



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE
CITIGROUP CENTER
500 WEST MADISON STREET, SUITE 1475
CHICAGO, ILLINOIS 60661

TEL: 312-730-1560
TDD: 312-730-1609
FAX: 312-730-1576

May 20, 2016

Brandon Wait
Executive Director
Paladin Career and Technical High School
308 Northtown Drive
Blaine, MN 55434

Re: OCR Docket # 05-16-1064
Paladin Career and Technical High
School

Dear Mr. Wait,

This letter is to notify you of the disposition of the above-referenced complaint filed on November 23, 2015, with the U.S. Department of Education (Department) Office for Civil Rights (OCR) against the Paladin Career and Technical High School (School), alleging that the School discriminated against a student (Student A) based on her disabilities and retaliated against her.

Specifically, the complaint alleged that the School:

1. discriminated against Student A, an eleventh grade student with disabilities (XXXXX XXXXX XXXXX and XXXXX), when it denied her a Free Appropriate Public Education (FAPE) during the 20XX – 20XX and 20XX – 20XX school years by failing to timely evaluate her to determine whether she qualifies for regular or special education and related aids and services designed to meet her individual educational needs; and
2. retaliated against Student A by creating a hostile educational environment and ultimately XXXXXX her in XXXXX 20XX for the remainder of the 20XX – 20XX school year, after Student A's mother advocated for the rights of Student A as a student with a disability during the 20XX – 20XX and 20XX – 20XX school years.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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, 42 U.S.C. §§ 12131 – 12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department, and as a public entity, the School is subject to these laws. Accordingly, OCR has jurisdiction to investigate this complaint.

In order to investigate this complaint, to date, OCR interviewed Student A, Student A's parent (the Complainant) and numerous School staff. Additionally, OCR reviewed documents submitted by Student A's parent and records submitted by the School. On May 6, 2016, prior to OCR's completion of its investigation, the School expressed interest in resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Accordingly, the School executed a Resolution Agreement pursuant to Section 302 of the CPM to resolve Allegation 1 on May 10, 2016. However, with respect to Allegation 2, OCR has determined that the evidence obtained is insufficient to conclude that the School retaliated against Student A as alleged. The reasons for OCR's determinations are explained below.

Allegation 1: Disability Discrimination (FAPE)

The School is a public charter school for high school students. Its mission is to assist students overcome social, emotional, and academic challenges to create a foundation for success after high school. The School states in its School Philosophy, which is available on its website, that it is designed for students whose creative, academic and emotional hopes and needs are unsupported in a mainstream educational system.¹ The School's Executive Director (Executive Director) stated to OCR that among the ways the School supports its students is to ensure all staff are trained in trauma-informed care.

The Complainant first enrolled Student A at the School for the 20XX – 20XX school year for Student A's eleventh grade year. According to the Complainant, Student A has disabilities including XXXXX XXXXX XXXXX and XXXXXX. Among the enrollment forms the Complainant completed for Student A was one entitled, "Annual Health Information 20XX – 20XX," which includes a *Health Concerns* section. Under *Health Concerns*, the instructions state to check all that apply followed by a list of health conditions. Student A's form indicates Student A's health conditions include "XXXXXX XXXXX XXXXX" and a check next to the checkbox of XXXXX XXXXX. While XXXXX was listed as a health condition on the form, it was not checked.

¹ <http://www.paladincareertech.com/>

According to the Complainant, Student A had a Section 504 plan at the school she previously attended. However, a review of Student A's records does not show that the Complainant provided a copy of the 504 plan to the School when Student A enrolled at the School. According to School staff OCR interviewed, none were aware Student A previously had a 504 plan until the Complainant informed the School of the prior 504 plan in XXXXX 20XX. Upon receiving that information, the School's 504 Coordinator requested Student A's 504 plan from the previous school district. The 504 Coordinator stated he did not receive the 504 plan until XXXXX XX, 20XX, and within a day of receiving the 504 plan, he created a draft plan to discuss and share with the Complainant. According to the 504 Coordinator, despite multiple attempts to schedule a meeting with the Complainant, the Complainant did not make herself available for any of the scheduled meetings and no 504 meeting was held for Student A during the 20XX – 20XX school year. OCR reviewed Student A's draft 504 plan, which the 504 coordinator stated mirrored the 504 plan in place at Student A's prior school. All of the accommodations concern Student A's XXXXX XXXXX XXXXX. The Executive Director stated to OCR that he believed all of the draft 504 accommodations were available as well as provided to Student A since the beginning of the 20XX – 20XX school year, and as such, Student A was not denied a FAPE.

