



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

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**REGION V
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INDIANA
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WISCONSIN**

August 19, 2015

Scott B. Thompson, Ed.D.
Superintendent
Community Consolidated School District 15
580 North 1st Bank Drive
Palatine, Illinois 60067-8110

OCR Docket No. 05-15-1181

Dear Dr. Thompson:

This is to inform you of the disposition of the above-referenced complaint filed against Community Consolidated School District 15 (District) on March 23, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging discrimination on the basis of disability and retaliation. Specifically, the complaint alleged that:

1. From [X-date redacted]¹, to present, the District has discriminated against Student A, a student at [X-school information redacted] based on disability [X-disability information redacted] in that, the District has denied Student A a free appropriate public education (FAPE) by failing to implement his Individualized Education Program (IEP).
2. Throughout the 2014-15 school year, the District has subjected Student A to different treatment based on disability by lowering Student A's math grades for not completing and turning in "math sheets," while not imposing similar requirements on similarly situated non-disabled students.
3. From [X-date redacted], to the present, the District has retaliated against the Complainants for their repeated requests that the District fully implement Student A's IEP by improperly documenting [X-disability-related information redacted].

OCR opened an investigation of this complaint pursuant to its enforcement authority under 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 and Title II prohibits discrimination on the basis of disability by public entities. Both statutes also prohibit retaliation against persons who engage in

¹ The Complainant alleged the discriminatory and retaliatory conduct began in [X-date redacted]. However, during the course of the investigation, OCR determined the Complainant gave consent for the IEP on [X-date redacted].

certain protected activities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws. Accordingly, OCR had jurisdiction over this complaint.

Applicable regulations and legal standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the allegations raised in this complaint do not provide greater protection than the applicable 504 regulations. Therefore, OCR applied Section 504 regulations in assessing the District's compliance with both Section 504 and Title II in this case.

General non-discrimination provisions

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides, in relevant part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance. The regulation implementing Title II at 28 C.F.R. § 35.130(a) contains a similar prohibition against discrimination against persons with disabilities on the part of public entities.

In assessing whether a recipient has subjected a person with a disability to discrimination in violation of these provisions, OCR assesses whether the recipient has subjected the person to less favorable treatment than similarly situated persons without disabilities were subjected to. If so, OCR examines whether the recipient has a legitimate non-discriminatory justification for its actions; if that is the case, OCR further examines whether those reasons are merely a pretext for discrimination. Pretext may be demonstrated by showing that the proffered justifications are not credible, or are inconsistent with the recipient's policies or usual practices.

Free appropriate public education (FAPE)

The Section 504 implementing regulation, at 34 C.F.R. §104.33(a), requires the District to provide a free appropriate public education (FAPE) to each qualified student with a disability. Under §104.33(b)(1), an appropriate education is defined as the provision of regular or special educational services and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled persons are met. The Section 504 regulation, at 34 C.F.R. §104.33(b)(2) further provides that implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. In making a compliance determination in this case, OCR considers whether the District provided related aids and services to Student A in accordance with his agreed upon IEP.

Retaliation

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, 42 U.S.C. § 2000d-2000d-7 at 34 C.F.R. § 100.7(e), which provides that a recipient may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the overarching statute or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under that statute. The regulation implementing Title II at 28 C.F.R. § 35.134 contains a substantially identical prohibition against retaliation on the part of public entities directed toward persons who engage in activities protected by Title II.

A prima facie case of retaliation requires evidence that establishes the following: (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 directed at the individual contemporaneously with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. To constitute an adverse action, the action must significantly disadvantage the complainant or reasonably deter or preclude the complainant from engaging in further protected activity.

If all of these elements are met, OCR then considers whether the recipient has a legitimate non-retaliatory reason for its 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 that treatment of the person was inconsistent with the District's treatment of similarly situated individuals or with its established policy or practice.

Allegation 1

Student A was [X-student's grade and school information redacted] during the 2014-15 school year and has a diagnosis of [X-disability information redacted]. The School's Assistant Principal reported that at the start of the school year Student A was a general education student who received [X-disability-related information concerning aids and services redacted]. The Assistant Principal stated that these supports were consistent with [X-disability-related information redacted]. However, Student A displayed [X-disability-related information redacted] as the fall 2014 semester progressed in spite of those interventions. Accordingly, an IEP meeting was convened on [X-date redacted]. The IEP team determined that Student A qualified for special education and related services under [X-disability information redacted], drafted an IEP and [X-disability-related information redacted]. The Assistant Principal stated that the Complainants "had a lot of great ideas" for addressing [X-disability information redacted], including suggestions regarding [X-disability-related information redacted], and daily progress reports (DPRs) through which the School would communicate [X-disability-related information redacted] to the Complainants.

