



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

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**REGION V**  
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May 20, 2014

Bernadeia H. Johnson, Ed.D  
Superintendent  
Minneapolis Public School District #1  
1250 W. Broadway Ave.  
Minneapolis, MN 55411

RE: OCR # 05-13-1363

Dear Dr. Johnson:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed processing the referenced complaint, which was filed with OCR on October 17, 2013, against Minneapolis Public School District # 1 (District).

Specifically, the Complainant) alleged the following:

1. The District discriminated against the Complainant's daughter, XXXXXXXXXXXXXXXXXXXX student (Student A) at the District's Marcy Open School (School), based on disability (attention deficit hyperactivity disorder) when, during the 2012-13 school year, the School failed to implement her Section 504 Plan (Plan).
2. Because the Complainant advocated on behalf of Student A from November 2012 through April 2013, the School Principal retaliated against the Complainant and Student A when:
  - a.) On February 20, 2013, she unfairly punished Student A and threatened Student A on a voice mail message.
  - b.) On February 28, 2013, and on March 15, 2013, she required Student A to serve detentions without cause.
  - c.) On April 18, 2013, she confronted Student A after school hours, which resulted in Student A requiring immediate counseling services.

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal Financial Assistance (FFA). OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100, which prohibit

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discrimination on the basis of race, color, or national origin by recipients of FFA. These laws also prohibit retaliation. As a recipient of FFA from the Department and a public entity, the District is subject to these laws.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint allegation may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving Allegation # 1. On May 16, 2014, the District signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address the issue raised in Allegation # 1. The provisions of the Agreement are consistent with applicable regulations and are aligned with the issues raised by Allegation # 1 and the information obtained during OCR's investigation. OCR will monitor the District's implementation of the Agreement. We look forward to receiving the District's first report on its implementation of the Agreement, which is due by June 13, 2014.

During OCR's investigation of Allegation # 2, OCR reviewed documents provided by the District and by the Complainant and interviewed the Complainant, the School Social Worker, the School Special Education Assistant (Tutor), Student A's Math Instructor, District Counsel involved in creating Student A's Section 504 Plan, and the principal of the School.<sup>1</sup> OCR carefully considered the relevant evidence in this case and has determined that there is insufficient evidence to conclude that the District retaliated against the Complainant and/or Student A as alleged. The bases for OCR's determinations are set forth below.

### Background

During the 2012-2013 school year, Student A attended the School, a K-8 grade Magnet school, XXXXXXXXXXXXXXXX. For that year, Student A had a Section 504 Plan (Plan), dated November 6, 2012. In relevant part, the Plan stated: (1) All assigned work will be corrected and returned in a timely manner so Student A can correct her mistakes, and (2) Student A will have a regularly scheduled check-in with an assigned staff member to work on organizational matters. According to the District, every school day, the assigned staff member was to ensure that Student A had her homework for that evening and that corrected assignments were returned home.

OCR's investigation revealed that the Complainant advocated on behalf of Student A with respect to the School's implementation of the Plan, particularly provision (1) throughout the school year, via email, internal grievances, telephone calls, and team meetings.

For the 2012-2013 school year, the District contracted with Project Success<sup>2</sup> to offer its programs in seven District high schools and nine elementary/middle schools. During the

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<sup>1</sup> Student A declined OCR's interview requests.

<sup>2</sup> <http://www.projectsuccess.org/>

2012-2013 school year, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX by Project Success. Project Success is an organization that serves students in participating Minneapolis and St. Paul schools by offering goal-setting workshops, professional musical theater experiences, and other enrichment programs.<sup>3</sup> The School's Project Success program involved coordinating and staging a middle school<sup>4</sup> student musical. Activities included logistics (set design, lighting, and sound) and performance. According to information provided by the School, students participating in the student musical were required to make "satisfactory academic progress" in order to stay in the program. Students with academic issues, such as missing work, were required to sit out of rehearsals or performances until the missing work was completed.<sup>5</sup>

### Factual Summary

#### *Allegation 2a*

The Complainant alleged that on February 20, 2013, the Principal unfairly punished Student A and threatened Student A on a voice mail message. The Complainant told OCR she believes the Principal's actions were taken in retaliation for the Complainant's advocacy for the implementation of Student A's Plan.

