



**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

October 30, 2014

Ms. Barbara Byrd-Bennett  
Chief Executive Officer  
Chicago Public Schools District #299  
125 South Clark Street  
Chicago, Illinois 60603

Re: 05141225

Dear Ms. Byrd-Bennett:

This is to advise you of the disposition of the above-referenced complaint that you (Complainant) filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on May 4, 2014, against the Chicago Public Schools District #299 (District), Portage Park Elementary School (School), alleging retaliation.

Specifically, the Complainant alleged that the District retaliated against her, a fifth grade teacher at the School, when in April 2014 it charged her with insubordination and unprofessional conduct, and in May 2014 it gave her an unjustifiable performance rating, because in March 2014 she challenged the School's placement decision for a student with a disability (Student A).

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. OCR also enforces 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. Both of these laws prohibit retaliation. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to Section 504 and Title II. Therefore, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

*April 2014 Charge of Insubordination and Unprofessional Conduct*

In accordance with Section 302 of OCR's *Case Processing Manual* a complaint 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 requested to resolve the allegation that the District retaliated against the Complainant when it charged her with insubordination and unprofessional conduct in April 2014 (April 2014 charge). Subsequent discussions resulted in the District signing the enclosed agreement (Agreement) which, when fully implemented, will resolve the issue raised in the allegation regarding the April 2014 charge. The provisions of the Agreement are aligned with the complaint allegation and are consistent with the applicable regulations.

OCR will monitor the implementation of the Agreement. We look forward to receiving the first monitoring report, which is due by November 30, 2014.

#### *May 2014 Performance Evaluation*

As part of its investigation regarding the allegation that the District retaliated against the Complainant in May 2014 when it created a negative performance evaluation, OCR reviewed information submitted by the Complainant and the District. In addition, OCR interviewed the Complainant. Based on OCR's review of all of the information provided by the Complainant and the District, OCR concludes that there is insufficient evidence to determine that the District retaliated against the Complainant in May 2014 as alleged.

#### **Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. Similar protections against acts of retaliation are prohibited by the Title II implementing regulation at 28 C.F.R. § 35.134(a).

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient 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. To be considered adverse, an action must significantly disadvantage an individual or reasonably deter an individual from engaging in future protected activities.

If one of the elements cannot be established, OCR finds insufficient evidence of a violation. If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

#### **Facts**

The Complainant teaches fifth grade math at the School. At the outset of the 2013-14 school year, Student A was a student in one of the Complainant's math classes. However, in March 2014, the School convened a meeting of persons knowledgeable about Student A, the meaning of the evaluation data, and the placement options. The meeting participants revised Student A's individualized education plan (IEP) to place him in a classroom other than the Complainant's for his math instruction.

The Complainant did not agree with the IEP team's decision to place Student A in another math class. Shortly after the March 2014 meeting, the Complainant contacted the District's Office of Diverse Learner Supports Services (ODLSS) to express concern about Student A's placement. The Complainant exchanged emails with District staff in the ODLSS, which directed her to formalize any dissent she had to Student A's IEP and provide it to the School's case manager and Principal. The Complainant asserts that she followed the ODLSS's instructions and that the District later retaliated against her for the March 2014 call to the ODLSS by creating an unjustifiable May 2014 Teaching Practice evaluation.

Because of previous favorable evaluations, the District evaluates the Complainant on a two-year performance cycle, rather than a one-year performance cycle. As part of the evaluation process, principals and other administrators observe teachers' "Teaching Practice" through classroom observations.<sup>1</sup> During the two-year performance cycle, the District conducts two informal and two formal Teaching Practice observations, utilizing a rubric with four principle categories (which collectively include 19 sub-categories).<sup>2</sup> A teacher can receive a rating of unsatisfactory, basic, proficient, or distinguished in each category, with each rating assigned a numerical value in ascending order from 1-4. Although the District has completed each of the four Teaching Practice evaluations for the Complainant's current performance cycle, her final performance evaluation for the 2012-13 and 2013-14 performance cycle is not yet complete.

In May 2014, the School's Assistant Principal conducted the final formal observation and evaluation of the Complainant's Teaching Practice for the current performance cycle. The Assistant Principal met with the Complainant on May 21, 2014, to discuss and complete the evaluation.

