



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

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**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

November 18, 2016

Dr. Jennifer Cheatham  
Superintendent  
Madison Metropolitan School District  
545 W. Dayton St.  
Madison, Wisconsin 53703

Re: OCR Docket #05-16-1333

Dear Dr. Cheatham:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Madison Metropolitan School District (District) alleging discrimination on the basis of disability and retaliation.

Specifically, the complaint alleges the District discriminated on the basis of Student A's disability (autism) and subjected him and his mother (the Complainant) to retaliation. The District allegedly:

- 1) Failed to provide the Complainant adequate notice of IEP (Individualized Education Program) meetings held for Student A in April and May 2016;
- 2) Failed to provide Student A sufficient information about or offer related aids and services for a field trip that took place on April 29, 2016;
- 3) Failed to include pictures of Student A in the 2015-16 XXXXX XXXXXX School yearbook; and
- 4) During the 2015-16 school year, failed to provide Student A specially designed instruction designed to provide individual support and instruction in behavior regulation, appropriate social behaviors, self-advocacy, and academics daily for two periods, as required by his IEP.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. These statutes also prohibit retaliation. As a public entity and a recipient of Federal financial assistance from the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Department, the District is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.<sup>1</sup>

OCR reviewed documentation provided by the District and the Complainant and interviewed District staff. For the reasons set out below, using a preponderance of the evidence standard, OCR finds insufficient evidence to conclude that the District subjected Student A to discrimination and retaliated against Student A and the Complainant as alleged.

### District Policies

The District has a policy which prohibits disability discrimination.<sup>2</sup> The policy stipulates that no person may be denied participation in, be denied benefits of, or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's disability. The District provides both a formal and informal complaint procedure to report claims of discrimination and harassment.

### Factual Summary

During the 2015-16 school year, Student A was a student in the XXXXXXXXXX School (School) and had an IEP. Student A's IEP stipulated that he had XXXX XXXX, and indicated that he should receive "individual support and instruction in behavior regulation, appropriate social behaviors, self -advocacy, and academics."

### Allegation 1: Notice of IEP Meetings

The Complainant alleged the District failed to provide her adequate notice of IEP meetings held for Student A in April and May 2016.

District documents indicate the IEP team first met for Student A's annual and three-year evaluation on April 1, 2016. Following subsequent meetings, Student A's IEP was finalized on June 9, 2016. Numerous emails were exchanged between the Complainant, Student A's Case Manager and the Assistant Director of Student Services (Assistant Director) about the dates and times of the meetings.

The Complainant attended and participated in the IEP meeting held on April 1 but the IEP was not completed at that meeting. Later that evening, the Complainant emailed the District and indicated she would be available for a continuation of the IEP meeting on April 29 or several dates in May. The District scheduled the additional meeting for April 29. On April

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<sup>1</sup> 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 regulation applicable to the allegations raised in this complaint do not provide greater protection than the applicable Section 504 regulation. Therefore, OCR applied the Section 504 regulations in analyzing the complaint allegations.

<sup>2</sup> <https://board.madison.k12.wi.us/policies/8012>

25, the Complainant emailed staff and informed them she would not be able to attend the April 29 meeting because she was attending a field trip with Student A. The April 29 meeting was rescheduled to May 4. The Complainant asked for the May 4 meeting to be rescheduled because she planned to be out of town on that day.

According to documentation provided by the District, the Assistant Director advised the Complainant that as it was necessary to complete the IEP, the IEP team would meet on May 4. The District offered the Complainant the opportunity to participate via conference call. The Complainant declined this offer. The IEP team met on May 4, without the Complainant. The Complainant requested another IEP meeting to review and revise the IEP. The team, including the Complainant, met on May 20 but were unable to complete their review of the IEP. Another meeting was held on May 23, which the Complainant attended. The Complainant requested another meeting that was scheduled for June 9. The IEP team, including the Complainant, met on June 9. OCR reviewed copies of documentation sent to the Complainant providing notice of the IEP meetings held on April 1, May 4, 20, 23 and June 9.

#### Allegation 2: Field Trip

The Complainant alleged that the District failed to provide Student A sufficient information about or offer him related aids and services for a field trip that took place on April 29, 2016. The Complainant asserted that Student A was treated differently than other students in his general education art class. In addition, the Complainant stated the District failed to make arrangements so that Student A could participate in the field trip.

OCR interviewed Student A's art teacher (Teacher A). She said Student A was in one of her art classes, which met daily for 50 minutes. XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX.

The April 29 trip was a voluntary trip for students enrolled in the School's Art Department and French Department classes. Students were bussed to the Art Institute of Chicago and the Field Museum. According to Teacher A, she started making announcements about the field trip in March to all five of her art classes. She said she made announcements multiple times to each class. Students were required to return a parent permission slip and pay \$40.00 if they wanted to participate in the field trip. Teacher A stated that because the trip required bus transportation there was a limit on the number of students who could attend. The trip reached its limit and a wait list was started. According to Teacher A, no one, including non-disabled students, from the wait list was allowed to go.

Teacher A said she assumed that Student A received information about the trip when she provided it to other students in his class; however, she acknowledged that because Student A XXXX XXXX XXXXX he might not have heard the information about the field trip.



taken during scheduled picture days. Teacher A said the student portrait pages for the yearbook were finalized for publication in December.

Student A did not take a standard school portrait picture during the 2015-16 school year. XXXX XXXX are also used in the yearbook. In March 2016, the Complainant sent XXXX XXXXX XXXX XXXX to Teacher A. Teacher A said she received Student A's photo and thanked the Complainant for providing the photo. However, Teacher A said the photo could not be used in the yearbook because all final proofs for the yearbook had already been sent to the yearbook company by the end of January. Teacher A acknowledged that she did not tell the Complainant the deadline for submitting pictures had passed and that the picture she provided for Student A would not be included in the yearbook.