The Complainant told OCR that Student A was on a full-day field trip to a local ski area on February 20. The Complainant asserted that when Student A returned to the School, a teacher (Teacher A) directed all students who did not have after school activities to proceed to their home bus. Student A did not have an after school activity that day, so she left on the home bus.<sup>6</sup>

According to the Principal, provision (2) of the Plan required Student A to have a regularly scheduled check-in with an assigned staff member (Tutor) to work on organizational matters. In addition to organization matters, the Tutor was also there to ensure that corrected assignments, required by provision (1) of the Plan, were returned home. Both the Principal and the Complainant indicated that compliance with provision (1) of the Plan was of major concern to the Complainant and that Student A did not like to meet with the Tutor at the end of the day as required by provision (2) of the Plan.

The Tutor told OCR that on February 20, the day of the field trip, support staff reminded Student A that she was supposed to check-in with the Tutor at the conclusion of the field trip. The Tutor said she waited for Student A where the busses were emptying after the field trip, but Student A did not show up. The Tutor asserted to OCR that Student A did not like meeting with her because it usually resulted in more homework for Student A. The Principal

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<sup>3</sup> The Project Success program is voluntary, and requires a nominal fee paid to Project Success in order to participate. Student A's 504 Plan did not require participation in Project Success.

<sup>4</sup> The middle school includes 6<sup>th</sup>, 7<sup>th</sup> and 8 grade students.

<sup>5</sup> [http://marcy.mpls.k12.mn.us/uploads/handout\\_20for\\_20marcy\\_20parents\\_202014.pdf](http://marcy.mpls.k12.mn.us/uploads/handout_20for_20marcy_20parents_202014.pdf)

<sup>6</sup> Student A declined to be interviewed by OCR.

observed that Student A found it difficult and distasteful to meet with the Tutor on a consistent basis. The inconsistency, according to the Principal, delayed the return of corrected assignments, as well as the return of pending assignments to be corrected. The Principal said that after all the children had left, the Tutor reported to her that she waited to check-in with Student A, and that Student A “blew her off again.” The Principal said Teacher A reported that Student A did not tell Teacher A that she was required to check-in with the Tutor. The Principal also told OCR that Teacher A later reported her frustration because she believed she was “used as an excuse” for why Student A did not meet with the Tutor. No formal discipline was issued, and the parties agree that Student A was never prohibited from participating in Project Success practices and performances because of this incident.

The Complainant told OCR that Student A generally does what she is told by adults and does not have a history of disciplinary issues. The Complainant said that Student A “loved and respected” Teacher A and wanted to please her, therefore she followed Teacher A’s instructions on February 20 and went straight to the home bus because she did not have an extracurricular activity. The Complainant asserted to OCR that the alleged punishment of threatening exclusion from the play was unfair because Student A would not have any homework that day because of the field trip, so there was no reason for Student A to check-in with the Tutor. At the Complainant’s request, Student A’s daily check-in with the Tutor ceased on April 9, 2013.

The Principal told OCR that she did not recall if she left a voice message for the Complainant on February 20, and asserted that she does not leave threatening voice mail messages. The Complainant provided OCR with an audio copy of the voice message left by the Principal. In the message the Principal stated that there have been problems with Student A “ignoring” the Tutor and that the Tutor was prepared to meet with her that day, but Student A did not show up. The Principal stated that she told Student A that she needed to show improvement by Wednesday to be able to stay in the play because the play appeared to be another distraction for her. The Principal requested that Student A bring her materials to the Principal the next morning and stated, “We need to clarify that she followed through so that she is able to continue in the play.” The Principal told OCR she did not treat this as a disciplinary issue and her intent was to ensure that Student A was meeting with the Tutor as required by the Plan. OCR did not view the tone of the voice mail as angry or threatening.

### ***Allegation 2b***

The Complainant alleged that on February 28, 2013, and on March 15, 2013, the Principal required Student A to serve two detentions without cause.

#### *The February 28, 2013 Detention*

The Complainant asserted the February 28 incident started XXXXXXXXXXXXXXXXXXXX (Student B) stated in XXXXXXXX on a School- issued XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Complainant said this was a XXXXXXXXXXXXXXXXXXXXXXXX. The Complainant said that the XX. The Principal issued Student A a detention; while Student B and Student C were not disciplined. The Complainant told OCR that she instructed Student A not to serve the detention and Student A did not serve the detention. Student A's disciplinary report does not contain record of Student A's conduct or the suspension.

The Principal told OCR that she first learned of the incident when Student C went to the Principal's office. According to the Principal, Student C left science class without permission, and was "visibly upset." According to the Principal, Student C informed her that Student A had, XXXXXXXXXXXX during a discussion in science class. The Principal asserted that after speaking with Student C, the Principal called Student A and Student B to her office. According to the Principal, all three had been XXXXXXXXXXXXXXXXXXXXXXXX of negative comments. The Principal did not review XXXXXXXXXXXX. While in the office, Student A asserted that one of the students, Student C, may have XXXXXXXXXXXXXXXX. The Principal asserted that she was never informed that Student C had threatened Student A in the manner described by the Complainant. According to the Principal, during the meeting she learned that while arguing in Science class over the XXXXXXXXXXXXXXXXXXXXXXXX.

