



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

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November 15, 2021

Mark Jenson
Superintendent
Detroit Lakes Public Schools
702 Lake Ave
Detroit Lakes, Minnesota 56601
markjenson@detlakes.k12.mn.us

Re: OCR #05-21-1284
Detroit Lakes School District

Dear Supt. Jenson:

This letter is to advise you of the resolution of the referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the the Detroit Lakes School District (District). The complaint alleged discrimination on the basis of disability and retaliation, as follows:

1. During the XXXXX school year a teacher at the District's XXXXXXXXX School (Teacher A) discriminated against students with disabilities and the District was aware of the discrimination, but failed to take appropriate action to prevent the discrimination.
2. Because the Complainant reported to the District that Teacher A was discriminating against students with disabilities, the District retaliated against the Complainant when, in XXXXXXXX, the District terminated the Complainant from her position as XXXXXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal Financial Assistance (FFA) from the Department of Education. OCR also enforces 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 public entities. These laws also prohibit retaliation. As a recipient of FFA from the Department and as a public entity, the District is subject to these laws.

During its investigation, OCR reviewed documents the Complainant and the District provided and interviewed the Complainant, District employees, and a former District employee. Prior to the completion of the investigation, the District executed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve Allegation #1. Regarding Allegation #2, OCR has determined that the evidence is insufficient to establish that the District retaliated against the Complainant as alleged. The bases for OCR's determinations are explained below.

Background

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

The District's XXXXXX (School) serves students in XXXXXX. The District hired the Complainant in XXXXXX as XXXXX at the School. During the XXXX school year, the School had XXXXX including the Complainant. Due to COVID-19, the District utilized a variety of learning models during the XXXXXX school year.¹

Legal Standards

Disability Discrimination

The Section 504 implementing regulation, 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 otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

The Title II implementing regulation provides, at 28 C.F.R. § 35.130(a), 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 subjected to discrimination by any public entity. Section 504 and Title II protect all persons with disabilities from discrimination, including parents, guardians, students, and employees.

Retaliation

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), 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.” The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the prohibitions against retaliation and intimidation set forth in the Title VI implementing regulation, at 34 C.F.R. § 100.7(e).

The Title II regulation, at 28 C.F.R. § 35.134, provides that no public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or opposed any act or practice made unlawful by Title II, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title II.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to or for the purpose of interfering with the exercise of a protected activity. To

¹ The XXXXXX school year began with all students attending XXXXXX, then to a XXXXX through XXXXX, and returned to XXXXXXXXXXXX through the end of the school year.

find a *prima facie* case of retaliation, each of the following three elements must be established: (1) an individual engaged in a protected activity; (2) the individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If a *prima facie* case of retaliation is established, then OCR considers whether there is a facially legitimate, non-retaliatory reason for the adverse action, and whether the facially legitimate, non-retaliatory reason for the adverse action is a pretext for retaliation.

District Policies

The District's Student Disability Non-Discrimination Policy is located on its website: <https://meetings.boardbook.org/Public/Book/2364?docTypeId=223646&file=9460dbba-6ff3-4361-a206-14b352b42b5a>. The District has a Student Disability Discrimination Grievance Report Form, which states, "[The District] maintains a firm policy prohibiting all forms of discrimination on the basis of disability. All persons are to be treated with respect and dignity. Discrimination on the basis of disability will not be tolerated under any circumstances."

Allegation 1 – Factual Summary

During the XXXXXX school year, the Complainant was aXXXXXXX for students XXXXXX, including a XXXXXX (Student A). Teacher A had XXXXXX in her class; XXXXXX. Student A and one other student were assigned XXXXXX, and one student was assigned XXXXXX. Prior to the XXXX school year, the Complainant and Teacher A had not worked together.²

The Complainant reported to OCR that during the XXXXXX school year Teacher A discriminated against Student A and other students with disabilities. The Complainant explained that Teacher A treated Student A and other students with disabilities differently than non-disabled students. For example, the Complainant alleged that Teacher A XXXXXXXX, and did not XXXXXX same rate as their non-disabled students. The Complainant said that she witnessed some of Teacher A's alleged discrimination, and other incidents were described to her by XXXXXs. The Complainant stated that she reported each of these instances to the School's administrators, amounting to at least XXXX reports.

