



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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March 20, 2018

Dr. Karen Sullivan
Superintendent
Indian Prairie School District #204
Crouse Education Center
780 Shoreline Drive
Aurora, Illinois 60504

OCR Case No. 05-17-1447

Dear Dr. Sullivan:

This letter is to notify you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on behalf of Student A against the Indian Prairie Community Unit School District #204 (District) alleging discrimination based on disability (concussion) and retaliation. Specifically, the Complainant alleges the District discriminated against her and Student A when:

1. On September 6, 2017, the District retaliated against the Complainant for utilizing an advocate when the school psychologist refused to communicate with the advocate.
2. The District did not properly consider a September 14, 2017 request for Student A to receive Section 504 accommodations.

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, 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, 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 a public entity, the District is subject to Section 504 and Title II.

During its investigation, OCR interviewed the Complainant and Student A with an advocate present, reviewed documents provided by the Complainant and the District, and spoke with District staff.

Allegation #1-Retaliation

The Complainant alleged that the District retaliated against her for utilizing an advocate when the school psychologist refused to communicate with the advocate.

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

Section 108(d) of OCR's *Case Processing Manual* (CPM) states OCR will dismiss an allegation when based on its review of the documents and information received from the Complainant, OCR is unable to conclude that the allegation establishes a violation of one of the laws and regulations OCR enforces.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established:

1. An individual experienced an adverse action caused by the recipient; and
2. The recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and
3. There is some evidence of a causal connection between the adverse action and the protected activity.

In considering whether an individual has been subjected to an adverse action, OCR considers whether the action is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

In this case, OCR is unable to conclude, based on the information provided, that a *prima facie* case of retaliation exists.

In determining whether a *prima facie* case of retaliation has been established, OCR first considered whether the Complainant or Student A experienced an adverse action. OCR finds that neither the Complainant nor Student A experienced an adverse action caused by the District. Although the Complainant alleges the School psychologist refused to talk to the advocate, refused to respond to the advocate's emails and did not allow the advocate to speak at a meeting, email correspondence reflects that the School psychologist informed the Complainant that his practice was to provide information to the parent, who could then convey the information to the advocate. In addition, the advocate was not otherwise denied access to School staff. The advocate was allowed to attend, and did attend, all meetings with the Complainant after she notified the District she had been retained. The District provided numerous emails exchanged between the advocate and the Principal, who appears to be the advocate's primary contact at the School. In addition, the Principal spoke with the advocate on the phone. The advocate also communicated via email and met with Student A's math teacher.

Accordingly, OCR is unable to establish a *prima facie* case of retaliation and is dismissing allegation #1 effective the date of this letter.

Allegation #2-Disability Discrimination

Prior to OCR making a final determination on allegation #2, the District expressed an interest in resolving the allegation. On March 20, 2018, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address allegation #2 in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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.

The Complainant may have a right to 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 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.

OCR would like to thank the District and Ms. Dawn Hinkle, counsel for the District, for the courtesy and cooperation extended during this investigation. If you have any questions or need assistance, please contact me, at (312) 730-1593 or dawn.matthias@ed.gov .

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

CC: Dawn Hinkle, Esq.