The Principal informed OCR that she did not issue formal discipline to any of the three XXXXXXXXXXXXXXXX, but instead counseled all three students regarding the XXXXXXXX. The Principal asserted that she did not know the XXXXXXXXXXXX beyond what the students told her. All three students agreed not to XXXXXXXXXXXX negative comments back and forth. The Principal learned that two students observed Student A had engaged in "unfriendly touching" and "physical aggression." Therefore, the Principal emailed the Complainant that she planned to issue Student A an after school detention. However, after an email exchange with the Complainant, the Principal did not impose the detention.

#### *The May 15, 2013 Incident*

According to the Complainant, on March 15, 2013, Student A and five to ten students were at the School at approximately 6:00 pm prior to a Project Success performance. The Complainant claimed that Student A was the only student disciplined for misbehaving in the school after school that day.

The Principal said that four or five unsupervised students were in the School the evening of March 15, 2013. The Principal told OCR that as a favor to the students she allowed them to remain in the front hallway if they agreed to talk quietly. The Principal told OCR that while she was in her office, she sporadically checked on the students. The Principal explained that on several occasions she re-directed the students because they would get up and walk around. On one occasion, the Principal noticed that Student A and XXXXXXXXXXXX (Student D) were not among the group of students in the front hallway. The Principal located Student A and Student D XXXXXXXXXXXX at Student D's locker. Because Students A and D had

disobeyed her, she issued them XXXXXXXXXXXXXXXXXXXX for misconduct which occurred on March 15, 2013.

### ***Allegation 2c***

The Complainant alleged that the Principal confronted Student A after School hours on April 18, 2013, and upset Student A so severely that she required immediate counseling services.

The Complainant explained that on April 18, 2013, the Complainant drove Student A to the School after hours to retrieve a book. The Complainant said that when Student A returned to the car she appeared “pasty.” In the car, Student A screamed, refused to buckle her seat belt and threw hot chocolate. The Complainant surmised that the Principal said something to Student A, which caused Student A to become extremely upset. The Complainant said that Student A stated that she hated the School and would not go back.

The Complainant took Student A directly to the Bridge for Youth,<sup>7</sup> to speak with a counselor (Counselor). Bridge for Youth is an agency that provides counseling and other services to youth. According to the Complainant, the Counselor told the Complainant that she had never seen a student so afraid of attending school.<sup>8</sup> As a result, the Counselor contacted the District’s Associate Superintendent. The Complainant said she contacted the District’s Human Resources Department to complain about the Principal regarding this incident. The Complainant said Student A “disassociates” and never told her what happened that night with the Principal.

The Principal told OCR that April 18 was the night of the School’s talent show for which she served as the master of ceremonies. The Principal does not recall speaking to Student A that evening. The Principal and Counsel for the District asserted that they received no contacts from the Superintendent, the Assistant Superintendent, or District Human Resources regarding this particular incident as described by the Complainant.

### **Applicable Regulation and Analysis**

The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI) provides at 34 C.F.R. § 100.7(e) that “[n]o 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 Act, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.” The regulation implementing Section 504 at 34 C.F.R. § 104.61 incorporates this provision of Title VI by reference.

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<sup>7</sup> <http://bridgeforyouth.org/find-help/>

<sup>8</sup> The Complainant could not obtain consent from the Counselor consent to speak with OCR. Therefore, OCR did not interview the Counselor about the April 18<sup>th</sup> incident.

A *prima facie* case of retaliation exists when each of the following is true: (1) the Complainant engaged in an activity protected by one of the statutes enforced by OCR; (2) the District was aware of the protected activity; (3) the District took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. A finding of noncompliance under these regulations requires a threshold determination that the recipient took an adverse action against the individual, i.e., the recipient took actions, including such acts as intimidation or coercion that significantly disadvantaged the individual or would reasonably have deterred or precluded an individual from engaging in further protected activities. If all of these elements are met, OCR then considers whether the District has a legitimate non-retaliatory reason for its action, and whether the reason given is a pretext for retaliation. Pretext may be shown by demonstrating that the proffered justification for the adverse action is not credible, or that the action is inconsistent with the District's policies or regular practices.