The Complainant and District reported to OCR that the Complainant reported Teacher A's alleged discrimination to the Principal on numerous occasions throughout the XXXXX school year verbally or via email. On XXXXX the Complainant sent an email to the Principal and other administrators, listing Teacher A's alleged discriminatory acts. The Principal forwarded the Complainant's email to the District's XXXXXX (Director). Although the District informed OCR that the Director investigated the incidents, the Director did not contact the Complainant about the incidents and the Complainant said she was never notified of any final decision or action the District took as a result of the investigation.

² Teacher A has been a teacher at the School for XXXXXX.

The District reported to OCR that each time the Complainant reported her concerns about Teacher A to the Principal, the Principal spoke with Teacher A and in turn, Teacher A denied some of the Complainant's reports. The Principal informed OCR that she had been Teacher A's XXXXXX. She stated that over this time she has not received any other complaints about Teacher A and therefore found Teacher A to be credible. The Principal told OCR that in XXXX she contacted the Director after a contentious meeting where the Complainant confronted Teacher A about a disparaging comment Teacher A had previously made about students with disabilities. Teacher A admitted to making the comment, but contended it had been taken out of context. The Principal said she consulted with the Director about the distress the confrontation at the meeting had caused Teacher A, not about the Complainant's reports of Teacher A's alleged discrimination.

In XXXXX, the Complainant was notified that her employment contract would not be renewed for the XXXXX school year. After learning the Complainant's contract was not renewed, XXXXX who had worked with Teacher A submitted letters of resignation to the District. Both of the XXXXX cited the non-renewal of the Complainant's employment contract as one of the reasons for their resignation, and one employee also cited Teacher A's treatment of students with disabilities. The Director reported to OCR that she initiated an investigation of the XXXXXX concerns after receiving their letters of resignation. The District provided OCR with a copy of the investigative file, which includes the Director's interviews of XXXX District employees. The Director did not interview the Complainant or Teacher A. This investigation was never finalized.

Allegation 1 – Analysis and Conclusion

OCR's investigation identified concerns about the District's response to the reports that Teacher A allegedly discriminated against students with disabilities. In particular, the District did not complete an investigation into the Complainant's multiple complaints of disability discrimination until XXXXX after XXXX resigned, and it has not completed the disability discrimination investigation opened in XXXX. In addition, the District did not provide training about its disability discrimination policy and procedures to District administrators or School staff.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM),³ a complaint may be resolved before the conclusion of an investigation. OCR discussed resolution of Allegation # 1 with the District pursuant to Section 302 of the CPM. On November 12, 2021, the District executed the enclosed Agreement, which when fully implemented, will address the concerns regarding this allegation. The provisions of the Agreement are aligned with this allegation and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

³ <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

Allegation 2 – Factual Summary

The Complainant made verbal or written complaints to the Principal about Teacher A's discrimination of special education students throughout the XXXXX school year. Prior to XXXXXXXX, the Complainant made reports via email on XXXXX, and XXXXX. The Complainant said she made oral reports in XXXX, XXXX, XXXX, and XXXX.

The Complainant began her employment with the District in XXXXX. Prior to working for the District, the Complainant was a XXXX, with a total of XXXXX teaching experience. During the XXXXX and XXXXX school years, the Complainant was one of the School's XXXXXXXXXX.⁴ Under Minnesota law, the Complainant was considered XXXXXXX.

The District reported to OCR that administrators first discussed the Complainant's contract non-renewal at a staff planning meeting on XXXXXXX. The Principal conducted the Complainant's second performance observation of the school year on XXXXXXX. The Complainant said the Principal rated the Complainant XXXXXXX. The Complainant said when she asked the Principal about this rating, the Principal told the Complainant that it was because of the Complainant's "run in with [Teacher A]."⁵ The Complainant told OCR that she asked the Principal if she had received the rating because she had complained about Teacher A's alleged discrimination; the Principal denied this.

The Complainant's XXXXX evaluation provided by the District shows that the Complainant was rated XXXXXXX. In the Complainant's previous performance evaluations (one completed in the XXXXX and the two completed during the XXXXXXX school year) she received "Proficient" in all categories.