The contents [X-disability-related information redacted] were a topic of frequent discussion between the Complainants and the School's staff following the [X-date redacted] meeting. On [X-date redacted], a second IEP meeting was held, at which the results of the District's evaluation of Student A were finalized and [X-disability-related information redacted] was drafted. The Complainants attended both the [X-dates redacted] IEP meetings. However, they did not grant consent for the District to begin implementing [X-disability-related information redacted] that resulted from the [X-date redacted] meeting until [X-date redacted].

Though [X-disability-related information redacted] provides for a number of services [X-disability-related service information redacted] to be afforded Student A, the Complainants' allegation that the District failed to fully implement [X-disability-related information redacted] focuses on two areas: the provision of [X-disability-related information redacted] for Student A, and the communication of [X-disability-related information redacted] to the Complainants via DPRs, which were to be input in electronic form into a cumulative Excel spreadsheet and a Google.docs page, the latter of which would be accessible to the Complainants online.

[X-disability related information redacted] specifically states that "Teachers will document [X-disability-related information redacted] on the DPR. The DPR is to be completed by staff on google docs. In addition, [X-disability-related information redacted] required an administrator to email or call the parents when [X-disability-related information redacted]. The Assistant Principal acknowledged that she was the administrator responsible for that [X-disability-related information redacted] provision. The [X-disability-related information redacted] further provides that teachers are to record in the DPR when "[X-disability-related information redacted]."²

The Assistant Principal and Teacher A stated that a [X-disability-related information redacted] was designed at the [X-date redacted] IEP meeting. This form had a numerical scale rating Student A [X-specific service-related information redacted] as to his success in achieving [X-disability-related information redacted] in a given class period or school day; this was more specific than the form used for [X-disability-related information and comparator data redacted] The Assistant Principal stated that the team devised Student A's DPR form to provide more specific information on [X-disability-related information redacted] to the Complainants. The Complainants maintain the District failed to properly document [X-disability-related information redacted] in accordance with [X-disability-related information redacted]. The Assistant Principal acknowledged that the google.docs document used to record the DPRs at the time the Complainants consented to the implementation of [X-disability-related information redacted] reflected the old form, which used [X-disability-

² The [X-disability-related information redacted] required that after [X-disability-related information redacted]

related information redacted] rather than the updated individually designed form intended to . [X-disability-related information redacted] Moreover, the Assistant Principal acknowledged (and Teacher A confirmed) that for a period after [X-disability-related information redacted] went into effect, several if not all of Student A’s teachers were still using [X-disability-related information redacted] to track [X-disability-related information redacted], which resulted in the information contained in the DPRs not always being entered into the google.docs document in a timely fashion such that the Complainants were promptly able to view it.

The IEP further provided [X-disability-related information redacted] for Student A when he [X-disability-related information redacted] . This provision permitted him to [X-disability-related information redacted]. The Complainants asserted that this provision was not being followed by Student A’s teachers; Teacher A stated that it was implemented in her class. The School’s [X-disability-related information redacted in form of staff title] stated that she had frequent communications with the Complainants but that they never complained that [X-disability-related information redacted] was not being implemented.

Before the completion of OCR’s investigation of Allegation 1, the District asked to voluntarily resolve Allegation 1 through the attached Resolution Agreement. OCR will monitor the District’s implementation of the Agreement. The Agreement, when fully implemented, will rectify any compliance concerns arising from the District’s acts or omissions at issue in Allegation 1, and will ensure the District’s compliance with Section 504 and Title II with regard to the issues raised in that allegation.

Allegation 2

The Complainant alleged that Student A was required to complete “math sheets” that his nondisabled peers were not required to complete, and was penalized for not doing so.

The District denies the assertion, and asserts further that there are no assignments called “math sheets” as such. OCR’s investigation revealed no assignments called “math sheets” that were required of Student A or any of his classmates. Teacher A explained that she did have assignments referred to as [X-class-specific information redacted] which comprised a portion of students’ grades. Teacher A stated that [X-class-specific information redacted] is an online program accessed via computer or iPad, designed to help students develop math skills. She described it to OCR as “a fun way of working on math facts,” and that it is akin to a “game.” She said there is no work to show in responding to questions on [X-class-specific information redacted]. Teacher A stated that use of [X-class-specific information redacted] counts as homework when specifically assigned, and that it represents roughly 10 percent of a student’s course grade all told.

Teacher A stated that Student A would regularly [X-disability-related information redacted], but that on those occasions she would offer him the opportunity to [X-service-specific information redacted] perform the same work in paper form (for which he would receive equal credit). She stated that Student A [X-disability-related information redacted] she recalled discussions with Student A's parents to discuss strategies to [X-disability-related information redacted]. She stated that among his parents' suggestions were that he [X-disability-related information redacted].