Protected activity under Section 504 may take the form of filing a complaint or participating in an investigation under Section 504, or of expressing opposition to conduct that an individual, in good faith, believes to constitute disability discrimination. Such opposition must communicate, either implicitly or explicitly and in a reasonable manner, the individual's good faith belief that the opposed conduct is discriminatory.

OCR determined that the Complainant engaged in activity protected under Section 504 when she advocated for the implementation of Student A's Plan during the 2012-2013 school year and when she complained about the School's implementation of the Plan to the Principal and Counsel in April 2013. The evidence establishes the District responded to the Complainant's communications. Therefore, the District was aware of her protected activity.

OCR next considered whether the Principal subjected Student A or the Complainant to adverse actions. To be considered adverse, an action must significantly disadvantage a person, or reasonably deter or preclude the person from engaging in further protected activity.

***Allegation 2(a)***

Regarding the February 20, 2013 incident, the evidence showed that no formal punishment was given to Student A when the Student failed to meet with the tutor. Although the Complainant asserted that the treatment was unfair given the circumstances, because there was no new homework, this incident was the most recent of numerous times that Student A failed to meet with the Tutor. Regarding the Principal's telephone message, the evidence showed that the tone of the message was not angry or threatening. Although the Principal asserted over the phone that Student A may be kept out of Project Success practices or performances, the evidence shows that Student A was never denied participation in Project Success practices or performances due to a failure to meet with the Tutor.

Based on the evidence, OCR has determined that the School did not engage in an adverse activity on February 20 that significantly disadvantaged Student A, as the student was not disciplined and she was not prohibited from participating in Project Success practices and performances. Furthermore, the Principal's actions did not preclude the Complainant from further advocacy, as the Complainant successfully advocated for the removal of provision (2) of the Plan two months later.

***Allegation 2(b)***

Regarding the February 28, 2013 incident, the evidence again showed that no formal punishment was given to Student A regarding the incident where Student A allegedly "bent back" another student's finger. The evidence showed that the three students were provided counseling regarding XXXXXXXXXXXXXXXX. The evidence revealed that other than emails sent back and forth between the Complainant and the Principal regarding this issue, Student A was not disciplined for the incident.

Based on the evidence, OCR has determined that the School did not engage in an adverse action on February 28 that significantly disadvantaged Student A, as she did not receive or serve any discipline. Additionally, the conduct did not preclude the Complainant from further advocacy, as the Complainant continued to advocate for Student A.

Regarding the incident on March 15, 2013, the evidence established that the Principal issued formal discipline to Student A in XXXXXXXXXXXXXXXX. The evidence showed that four to five students were in the school without supervision prior to the Project Success musical. The Principal asserted that she corrected the whole group on several occasions, without issuing formal discipline. However, the evidence showed that Student A and Student D left the designated area without permission and accessed the XXXXXXXXXXXXXXXX. According to the Principal, no other students accessed a different floor that evening. The District's records reflect that Student A and Student D were XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, for the same incident on the same day.

Based on the evidence, OCR has determined that the single lunch detention did significantly disadvantage Student A, as it did not interfere with her ability to participate in the District's educational programs, services or activities. The evidence established that Student A received discipline in a manner consistent with Student D, who committed the same infraction. Finally, OCR has determined that the lunch detention, served by Student A, did not preclude the Complainant from further advocacy.

***Allegation 2(c)***

OCR's investigation revealed that the Principal told OCR that although she was in the building after school hours on April 18, 2013, she did not speak with Student A when she returned to the School for a book. OCR's investigation could not substantiate the April 18<sup>th</sup> incident, as described by the Complainant because Student A declined to be interviewed by

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OCR and the Complainant did provide consent to the Counselor to speak with OCR about Student A's account of the April 18<sup>th</sup> incident.

Based on the foregoing, the evidence is insufficient to show that the Principal engaged in the adverse action against Student A, as alleged.

Therefore, the evidence with regard to the incidents of February 20, February 28, March 15, and April 18, 2013, the evidence does not establish a *prima facie* case of retaliation because the District's conduct did not amount to adverse actions. Therefore, OCR has determined that the evidence is insufficient for OCR to conclude that the District retaliated against Student A or the Complainant, as alleged in Allegation # 2.

This concludes OCR's investigation of Allegation # 2 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.

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 a 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 release, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

If you have any questions regarding this letter, please contact Emily Martin, Equal Opportunity Specialist, at 312-730-1505 or [emily.martin@ed.gov](mailto:emily.martin@ed.gov) or me, at 312-730-1571 or [ann.cook-graver@ed.gov](mailto:ann.cook-graver@ed.gov)

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

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cc: Amy Moore  
Deputy General Counsel