On XXXXXXX, the Principal notified the Complainant that her contract would be recommended for non-renewal for the XXXX school year. The Complainant reported to OCR that the Principal told her she was being "terminated" because the District was cutting costs and the Complainant did not have tenure. The District avers that the Complainant was not terminated, rather her contract was not renewed for the XXXXX school year due to a decrease in enrollment at the school and subsequent budgetary concerns.

According to the District, during the XXXX school year, the School was providing XXXXXXX students with special education services. The District expected a decrease to XXX special education students for the XXXXX school year. Due to this decrease, the District reduced the number of XXXXX for the XXXXX school year.⁶ The Complainant continued to work as a

⁴ The other teacher who worked with XXXXXXX.

⁵ District staff reported to OCR that at a XXXXXXX meeting the Complainant raised her voice to Teacher A.

⁶ XXXXX were hired at the School on the same date as the Complainant and were also considered probationary teachers at the time. One teacher resigned at the end of the XXXX school year, citing XXXXX concerns. The other teacher remains a special education teacher at the School.

special education teacher through the remainder of the XXXX school year. The Principal and Director told OCR that the Complainant's reports about Teacher A's alleged discrimination were not the cause for the non-renewal of the Complainant's contract.

On XXXXX, the school board officially voted to not-renew the Complainant's contract for the XXXXX school year and formally notified the Complainant. The District reported to OCR that the decision was made due to budgetary issues and "on-going" performance issues.⁷ The District reported that the school board voted against the renewal of XXXX other District employees on XXXXXXXX.

Allegation 2 – Analysis and Conclusion

The Complainant alleged that in XXXXXX, the District terminated her teaching contract with the District in retaliation for her repeated reports to District employees that Teacher A was discriminating against students with disabilities.

On at least XXXXXX and XXXXXX, the Complainant pointed out Teacher A's treatment of a student with a disability in emails to the Principal. Additionally, the Complainant allegedly verbally shared her concerns with the Principal about the treatment of Student A and other students with disabilities prior to XXXXX. Consequently, OCR has determined the Complainant engaged in protected activities of which the District had notice.

OCR found that the District took an adverse action against the Complaint when it declined to renew the Complainant's employment contract for the XXXXX school year. Finally, because the District's adverse action occurred after the Complainant engaged in protected activities, a causal connection exists. Accordingly, the evidence establishes a *prima facie* case of retaliation.

OCR next examined whether the District proffered a legitimate, non-retaliatory reason for its decision to not renew the Complainant's employment contract for the XXXXX school year. The District reported to OCR that upon assessing its staffing needs for the XXXX school year based on student enrollment, budgets, and other factors, the District found that its enrollment of students with disabilities at the School would be dropping to a point where the District did not require XXXXX. Under Minnesota state law non-tenured teachers, such as the Complainant, may be non-renewed at the end of a school year before they receive tenure as determined by the School Board. The Complainant had been a teacher at the District for XXX school years, and unlike most other teachers at the School, she was non-tenured and therefore subject to possible non-renewal at the end of the XXXXX school year. The administrators involved in the decision reported to OCR that the Complainant's reports about Teacher A's alleged discrimination were not a factor in their decision to not renew the Complainant's contract. The District did not renew the contracts of four other teachers for the 2021-2022 school year. OCR finds the District's

⁷ The District reported that during the XXXX school year, the District had concerns with the Complainant's XXXXX. The District also cited a "heated argument" between the Complainant and Teacher B in XXXXX.

justifications for non-renewal of the Complainant's contract for the XXXX school year to be both legitimate and non-retaliatory.

Based on the forgoing, OCR determined that by a preponderance of the evidence standard, the evidence is insufficient to establish that the District retaliated against Complainant as alleged in Allegation #2.

Overall Conclusion

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 one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, 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 has a right to appeal OCR's determination 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.

It is important for you to understand that the laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a complaint alleging such treatment. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

OCR would like to thank you and Zachary Cronen, Esq., for the cooperation extended during OCR's investigation of this complaint. If you have any questions regarding this letter, please contact me by phone at 312-730-1571 or by email at ann.cook-graver@ed.gov.

Supt. Jenson
OCR # 05-21-1284
November 15, 2021
Page 8 of 8

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure

cc: Zachary J. Cronen
Associate Attorney
Rupp, Anderson, Squires & Waldspurger, P.A.
zachary.cronen@raswlaw.com