ADHD) and has an Individualized Education Program (IEP), attends a District school (School). During the 2015-16 school year, while the Student was in kindergarten, the District held meetings with the Complainant to consider the Complainant’s request for additional services for the Student. When the parties could not agree on the requested services, the Complainant filed a due process complaint with the Tennessee Department of Education. During a January 19, 2016 meeting, which was a part of the due process complaint process, District personnel provided the Complainant with a paper listing three designated personnel with whom the Complainant should make contact regarding the Student. Via email dated February 3, 2016, the Complainant indicated that she was concerned and confused by the paper she received on January 19, 2016, which she characterized as a written directive. A few days later, on February 5, 2016, the District clarified that the paper was a listing of points of contact and was in no way meant to be any type of written directive.

Prior to receiving the request from the District to resolve this matter, OCR did not complete the investigation to determine whether the District retaliated against the Complainant as alleged.

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## **Resolution Agreement**

To remedy the allegation raised by OCR's complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will (1) issue written correspondence from the Principal of the School or from other higher level District personnel to the Complainant confirming that the Complainant may contact any District personnel regarding her Student. The District's written correspondence may suggest that the Complainant consider directing her inquiries regarding the Student to certain points of contact, but any such suggestion should clearly and expressly state that the Complainant is not limited to communicating with the suggested points of contact; and (2) conduct training for the School administration and staff on the Section 504 and Title II prohibition against discrimination on the basis of disability, including retaliation, intimidation or coercion directed against individuals who exercise their rights under Section 504 or Title II. The training will be conducted by an individual not employed by the District and shall include, at a minimum, an explanation of what adverse actions may constitute retaliation.

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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

Finally, OCR has reminded the District that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this

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complaint, please contact Ms. Michelle Reid, investigating attorney, at (404) 974-9386, or me, at (404) 974-9376.

Sincerely,

/s/

Arthur Manigault, Esq.  
Compliance Team Leader

Enclosure

cc: XXX, Esq. (w/ enclosure)