The District provided documentation of the Teaching Practice rubrics for the Complainant that it completed during the current two-year performance evaluation cycle.<sup>3</sup> The District conducted informal observations of the Complainant on May 7, 2013 and October 1, 2013, and completed formal observations of the Complainant on December 12, 2012 and May 21, 2014. The chart below shows the scores for each sub-category the District assigned to the Complainant during these observations.

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<sup>1</sup> The Teaching Practice observations comprise 75% of a teacher's overall performance evaluation. The remaining 25% of a teacher's overall performance evaluation is measured by student achievement using objective rubrics.

<sup>2</sup> Sub-categories 1(a)-1(e), collectively, comprise 25% of a teacher's Teaching Practice score, sub-categories 2(a)-2(d), collectively, comprise 25% of a teacher's Teaching Practice score, sub-categories 3(a)-3(e), collectively, comprise 40% of a teacher's Teaching Practice score, and sub-categories 4(a)-(e) comprises 10% of a teacher's Teaching Practice score. The rubric indicates that subcategories 4(b)-4(e) are rated once per school year at the end of the year. However, the information provided by the District does not indicate that the Complainant received any rating in sub-categories 4(b)-4(e) for either the 2012-13 or 2013-14 school year. In addition, evaluators do not assign ratings for sub-categories 1(a)-1(e) or 4(a) during an informal observation.

<sup>3</sup> The District also provided evaluations of the Complainant from prior school years. However, those evaluations were conducted by a different administrator using a different evaluation rubric.

Category	December 2012	May 2013	October 2013	May 2014
1(a)	3			3
1(b)	2			2
1(c)	3			3
1(d)	3			3
1(e)	3			3
2(a)	1	2	1	2
2(b)	2	2	2	3
2(c)	3	3	3	3
2(d)	3	3	3	3
3(a)	2	3	2	3
3(b)	2	2	2	3
3(c)	2	2	2	3
3(d)	2	3	2	2
3(e)	2	2	1	2
4(a)	2			3
Average	2.33	2.44	2.00	2.73
Weighted Teaching Practice Rating	2.26			2.73

Among the four observations for the current evaluation cycle, the Complainant received the most favorable ratings during the May 2014 observation, which is the only observation to occur after the Complainant's protected activity. When adjusted for the weight of each category, the Complainant's May 2014 Teaching Practice rating is .47 points higher than her initial December 2012 rating. Further, in sub-categories 2(b), 3(b), 3(c), and 4(a), the Complainant received a higher score in May 2014 than she did after any previous observation. In six out of nine sub-categories (2(a), 2(b), 3(a), 3(b), 3(c), and 3(e)), the Complainant received a higher score in May 2014 than she did in October 2013, the next most recent observation. There were no sub-categories in which the Complainant received a lower score in the May 2014 than she did in either the October 2013 or December 2012 and only one sub-category (3(d)) in which she received a lower score than she did in May 2013.

### Analysis

OCR finds that the preponderance of the evidence does not establish that the Complainant suffered an adverse action in that her Teaching Practice rating improved, rather than declined, after she engaged in protected activity by contacting the ODLSS to express concern about Student A's placement. Notably, the Complainant's May 2014 Teaching Practice rating was .47 points higher than the rating after the initial observation in December 2012. Based on all of the information submitted by the Complainant and the District, OCR finds insufficient evidence to conclude that the Complainant suffered an adverse action, in the form of a negative evaluation, after engaging in a protected activity. Therefore OCR has determined that there is insufficient

evidence that the District subjected the Complainant to retaliation by giving her an unjustified performance evaluation in May 2014, as alleged.<sup>4</sup>

For the reasons stated herein, OCR is closing the complaint effective the date of this letter.

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 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 Complainant 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 privacy.

If you have any questions regarding this letter, please contact me at (312) 730-1613 or at [Aleeza.Strubel@ed.gov](mailto:Aleeza.Strubel@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: Susan O'Keefe, Deputy General Counsel

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<sup>4</sup> As previously noted, the Complainant's evaluation for the current performance cycle is not yet complete. Consequently, any allegation based on an overall performance rating for the current performance cycle is premature. However, if a finalized performance evaluation contains additional information not contained in the information provided to OCR, such as, but not limited to, ratings for previously unrated subcategories 4(b)-4(e), revised ratings for any subcategory, or new or revised comments or summaries on previously completed evaluations, such information might provide a basis to conclude that a finalized performance evaluation is pretext for retaliation.