As it relates to Student A's XXXXX, the Complainant stated she had numerous conversations with School staff including the School's former Executive Director, current Executive Director and Dean of Students requesting accommodations for Student A.² OCR interviewed each of those individuals. The Executive Directors – current and former – stated they were unaware Student A had XXXXX. OCR also interviewed additional School staff who stated they were also unaware Student A had XXXXX. The Dean of Students stated to OCR that while he was unaware of Student A having a diagnosis of XXXXX, he had conversations with the Complainant during the 20XX – 20XX school year that Student A was XXXXX. He further stated he believed many of the School's students were XXXXX XXXXX XXXXX XX XXXXX XXXXX, and believes the School addresses students XXXXX XXXXX XX XXXXX XXXXX XX XXXXX XXXXX and a staff trained in XXXXX-XXXXX XXXX.

Student A enrolled for the 20XX – 20XX school year. Shortly after the beginning of the 20XX – 20XX school year, Student A was involved in a XXXXX XXXXX XXXXX X XXXXX. Prior to the conclusion of a XXXXX XXXXX, the Complainant withdrew Student A from the School.

² The School's former Executive Director served during the 20XX – 20XX school year and through XXXXX 20XX. During that time, the School's current Executive Director served in a combination of positions including the School's Assistant Director and interim or acting Executive Director.

Allegation 1: Applicable Legal Standards

The Section 504 implementing regulations at 34 C.F.R. §104.4(a) states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Under Section 504, recipients must provide a FAPE to each qualified student with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability. 34 C.F.R. § 104.33(a). An appropriate education for the purposes of FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35 and 104.36 regarding educational setting, evaluation, placement and procedural safeguards.

To be eligible to receive FAPE under Section 504, a student must have a mental or physical impairment that substantially limits one or more major life activities. 34 C.F.R. § 104.3(j). Pursuant to Section 504 and Title II, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting.

Section 504 places an affirmative duty on the recipient to individually evaluate any student who, because of disability, needs or is believed to need special education or related services. 34 C.F.R. § 104.35(a). Recipient school districts must establish standards and procedures for the evaluation and placement of such students which ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b).

In interpreting evaluation data and in making placement decisions, the recipient must: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 34 C.F.R. §§ 104.34, 104.35(c).

The Title II implementing regulation at 28 C.F.R. §35.130(a) provides that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity.

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 allegation do not provide greater protection than the applicable Section 504 regulations and has therefore applied the relevant Section 504 standards.

Allegation 2: Retaliation

During the 20XX – 20XX school year, the Complainant stated she had numerous conversations with the School’s administration requesting accommodations for Student A. Additionally, she stated she complained to the School’s administration that students were bullying Student A on the basis of her disability. She also stated that she complained to the Minnesota Department of Education (MDE) about bullying at the School, and as a result, School staff retaliated by bullying her daughter when the former Executive Director approached Student A in a threatening manner and made a comment to her like, “No one cares you have XXXXX XXXXX.” The Complainant asserts that MDE ordered the School to take corrective action. The Complainant stated all of her communications with the School and MDE were verbal and that she never received anything in writing from MDE concerning her complaint.

OCR interviewed the Dean of Students and the Executive Director who are responsible for investigating bullying complaints at the School. Both stated they investigated the Complainant’s concerns and determined there was insufficient evidence to show that Student A was bullied as alleged. Among the staff interviewed, none were aware of any allegations of any bullying by students against Student A. Moreover, none of the School staff were aware of any MDE investigations of the School concerning a complaint filed by the Complainant.

OCR further inquired about staff bullying of Student A. Specifically, OCR investigated the former Executive Director's alleged threatening conduct and comment. OCR interviewed the former Executive Director who denied that she ever approached Student A in a threatening manner or making the alleged comment. OCR interviewed numerous School staff who stated never observing the alleged conduct. OCR also interviewed Student A who claimed there were numerous witnesses to the alleged conduct, but she was not able provide the names of any of these witnesses.

On XXXXX XX, 20XX, Student A engaged in a XXXXX XXXXXX, which included a XXXXX. The Complainant acknowledged that Student A was in XXXXX XX XXX XXXXX. Pursuant to the School's handbook concerning XXXXX and XXX XXXXX XX XXXXX, Student A was XXXXX for XX XXXX XXXXX XXX XXXXX XX XXXXX. Prior to XXX XXXXX XXXXX, Student A withdrew from the School. During the 20XX – 20XX school year, one student was XXXXX for XXXXX XXXXX XXXXX XXXXX. During the same time period, 13 students received XXXXX for XXXXXX XXX XXXXX XXXXX XXXXX and two students received XXXXX for XXXXX XXX XXXXX XXXXX XXXXX. None of the parents of these 13 students had engaged in a protected activity prior XX XXXXX XXXXX XXXXX.

