



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

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May 3, 2023

Dr. Todd Stirn
Superintendent
Central Community Unit School District 301
275 South St.
PO Box 396
Burlington, IL 60109

Sent via email only to: todd.stirn@central301.net

Re: OCR Docket #05-23-1067

Dear Dr. Stirn:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities for the above-referenced complaint filed against the Central Community Unit School District 301 (District). Specifically, the complaint alleges that on October 27, 2022, the District retaliated against the Complainant and the Complainant's son (Student A) after the Complainant hired an advocate and requested documents relating to the provision of Student A's special education services by not allowing the advocate to be present for Student A's parent-teacher conference.

OCR enforces 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 also enforces 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. 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 Section 504 and Title II.

During its investigation, OCR reviewed information provided by the Complainant and the District and conducted an interview with the Complainant. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint allegation and OCR determined it was appropriate to do so pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On May 3, 2023, the District submitted to OCR the enclosed resolution agreement, which when fully implemented will address the evidence obtained and all of the allegations investigated. This letter summarizes the applicable legal standards, the information gathered during the investigation to date, and OCR's compliance concerns.

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

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, incorporates the procedural provisions applicable to Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), and prohibits a recipient from intimidating, threatening, coercing, or discriminating 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, proceeding or hearing under the regulation. The Title II regulation, at 28 C.F.R. § 35.134, also prohibits retaliation.

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; (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.

If all of the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

Facts

During the 2022-2023 school year, Student A was a XXXXXXXXXXXXXXXX enrolled in an XXXXXXXXXXXXXXXXXXXXXXXX at XXXXXXXXXXXXXXXX (School) in the District. Student A was determined to be eligible for special education and related services under the disability category of XXXXXXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXXXXXX was developed for Student A. In XXXXXXXX 2022, the Complainant hired an advocate (Advocate) to work with her on XXXXXXXXXXXXXXXX regarding Student A.

On XXXXXXXX 2022, XXXXXXXXXXXXXXXXXXXXXXXX contacted the Complainant to schedule Student A's parent-teacher conference (Conference). The Complainant responded the same day and asked whether her Advocate could also attend the Conference. XXXXXXXX responded that she was not familiar with this type of request and stated that she was copying the XXXXXXXXXXXXXXXXXXXXXXXX for guidance. The next day, XXXXXXXX 2022, the XXXXXXXX responded and informed the Complainant that the Advocate could attend the Conference, but stated that questions specifically related to Student A's XXX should be discussed during an XXXXXXXX, not the Conference. The District informed OCR that the XXXXXXXX response was not in accordance with District practice, and the XXXXXXXX should have informed the Complainant that the Advocate could participate in an XXX meeting to address any concerns about Student A's educational programming instead of allowing her to participate in the Conference.

The Conference was scheduled for the morning of XXXXXXXX 2022. The XXXXXXXX included herself and the XXXXXXXX on the Conference meeting invitation, as well as Student

A's XXXXXXXXXXXXXXXXXXXX. According to the District, the XXXXXXXXXXXX invited these individuals so that they could respond to any questions or concerns raised by the Advocate at the Conference.

On XXXXXXXX 2022, the Advocate requested information and documentation related to the District's provision of XXXXXXXXXXXXXXXXXXXX for Student A on behalf of Student A's parents.¹ According to the Complainant, the Advocate requested Student A's records because she believed that there was a discrepancy in Student A's XXXXXXXXXXXXXXXXXXXXXXXXXXXX. On XXXXXXXX 2022, the District's XXXXXXXXXXXXXXXX emailed the Advocate confirming receipt of the records request and also emailed XXXXXXXX to gather the requested records.

According to the District, on XXXXXXXX 2022, after the XXXXXXXXXXXX learned that the District's longstanding practice was for parent-teacher conferences to be between parents/guardians and teachers to focus solely on classroom updates and that any specific educational planning questions and concerns should be redirected to XXX meetings, the XXXXXXXX emailed the Complainant and notified her that the Advocate would not be allowed to attend Student A's Conference because the District does not allow advocates to participate in parent-teacher conferences.² In this email, the XXXXXXXX informed the Complainant that the Advocate was welcome to attend an XXX meeting to address any concerns about Student A's XXXXXXXXXXXXXXXXXXXX.

Student A's Conference was held on XXXXXXXX, 2022. The District acknowledges that although the Advocate was not allowed to attend the Conference, additional staff members who are part of Student A's XXXXXXXXXXXX and who would customarily participate in an XXX meeting, but not a parent-teacher conference, attended Student A's Conference. The District asserts that this was because the XXXXXXXX failed to inform the additional staff members that the XXXXXXXXXXXX had included on the Conference invitation that they should not attend the Conference. The Complainant stated that she was surprised by the number of XXXXXXXX present at the Conference and upset that the Advocate was not allowed to participate in the meeting given the additional staff members present and concerns she had about Student A's XXXXXXXXXXXXXXXXXXXX.

The XXXXXXXXXXXXXXXXXXXXXXXX processed the Advocate's records request and provided the Advocate and the Complainant with the relevant records on XXXXXXXX, 2022. The Advocate was invited to and attended Student A's XXX meeting in XXXXXXXX 2023.

Analysis and Conclusion

Based on the information gathered during OCR's investigation, OCR has concerns regarding the District's failure to conduct Student A's Conference consistent with its parent-teacher conference attendance protocol and the absence of a written policy to substantiate the District's asserted practice of limiting parent-teacher conferences to parents and guardians. OCR also has concerns that District staff members are unaware of the District's purported longstanding practice of

¹ The Section 504 regulation, at 34 C.F.R. § 104.36, specifically provides that recipients must provide "a system of procedural safeguards" that includes, in part, the opportunity for parents to examine relevant records.

² The Complainant told OCR that the Advocate had participated in parent-teacher conferences for other District students. The District denies that the Advocate participated in parent-teacher conferences and asserts that the Advocate participated in education planning meetings.

limiting advocate participation in parent-teacher conferences and instead directing advocates to participate in educational planning meetings such as IEP and 504 meetings.

In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of the investigation, the District expressed an interest in resolving the allegation and signed the enclosed resolution agreement. When fully implemented, the resolution agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue in the case. OCR will monitor its implementation until the District is in compliance with the terms of the resolution agreement and the statutes and regulations at issue. Upon determining the District's compliance, OCR will close the case.

This concludes OCR's resolution activities with regard to 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 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.

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

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Kevin McKeown and Jennifer Deutch, District Counsel. OCR looks forward to working with the District during the monitoring of the resolution agreement. If you have any questions regarding this letter, please contact Lauren Skerrett, Esq., at (312) 730-1601 or by email at Lauren.Skerrett@ed.gov.

Sincerely,

Melissa Katt
Supervisory Attorney

Enclosure

Cc: Kevin McKeown (*sent by email only to: kmckeown@hlerk.com*)
Jennifer Deutch (*sent by email only to: jdeutch@hlerk.com*)