



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

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July 22, 2019

Alberto Carvalho
Superintendent
Miami-Dade County Public Schools
1450 N.E. Second Avenue, Suite 912
Miami, Florida 33132

Re: OCR Complaint No. 04-19-2097 - Resolution of Complaint

Dear Mr. Carvalho:

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has completed its resolution of the above-referenced complaint, which OCR received on January 25, 2019, filed against Miami-Dade Public Schools (District) by the Complainant, a Licensed Practical Nurse (LPN) student against the District which funds and runs the Miami Lakes Educational Center & Technical College (College).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department and which prohibits retaliation. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

OCR opened an investigation of the following legal issue:

Whether the Complainant was subjected to retaliation when: 1) her former LPN Teacher encouraged the director of a nursing home to prohibit the Complainant from completing her clinical work there; 2) the director of nursing at Lindsey Technical College (LT) (another District college) lied to her about their clinical rotation to keep her from enrolling; and 3) the District failed to investigate her allegations of retaliation regarding Lindsey Technical College because they did not want to “get in the middle” of the dispute in non-compliance with Title VI and its implementing regulations at 34 C.F.R. § 100.7(e).

In reaching a determination, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff members. As described more fully below, OCR concluded that there is insufficient evidence to support the Complainant’s contention that the District engaged in the first alleged retaliatory/adverse action. Prior to the conclusion of OCR’s investigation of the alleged second and third retaliatory acts, the District requested to resolve the complaint and proffered terms which OCR included in a Resolution Agreement (Agreement) which would serve to resolve the complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Agreement.

Legal Standards

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall 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 he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing in connection with a complaint.

When investigating a complaint of retaliation, OCR determines whether: (1) an individual engaged in a protected activity; (2) the recipient had notice of the protected activity; (3) the recipient took a materially adverse action against the individual; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all four elements are established, an initial or *prima facie* case of retaliation exists. OCR then inquires whether the recipient had a legitimate, non-retaliatory reason for taking the adverse action. If so, the evidence is analyzed to determine whether the proffered reason is merely an excuse or pretext for retaliation.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

Factual Findings and Analysis

On or about April 11, 2018, the Complainant enrolled in the LPN program (Program) at the College. The Complainant filed a previous complaint with OCR on September 27, 2018, Complaint #04-18-1792, against the District alleging discrimination on the basis of race (black) and national origin (United States). In that complaint, the Complainant alleged, among other issues, that her LPN Teacher (Teacher) discriminated against her by writing her up, placing her on probation, and suspending her. OCR concluded that investigation on March 26, 2019 with a finding that there was insufficient evidence to support the Complainant's allegations.

Protected Activity & Recipient Notice.

As noted above, the Complainant has a record of having engaged in protected activity by filing a complaint with OCR regarding the Teacher. The District received notice of this complaint, and staff participated in gathering responsive evidence and in providing interviews. Based on the foregoing, OCR concludes that the Complainant engaged in protected activity of which the District had notice.

Adverse Actions Alleged

- 1) The Teacher encouraged the Director of Miami Jewish Health Systems (MJH) to prohibit the Complainant from completing her clinical work there.

The Complainant alleged that on December 21, 2018, the Teacher took retaliatory action against her by encouraging staff at MJH to dismiss her from clinical work at MJH. During an interview with OCR, the Complainant stated that on that date, she and another student (Student) went to a meeting with the Director of MJH (Director) and the Teacher where the Director told them that a "reliable source"

reported that they were in the elevator complaining that they were sick of coming to MJH and also said something negative about the patients. The evidence indicates that the Teacher did not speak at the meeting and only observed. The Complainant stated that the Director told the Complainant and the Student that the conduct alleged was unacceptable. The Complainant said she denied saying anything negative about MJH, and responded, “Yes ma’am,” acknowledging that she understood. The Complainant stated that in January 2019, the District told her that she had been dismissed from MJH and as a result, she was not going to be able to attend the Program at the College any longer because the clinical work for the Complainant’s required courses was all being conducted at MJH.