Teacher A stated that all students in the class, with or without disabilities or IEPs, are required to [X-class-specific information redacted]. Student A's IEP does not contain any modifications to this requirement. Student A is one of [X-numbers of disabled students redacted] students in his math class with an IEP, out of [X-total number of students redacted] students total.

Teacher A acknowledged that on a few occasions the Complainant stated she was unable to log in to [X-class-specific information redacted] using the PIN and password; however, when asked, Student A told Teacher A he simply [X-disability-related information redacted]. Teacher A said on those occasions, he was given [X-disability-related service information redacted] and that he did not lose credit. She stated that Student A received [X-grade information redacted] in her class for the first trimester, [X-grade information redacted] for the second, and for the third, he was earning [X-grade information redacted] at the time of her interview with OCR ([X-date redacted]).

The Complainant produced no evidence to support her allegation that other students are not required to either complete [X-class-specific information redacted] and OCR's investigation revealed no evidence to that effect. Teacher A stated that the Complainants never indicated to her that either they or Student A were unaware of the [X-class-specific information redacted] requirement.

Analysis

The evidence does not support the Complainant's contention that the District required Student A to complete [X-class-specific information redacted], or to [X-class-specific information redacted] in math class when necessary, while his non-disabled math classmates (or for that matter, any of his classmates) were not. The District documented that the requirements [X-class-specific information redacted] are communicated clearly to students, and Teacher A testified credibly that Student A [X-disability-related information redacted]. Moreover, the evidence suggests that Teacher A accommodated Student A's [X-disability-related information redacted].

Based on this information, OCR cannot conclude by a preponderance of the evidence that the District subjected Student A to math requirements that differed from non-disabled classmates; as such OCR cannot conclude that the District discriminated against Student A

by subjecting him to different treatment based on his disability in violation of Section 504 or Title II as claimed in Allegation 2.

Allegation 3

The Complainants allege that due to their frequent communication with School staff and administrators that they [X-disability-related information redacted], consistent with the provisions of Student A's IEP became effective ([X-date redacted]), the District has engaged in retaliation by improperly documenting Student A's behavior.

The District denies that it has retaliated against the Complainants in any fashion, or that it has falsely documented [X-disability-related information redacted]. Specifically, the District asserts that all documentation of [X-disability-related information redacted] has been made pursuant to Student A's IEP, which became effective [X-date redacted].

Records produced by the District indicate that Student A [X-disability-related information redacted] from the start of the 2014-15 school year until [X-date redacted]. He [X-disability-related information redacted] from [X-date redacted] until the District's spring break week, which began on March 23, 2015, when the instant complaint, including the Complainants' retaliation claim, was filed with OCR.

The Complainants noted that Student A [X-disability-related information redacted], at noon, which was 80 minutes after Student A was removed from school for a medical appointment (District attendance records confirm this). In addition, he [X-disability related information redacted] on [X-date redacted], when, according to District records, he was absent from school. The Complainants also presented [X-disability-related information redacted] the original handwritten incident dates appear to have been crossed out with another date written in by hand. Finally, the Complainants objected to delays that occurred on more than one occasion (specifically, between [X-date redacted], and [X-date redacted]) between certain [X-disability-related information redacted] and the District's reporting [X-disability-related information redacted] to the Complainants, which the Complainants consider suspicious, and evidence of fabrication [X-disability-related information redacted] in retaliation for the Complainants' protected activities. The Complainants did not identify any specific [X-disability-related information redacted] as falsely reflecting [X-disability-related information redacted], but asserted that the discrepancy between the dates of [X-disability-related information redacted] and Student A's actual attendance at school noted above, hand-editing of [X-disability-related information redacted] in [X-date redacted], and periodic lags of up to two weeks before the School brought [X-disability-related information redacted] to the Complainants call all of Student A's [X-disability-related information redacted] into question. The Complainants do not dispute that Student A has a history of [X-disability-related information redacted] sufficient to warrant [X-disability-related information redacted]

generally, or that the [X-disability service information redacted] in light of [X-disability-related information redacted] is not inappropriate.

The District stated that administrative error accounted for the disparities in dates and times between [X-disability-related information redacted] and his attendance at school (or the hand-edited [X-disability-related information redacted] from mid-May 2015). The Assistant Principal also noted that on both occasions in which a two-week lag occurred between [X-disability-related information redacted] Student A and [X-disability-related information redacted] being reported to the Complainants, intervening school breaks (Thanksgiving³ and Spring Break respectively) accounted for much of the delay.

