



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

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CHICAGO, IL 60604

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August 1, 2019

Dr. Tara Paul
Superintendent
Estherville Lincoln Central Community School District
1814 7th Ave South
Estherville, Iowa 51334

Re: OCR Docket # 05-19-1220

Dear Dr. Paul:

This is to notify you of the resolution of the above-referenced complaint filed against Estherville Lincoln Central Community School District (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging retaliation. Specifically, the complaint alleged that:

1. In February 2019, the District retaliated against the Complainant, a freelance journalist, for advocating on behalf of students with disabilities when a District official requested the Complainant's supervisor not allow her to write articles about the District.
2. On or around May 1, 2019, the District retaliated against the Complainant's daughter (Student A), a 1st grade student at the District's Demoney Elementary School (the School), when a teacher discarded Student A's project after school hours.

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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination since disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR interviewed the Complainant and reviewed data provided by the Complainant and the District, including statements by witnesses with knowledge of the complaint allegations. Regarding Allegation #1, prior to OCR concluding its investigation and making a final determination, the District expressed an interest in resolving the allegation under Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it was appropriate to resolve the allegation with an agreement. On July 23, 2019, the District

signed the enclosed Resolution Agreement, which, when fully implemented, will address Allegation #1 in the complaint. OCR will monitor the implementation of the Resolution Agreement. Regarding Allegation #2, based on OCR's investigation, OCR has determined that there was insufficient evidence to establish that the District retaliated against Student A as alleged. The basis for OCR's determination is set forth below.

Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

The regulation implementing Section 504, at 34 C.F.R. 104.61, incorporates by reference the prohibitions against retaliation and intimidation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides at 34 C.F.R. § 100.7(e). The Title VI prohibition states, “[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by...the Act, or because [s]he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.”

Facts

The Complainant is a free-lance journalist for the local newspaper and, on approximately four to five occasions in the past, has been assigned to take photographs for the newspaper's news coverage of District events. She also has two children who attend the School, including Student A.

Allegation #1

The Complainant told OCR that, on February 21, 2019, while waiting in her car to pick up her children from school, she witnessed a teacher's aide using inappropriate language with a student with disabilities, lifting him by the hood of his jacket, and pushing him into a van. She said she got out of her vehicle and reported the inappropriate treatment of the student to the staff members in the office at that time, an administrative assistant and school counselor. She said she also reported that Student A has mentioned that her teacher treats a student with autism in her class negatively. Finally, the Complainant said she also told them that, in her role as a journalist for the newspaper, she had heard from members in the community that two District administrators were having an “inappropriate relationship.”

The Complainant said she informed the administrative assistant and counselor that she did not want the School Principal to know she reported these issues because she feared he would retaliate against her.

The Complainant stated that shortly after she reported to School staff the mistreatment of students with disabilities, the School Principal met with her supervisor at the local newspaper

and directed him not to assign the Complainant to cover events at District schools.¹ In response, her supervisor advised the Complainant of this conversation and told her he would not be assigning her to write articles or take photographs for the newspaper at District events. Her supervisor also told her that the School Principal said the Complainant had “made a scene” at the School when she made her report, which the Complainant denied.

The Complainant said she filed a complaint with the School Board about the mistreatment of students with disabilities and the alleged retaliation by the School Principal. In response, pursuant to its policies, a District administrator (the Investigator) conducted an internal investigation including, reviewing video and interviewing relevant staff about the Complainant’s allegations. Regarding her claim that staff was mistreating students with disabilities, the Investigator determined that based on his review of the evidence, including video, “the report of student abuse and the use of inappropriate language by the aide [was] unfounded.” The investigator likewise concluded he could not confirm the teacher acted inappropriately toward the student with a disability in Student A’s class.

With respect to her retaliation claim, the District’s investigation established that, while a meeting occurred between the School Principal and the newspaper supervisor on February 22, 2019, the day after the Complainant’s report to District staff, the reason the School Principal requested that the Complainant not be assigned to any future District events was because of the rumors she shared about the personal lives of two District personnel

In his written findings, the Investigator acknowledged that it may appear that the School Principal retaliated against the Complainant; however, he stated that the evidence revealed that the School Principal offered his preference to the newspaper supervisor that the Complainant not be assigned to District events but that it ultimately was the newspaper supervisor’s decision, which the newspaper confirmed to OCR. Further, the Investigator determined that the School Principal’s motive for meeting with the newspaper supervisor was not to retaliate against Complainant for reporting mistreatment of students with disabilities, but due to the School Principal’s concern that the Complainant may write a biased article about the District or District staff, resulting in the newspaper printing defamatory and/or inaccurate information about the District or its personnel.

OCR’s review of the underlying notes of the investigation revealed that, although the District Investigator gathered conflicting testimony regarding the School Principal’s characterization of the Complainant’s demeanor when she made her report and reference to her job at the newspaper,² the testimony supported the Investigator’s determination that the Principal’s motive in asking the Complainant’s newspaper supervisor not to assign the Complainant to District events was because of the rumor Complainant shared about District personnel and

¹ The Complainant told OCR that, since she began freelancing for the newspaper in summer 2018, she has been assigned to cover District events approximately 5 or 6 times. She indicated she has taken photos of events and written “fluff” pieces; she has not written anything that would be “controversial” about the District.