The District reported that it received a letter from MJH dated December 21, 2018, dismissing the Complainant from any further work at MJH because her behavior did not meet the MJH Code of Conduct. The MJH letter states, “[w]e do not take this action lightly; the care and safety of our residents must always be our number one priority.” When interviewed by OCR, an Assistant Principal for the College stated that this was the first time he experienced a student being dismissed from a clinical location and that he and another principal went to MJH on January 8, 2019 and met with the Director and another staff member to ask if they would reconsider allowing the Complainant to continue attending clinical practice because she was almost finished with her Program.¹

The Assistant Principal reported that he and the other principal met with the Complainant on January 8, 2019 and informed the Complainant of the dismissal and their meeting with the staff at MJH to advocate on her behalf. They discussed enrollment options, including enrollment at another District college, LT, depending on where the clinical locations were placed, or a transfer to a Broward County School District Community College, which required the Complainant to retake a test. and she wasn’t interested.

The evidence shows that the Director contacted the Assistant Principal the following day and notified him that MJH legal counsel would not reconsider the decision and the Complainant could not return to the facility. The evidence shows that the Assistant Principal called the Complainant sometime shortly thereafter and told her that MJH would not reconsider.

OCR interviewed the Teacher, who denied that she influenced or recommended to anyone at MJH that they should dismiss the Complainant. The Teacher confirmed that she attended the meeting with the Director, the Complainant, and Student, but stated that she was silent during the meeting. She witnessed the Director tell the Complainant and the Student about the behavior reported and that the Complainant and the Student both denied the allegation. The Director talked with them about the importance of professional behavior and being careful about what is said and keeping their conduct consistent with MJH expectations. The Teacher stated that the Director said that she needed to be able to go back to her boss and tell her that they understood and would not engage in that kind of behavior again.

The Teacher added that the Complainant and the Student reacted very differently to the situation. According to the Teacher, although they both denied the allegations, the Student was respectful. He responded that he had not engaged in the behavior that was reported, but that he understood the MJH behavior standards and that nothing like that would happen again. The Teacher stated that the Complainant’s reaction was different in that her voice was raised and that she was gesturing a lot and

¹ The evidence shows that MJH is a fully independent body with which the District has a relationship as a clinical site, but no contractual relationship or control over.

using very direct and unprofessional language, for example, “I’m an adult. I’m old enough to know how to work. I’ve worked before. I don’t need anyone to tell me how to work.” Also, she refused to answer the Director’s question about whether she understood MJH standards of conduct. According to the Teacher, when the Director asked the Complainant if she understood, and explained that she would have to speak to her boss, the Complainant replied, “You have to tell your boss about this?” When the Director responded, “Yes,” the Complainant said, “Okay, you can tell them I understand.”

The Teacher stated unequivocally that she did not recommend that anyone dismiss the Complainant from MJH or treat her differently in any way. The Teacher stated that she was not aware of the dismissal until January 2019 when someone from the District informed her that the Complainant would no longer be participating in the MJH clinical work. OCR sought to interview the Student as well as the Director of MJH regarding the events that occurred and to ascertain whether the Teacher had any involvement in the decision to dismiss the Complainant from MJH. Neither the Student nor the Director have responded to repeated attempts to interview them.

When contacted for a rebuttal interview, the Complainant confirmed that the Principal met with her to discuss her dismissal from MJH and told her he had gone to MJH to advocate for her return to complete her Program, but that she did not believe him. The Complainant was unable to identify any witnesses who could support her contention that the Teacher was involved in or contributed to MJH’s decision to dismiss her from clinical work at their site.

Based on the foregoing, while the Complainant suffered a materially adverse action in her dismissal from the clinical rotation at MJH, there is insufficient evidence to support the Complainant’s contention that the District (Teacher) recommended or encouraged the staff at MJH to dismiss her from the clinical rotation. The decision to dismiss the Complainant from MJH was made by MJH staff, who are not employed by or contractually bound by the District and is not an adverse action taken by the District. Therefore, OCR will not continue the retaliation analysis regarding this alleged adverse action.