Documentation from the parties reflects that the Complainants were actively involved in the development of Student A's IEPs during the 2014-15 school year, particularly from [X-date redacted] onward. Their activities have included attendance at IEP meetings, sending of [X-reference to specific communications redacted] to School staff and administrators, and email and telephone communications with School staff and administrators regarding the implementation of Student A's IEP [X-disability-related information redacted]. As noted above, the District was receptive to the Complainants. Specifically, the Assistant Principal reported that the Complainants "had a lot of great ideas" for addressing [X-disability-related information redacted], and the District incorporated their suggestions ([X-disability related information redacted] into [X-disability-related information redacted].

Analysis

The Complainants assert that the District engaged in retaliation for the Complainants' insisting that Student A's IEP be followed. The evidence establishes that the Complainants engaged in ongoing protected activities following their consent to Student A's IEP [X-disability-related information redacted] on [X-date redacted] as they described, including multiple conversations and emails with School staff and administrators exhorting them to comply with [X-disability-related information redacted]. Because these actions constitute an implicit statement of the Complainants' good-faith belief that the District was not adhering to the requirements of Section 504 and Title II in failing to implement [X-disability-related information redacted], these communications with the School are activities protected by Section 504 and Title II; District staff and administrators acknowledge their awareness of the Complainants' frequent communications to that effect. Therefore, the first two elements of a prima facie case of retaliation are established.

OCR next considered whether the District subjected Student A or the Complainants to an adverse action contemporaneous with or subsequent to the protected activity. OCR notes, as

³ According to the District's 2014-15 calendar, students did not attend school the entire week of Thanksgiving, due to a two-day Thanksgiving recess (Thursday and Friday), two days of parent/teacher conferences (Monday and Tuesday), and a "student non-attendance day" the day before Thanksgiving.

an initial matter, that the [X-disability-related information redacted] the Complainants advocated for requires the District to document [X-disability-related information redacted]. The Complainants contend that the District's actions were adverse as it was "improperly" documenting [X-disability-related information redacted]. Specifically, the Complainant identified misdated [X-disability-related information redacted] in [X-dates redacted] 2014, as well as [X-disability-related information redacted] postdating the adoption of [X-disability-related information redacted] on which dates appeared to have been altered by hand. However, these idiosyncrasies occurred both before the protected activity in question (in [X-dates redacted] 2014) commenced and afterwards. Because errors preceded the protected activity, they cannot have been caused by the protected activity; accordingly, no causal connection between the protected activity at issue in this case and the claimed adverse action can be inferred.

The Complainants further suggest that the misdated [X-disability-related information redacted] calls the legitimacy of all of [X-disability-related information redacted] into question. However, the Complainants did not identify any particular [X-disability-related information redacted] as incorrectly [X-disability-related information redacted]. Moreover, given Student A's [X-disability-related information redacted], the preponderance of the evidence does not suggest that the District falsified [X-disability-related information redacted].

The Complainants also contend that the District increased its [X-disability-related information redacted] after [X-disability-related information redacted] was adopted and the Complainants began expressing concerns about its implementation. However, OCR has determined that Student A [X-disability-related information redacted] both before and after the Complainants expressed concern about the implementation of [X-disability-related information redacted] (which Complainants consented to on [X-date redacted]). While Student A [X-disability-related information redacted] after the implementation of [X-disability-related information redacted] as compared to beforehand ([X-disability-related information redacted]), the [X-disability-related information redacted] was negligible. Because the District [X-disability-related information redacted] at similar rates both before and after the Complainants' protected activity, OCR cannot conclude that [X-disability-related information redacted] after [X-date redacted] is causally related to the Complainants' advocacy.

Finally, OCR notes that the District spoke appreciatively of the Complainants' suggestions regarding [X-disability-related information redacted] and incorporated them into the final documents. The District's receptiveness to the Complainants' suggestions belies a finding that it harbored a motive to retaliate against the Complainants for having advocated that the District implement those suggestions.

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Based on a lack of a causal connection between the alleged adverse actions and the protected activity, OCR cannot conclude by a preponderance of the evidence that retaliation in violation of Section 504 or Title II occurred as claimed in Allegation 3.

This concludes OCR's investigation of Allegations 2 and 3 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 cited, relied upon or construed as such. OCR's formal policy statements are issued by a duly authorized OCR official and made available to the public. The Complainants may file a private suit in federal court whether or not OCR finds a violation.

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 Complainants 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.

If you have any questions regarding this letter, please contact Brian Bigelow, Senior Regional Attorney, at 312-730-1565 or via email at brian.bigelow@ed.gov.

Sincerely,

Karen E. Tamburro
Supervisory Attorney

Enclosure

cc: Jay Kraning, Esq.