² According to the Investigator’s notes, the administrative assistant and counselor both told him that the Complainant met with them privately when she made her report and was calm; and that while the Complainant told them she worked for the newspaper, she did not do so in a threatening manner but to explain why community members shared information with her.

not because of her complaint about the mistreatment of students with disabilities. The Complainant also acknowledged to OCR that she discussed the rumor with the administrative assistant and school counselor.

Allegation #2

On May 1, 2019, the Complainant informed OCR that the District retaliated against Student A for Complainant filing an OCR complaint when Student A's teacher discarded a project Student A made for her friend. When the Complainant confronted the teacher, instead of providing a reason for her actions, the teacher called the Superintendent to the School. When the Superintendent arrived, she would not speak to the Complainant prior to discussing the incident with the teacher. The Complainant said that neither the Superintendent nor the teacher provided her a reason for the teacher's actions.

The District denied that the teacher threw away Student A's project in retaliation for her parent's OCR complaint against the District.

The attorney for the District informed OCR that, at the end of the day in question, Student A and a classmate were playing with a piece of Styrofoam as the class was dismissed. In response to these students not being on-task shortly before dismissal, the teacher took the Styrofoam away from Student A and spoke to both students about classroom expectations. The teacher discarded the Styrofoam because it appeared to her to be trash. The District provided OCR a photograph of the alleged project, and OCR confirmed that it appears to be a piece of Styrofoam broken off from a larger piece of Styrofoam on which one of the student's had written in marker Student A's name, her friend's name, and "BF-BS forever."

Regarding the Complainant's contention that the District did not explain to her why the teacher threw away Student A's project, the District reported to OCR that, on the day in question, the Complainant entered the school after dismissal with her two children and approached the teacher while video recording live on Facebook, accusing the teacher of throwing away Student A's project. A meeting was scheduled to discuss the incident the following day, but the Complainant elected not to attend the meeting and requested instead an explanation as to why the project was thrown away in writing.

OCR reviewed two videos provided by the Complainant. The first video reveals the Complainant entered the school, announced she was video recording, asked the Principal to escort her and her children to the teacher's classroom to retrieve the project, and on her way confronted the teacher about why she threw Student A's project in the trash. The video indicates the teacher told her she did not give her permission to record and because the Complainant continued to record, the teacher telephoned the Superintendent and requested her to come to her classroom to meet with the Complainant. While waiting for the Superintendent, the Complainant continued to record the teacher and ask her to tell her why she threw the project away, why she would not answer her, and noted that she is recording because she is "tired of you guys lying." The teacher told her she'd talk about it when the Superintendent arrived. The second video shows as the Superintendent arrived, the Complainant asked her to stop and hear her side of the story before she spoke with the

teacher; the Superintendent paused while the Complainant told her that the teacher threw away Student A's project and she is tired of the teacher being mean to her daughter and other students and that it is retaliation; the Superintendent then walked into another area of the office. The District reported to OCR that administrators informed the Complainant that school representatives would be willing to discuss the situation but not while being recorded with live stream video.

Analysis and Conclusion

Allegation #1

As stated above, the District signed an Agreement to resolve Allegation 1. OCR will monitor the District's implementation of the Agreement. Please note that the first monitoring deadline is October 15, 2019.

Allegation #2

The Complainant alleged that the District retaliated against Student A for the Complainant's report of mistreatment of students with disabilities and/or her OCR complaint when a teacher discarded her project after school hours. 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 recipient's action significantly disadvantaged the individual, and whether the challenged action might reasonably have been expected to deter or preclude the individual from engaging in further protected activity.

The evidence established that the Complainant engaged in a protected activity when she reported what she believed was mistreatment of students with disabilities and filed an OCR complaint. OCR determined, however, that the evidence is insufficient to establish that Student A suffered an adverse action, as Teacher A did not throw away a school project that negatively affected her grade or otherwise impacted her academic performance; rather, Teacher A discarded a piece of broken Styrofoam on which Student A and/or her friend had written on unrelated to their classwork. The evidence therefore is insufficient to establish that the teacher's action significantly disadvantaged Student A or deterred her or her parent from engaging in further protected activity. Moreover, even if discarding Student A's property were an adverse action, the evidence is insufficient to establish a causal connection between Complainant's protected activity and the teacher's discarding of the piece of Styrofoam. Rather, the evidence suggests that the teacher discarded the piece of Styrofoam because it appeared to be garbage, and not because of the Complainant's protected activity.

Accordingly, OCR found insufficient evidence that the District retaliated against Student A as alleged in Allegation #2.

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

The complainant has a right to appeal OCR's determination regarding Allegation #2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the recipient 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 individual may file a 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.

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.

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OCR wishes to thank the District for the courtesy and cooperation extended to OCR during the investigation. We wish to thank Mr. David Stein, Attorney for the District. If you have any questions about this letter, please contact Sandra Garcia, OCR Senior Equal Opportunity Specialist, OCR Attorney, at 312-730-1580 or by email at Sandra.L.Garcia@ed.gov .

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: David Stein (via email at davidjr@steinlawoffice.com)