2) The Director of nursing at Lindsey Technical College (LT) lied to the Complainant about their clinical rotation to keep her from enrolling;

The Complainant alleged that after she was dismissed from the College, she was informed that one option to complete her program was to enroll at (LT), another District College. The Complainant stated that when she went to LT, the Director of Nursing at LT informed her that they used MJH for clinical rotations for the remaining courses the Complainant was required to complete for the Program, and that she therefore could not enroll at LT. The Complainant alleged that she subsequently learned that the Director of Nursing at LT had lied to her, as the students attending LT used clinical locations other than MJH.

Data received from the District initially showed that LT only used MJH for clinical rotation. When interviewed by OCR, the Director of Nursing at LT confirmed this information from the District and stated that LT had not used any other clinical location for Med Surge (the next course required by the Complainant for her Program) in years. The Complainant then provided OCR with the name and contact information of a student enrolled at LT who, when interviewed, stated that he was currently enrolled in Med Surge and that he was completing his clinical rotation at a location other than MJH. OCR requested supplemental information from the District regarding the locations of clinical

rotations at LT for the current term and learned that LT did use alternative clinical sites, but that at the time the Complainant requested to transfer to LT in January 2019 to complete Med Surge, it was only offered at MJH.

Prior to OCR interviewing current and former LT students regarding their clinical rotation locations, the District requested to voluntarily resolve the complaint by voluntary resolution agreement under Section 302 of OCR's *Case Processing Manual* (CPM).

3) The District failed to investigate the Complainant's allegations of retaliation.

The Complainant alleged that she met with the Director of Administration for the District's Colleges (Administrator) after she was dismissed in January 2019 and was unable to transfer to LT. The Complainant stated that she told the Administrator that she had been retaliated against by the Teacher whom she believed inappropriately encouraged the Director of MJH to dismiss her. The Complainant stated that the Administrator listened to her but did not respond. According to the Complainant the Administrator later called the Complainant's mother and discussed clinical opportunities at LT. The Complainant alleged that her mother updated the Administrator about the Complainant's issue of transferring to LT and the Administrator said that he "didn't want to get in the middle of it."

In response to OCR's data request, the District reported that it became aware of the Complainant's allegations of retaliation when it received notice of this OCR complaint. The District identified its Office of Civil Rights Compliance (CRC) as the department charged with investigating claims of discrimination/harassment and retaliation within Miami-Dade County Public Schools and that to date, there has been no Civil Rights complaint filed with CRC for investigation by the Complainant.

When interviewed by OCR, the Administrator confirmed, however, that the Complainant told him during a conversation after her dismissal that she had been retaliated against when she was dismissed from the College. When asked, the Administrator identified himself as responsible for investigating the Complainant's claim but did not investigate the claim, pass the claim along to the CRC or recommend to the Complainant that she file a complaint with the CRC. The Administrator denied having spoken with the Complainant's mother about her dismissal from the College, but stated that he had a further conversation with the Complainant by phone, during which she described having trouble transferring to LT. The Director could not recall if the Complainant used the word "retaliation" during that conversation, however. Prior to OCR conducting further interviews regarding the allegation of the complaint, the District requested to voluntarily resolve this allegation pursuant to Section 302 of OCR's CPM.

Conclusion

Based on the foregoing, OCR found insufficient evidence to support the first alleged adverse action and has agreed to the proposed Agreement to resolve the remaining allegations of the complaint without further investigation.

Pursuant to Section 302 of OCR's CPM the District signed the enclosed Agreement on July 19, 2019 which, when fully implemented, will resolve these issues. The provisions of the Agreement are aligned with the aforementioned regulatory requirements and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the

statutes and regulations at issue in the case. Failure to implement the 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.

The complainant has a right to appeal OCR's determination of insufficient evidence within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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, please contact Colleen Grogan, the OCR attorney assigned to this complaint, at 404-974-9395.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Marie de Vries". The signature is fluid and cursive, with the first name "Andrea" and last name "de Vries" clearly legible.

Andrea de Vries
Compliance Team Leader

Enclosure