#### Allegation 4: Failure to Implement IEP

The Complainant alleged that during the 2015-16 school year, the District failed to provide Student A specially designed instruction designed to provide individual support and instruction in behavior regulation, appropriate social behaviors, self-advocacy, and academics daily for two periods, as required by his IEP. The Complainant alleges that this was also an act of retaliation.

Prior to completing the investigation of this allegation, the District asked to resolve this allegation. The enclosed agreement requires the District to convene a group of persons knowledgeable about Student A, including the Complainant, to determine whether Student A requires compensatory and/or remedial services for the time period during the 2015-16 academic year he did not receive the specially designed instruction as stated in Student A's IEP in effect for the 2015-16 school year. The group will develop a plan for providing compensatory and/or remedial services, if any, and provide such services. OCR will monitor this agreement.

#### Applicable Regulations and Legal Standards

The regulation implementing Section 504 at 34 C.F.R. §104.4 states, in part, that no qualified person with a disability shall, on the basis, of disability, be excluded from participation in or be denied the benefits of any recipient program or services.

The regulation implementing Section 504 at 34 C.F.R. §104.33 specifically requires that a recipient that operates a public elementary or secondary education program provide a free appropriate public education to each student with a disability. A free appropriate public education is defined as regular or special education and related services that are designed to meet the student's individual needs as adequately as the needs of non-disabled students are met. The regulation further states, at 34 C.F.R. § 104.33(b)(2), that implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

The regulation implementing Section 504, at 34 C.F.R. § 104.35, requires a recipient that operates a public elementary or secondary education program or activity to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services. Any such evaluation must be made before placing the student in regular or special education, and before making any significant changes in placement. The regulation further states, at 34 C.F.R. § 104.35(c), that in making placement decisions a recipient shall consider information from a variety of sources and 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. The regulation implementing Section 504, at 34 C.F.R. § 104.35(d), requires a recipient to which this section applies to establish procedures for a periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the IDEA is one means of meeting this requirement.

The regulation implementing Section 504, at 34 C.F.R. § 104.36, requires the recipient to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

### 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 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.

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. 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.

### Analysis

OCR frequently must weigh conflicting accounts and determine which is supported by the preponderance of the evidence.

Allegation 1: The Complainant alleges that the District failed to provide her adequate notice of IEP meetings held for Student A in April and May 2016. The Complainant alleges that the District's failure to provide notice was also an act of retaliation.

According to documentation provided by the District, the Complainant was informed of each IEP meeting held in April and May. Although she may not have been able to attend each meeting, the District attempted to schedule the meetings when the Complainant indicated she was available, and rescheduled multiple meetings at her request. Furthermore, the District held multiple IEP meetings and the Complainant was able to attend the majority of the meetings. When she was not able to attend a meeting rescheduled to May 4 at her request, the District provided her with alternate means of participating. The Complainant declined this offer. The evidence establishes that the District's actions were reasonable under the circumstances, and that it did not fail to provide the Complainant with notice of IEP meetings.

The evidence also establishes that the District's actions were not retaliatory. The Complainant engaged in a protect activity when she filed a previous OCR complainant on behalf of Student A and when she advocated for services for Student A at the School. However, as the information above shows, OCR found no evidence that the District engaged in an adverse action by failing to provide notice of IEP meetings. The Complainant's allegation does not establish a *prima facie* case of retaliation.

Allegation 2: The Complainant alleges that the District failed to provide Student A sufficient information about or offer related aids and services for a field trip that took place on April 29, 2016. The Complainant alleges that this was also an act of retaliation.

According to the documentation provided by the District, Student A had access to the same information about the April 29 voluntary field trip as other students. While District staff could not confirm the exact date Student A may have been provided the information because of XXXXXXXXX, OCR found no evidence that the District denied Student A or the Complainant sufficient information about the field trip. Non-disabled students who expressed an interest in participating in the field trip but had responded after the bus was full, also were unable to attend. XXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXX XXX XXXX. OCR found no evidence that the Complainant requested related aids for Student A to be able to participate in the field trip.

Allegation 3: The Complainant alleges that the District discriminated against Student A when his picture was not included in the yearbook. The Complainant alleges that this was also an act of retaliation.

OCR found no evidence of different treatment in connection with the yearbook photo. According to OCR's investigation, to the District provided the Complainant with information regarding days when student pictures were being taken at school and which would have ensured that Student A's picture was included in the yearbook. Student A did not sit for a picture on one of the two scheduled days, or on the retake day—despite the fact that his Case Manager alerted the Complainant of the retake opportunity by e-mail. Although the Complainant provided a XXXXXXXX Student A to be included in the yearbook, it was submitted two months after the yearbook proofs were sent to the publisher. The evidence shows that non-disabled students' pictures were also excluded from the yearbook and that none of these students had engaged in a protected activity.

Therefore, although Student A's picture was not included in the yearbook, the district provided a non-discriminatory explanation for the reason his picture was not included. OCR did not find evidence suggesting this to be a pretext for discrimination or retaliation.

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. 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 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 personal privacy.

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

We wish to thank the District for the courtesy and cooperation extended by its staff and Ms. Dylan Pauley, the District's Counsel, during this investigation. If you have any questions, please contact me at (312) 730-1560.

Sincerely,

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Dawn R. Matthias  
Team Leader

Enclosure

cc: Ms. Dylan Pauley, Esq.