Allegation 2: Applicable Legal Standards

The regulation implementing Section 504 at 34 C.F.R. §104.61 incorporates by reference the provision of the implementing regulation of Title VI of the Civil Rights Act of 1964 that prohibit acts of retaliation. Section 104.61 prohibits a recipient from retaliating against an individual for the purpose of interfering with any right or privilege secured by Section 504 or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, hearing or proceeding under Section 504. The regulation implementing Title II at 28 C.F.R. §35.134(b) contains a similar provision prohibiting retaliation, intimidation, threats, coercion, and interference with an individual's right to engage in activities protected by Title II.

To establish a *prima facie* case of retaliation, each of the following elements must be met: (1) an individual engaged in an activity protected by Section 504 or Title II; (2) the institution knew of this activity; (3) the institution took an adverse action against 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. If all of these elements are met, OCR then considers whether the institution has a legitimate non-retaliatory reason for its action, and if so, whether the reason offered is a pretext for retaliation.

Analysis

OCR determined that the Complainant engaged in a protected activity about which School staff had knowledge when she had numerous conversations with School administration during the 20XX – 20XX school year requesting accommodations for Student A. OCR also finds the School engaged in an adverse action when on XXXXX XX, 20XX, the School XXXXX Student A for X XXXXX in which she was XXXXXX on XXXXX XX, 20XX.³ OCR assumes for purposes of analysis that a causal connection between the adverse action and the Complainant’s protected activity exists. Therefore, a *prima facie* case of retaliation has been established.

Because the evidence establishes a *prima facie* case of retaliation, OCR considered the School’s justification for XXXXX Student A. The School indicated that it XXXXX Student A based solely on the conduct violation, i.e., XXXXX XXXXX XXXXX XXXXX XXXXX and XXXXX XX X XXXXX. OCR reviewed the incident report of the XXXXX XX, 20XX XXXXX. In light of the XXXXX of the conduct and XXXXX XXXXX, OCR considers the School’s reason for XXXXX Student A to be legitimate and non-retaliatory. OCR reviewed XXXXX information concerning other School students who were disciplined for XXXXX or for XXXXX XXXXX. OCR found that the School consistently applied the Schools’ discipline code to these students and found no evidence to suggest that the students were disciplined because a parent had previously engaged in a protected activity. OCR’s investigation established that Student A was treated consistently with the School’s policy and practice concerning XXXXX and XXXXX and that the discipline imposed on Student A was not in retaliation for the Complainant’s advocacy on behalf of Student A. OCR therefore determined the School’s legitimate, non-retaliatory justification for suspending Student A is not pretext for retaliation. OCR therefore concludes the preponderance of the evidence is insufficient to conclude that the School retaliated against Student A as alleged. Accordingly, OCR is closing Allegation 2 as of the date of this letter.

Voluntary Resolution and Conclusion

On May 10, 2016, the School submitted the enclosed Resolution Agreement (the Agreement) to OCR, which, when fully implemented, will resolve Allegation 1. The Agreement requires the School to revise, adopt, and implement its Section 504 policies and procedures regarding, at a minimum, identification, evaluation, reevaluation, placement procedures, procedural safeguards, and provision of FAPE to qualified students with disabilities, as well as revising

³ While the Complainant asserts additional adverse actions by the School, namely the School creating a hostile educational environment as a result of student and staff disability harassment, OCR has determined there is insufficient evidence to conclude the School either failed to promptly and equitably address complaints of disability discrimination by the Complainant or that School staff engaged in harassing conduct against Student A, as alleged.

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its Section 504 grievance procedure to comply with 34 C.F.R. §104.7(b) and revising its notice of procedural safeguards to comply with 34 C.F.R. §104.36. The School will also provide training to all of its School administrators and staff members who are responsible for Section 504 referrals, decision-making, and/or the provision of services under Section 504 to students with disabilities. The Agreement also requires the School to reconvene Student A's 504 team to determine whether during the time period from the beginning of the 20XX – 20XX school year through XXXXX XX, 20XX, Student A had a disability that entitled her to receive FAPE, and if so, determine what compensatory education or other remedial services she requires from this time period.

In light of the signed Agreement, OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the School's implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets for 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 School 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 harmed individual may file a complaint alleging such treatment. The Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the School's cooperation during OCR's resolution of this complaint. We look forward to receiving the School's first monitoring report pursuant to the Agreement, which will be due on June 1, 2016. For questions requesting the implementation of Agreement or the resolution of this complaint, please contact Daniel Kim at (312)730-1482 or by email at daniel.kim@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure