



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Reference OCR #:06141627

Mr. Darren Webb, Superintendent
Lago Vista Independent School District
P.O. Box 4929
Lago Vista, Texas 78645

Dear Mr. Webb:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has reached its determination of a complaint, which was received in this Office on September 16, 2014, filed against Lago Vista Independent School District (LVISD) Lago Vista, Texas. The complainant alleged that the LVISD discriminated against her son (hereinafter referred to as “the student”) on the basis of his disability (Non-Verbal Autism), in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability.

This agency is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504, which prohibits discrimination on the basis of disability. OCR is also responsible for enforcing Title II. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The LVISD is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR had jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

OCR investigated the issue to determine whether the LVISD retaliated against the Student because the complainant filed a previous complaint with OCR, when faculty at LVMS did not returned the Student’s pottery art project and included demeaning and degrading pictures of the Student in the 2013-2014 yearbook, as prohibited by Section 504, and its implementing regulation at 34 C.F.R. § 104.61 [incorporating by reference the procedures for Title VI of the Civil Rights Act of 1964 found at 34 C.F.R. § 100.7 (e)], and Title II, and its implementing regulation at 28 C.F.R. § 34.134, which prohibit retaliation against any person engaged in a protected activity. OCR reviewed data provided by the LVISD, which included the LVISD’s policies regarding Section 504 and Title II, copies of the 2012-2013 and 2013-2014 school years yearbooks, information regarding the Student’s pottery art project and its processes for development of the

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yearbook at LVMS, information provided by the complainant, other relevant documentation and conducted telephonic conferences with the LVISD's legal counsel(s).

Legal Standards

In order to establish whether retaliation occurred, it is necessary for OCR to determine whether a *prima facie* case of retaliation can be established which consists of the following four elements: 1) the complainant was involved in a protected activity (that is, exercised a right or took some action that is protected under the Federal laws that OCR enforces); 2) the recipient was aware of the complainant's involvement in the protected activity; 3) the complainant was subjected to adverse action contemporaneously with or subsequent to the protected activity; and 4) there was a causal connection between the protected activity and the alleged adverse action(s). If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of these elements are established, OCR considers whether the recipient can identify a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for retaliation.

While OCR would need to address all of the elements in order to find a violation, OCR need not address all these elements in order to find insufficient evidence of a violation where the evidence otherwise demonstrates that retaliation cannot be established. Rather, if insufficient evidence is found with regard to any one of the elements, OCR can find insufficient evidence of a violation without engaging in unnecessary further investigation and analysis.

Findings of Facts and Analysis

The complainant filed a previous OCR complaint (OCR Ref# 06131724), which alleged that the LVISD discriminated against the Student based on his disability. An investigation of that complaint, OCR Ref# 06131724, resulted in the LVISD signing a voluntary agreement on March 17, 2014, prior to the conclusion of OCR's inquiry. The complainant filed this complaint of retaliation and alleged that the LVISD took the following adverse actions against the Student because of her participation in the previous OCR complaint.

The complainant advised OCR that she believes that the Student was retaliated against by LVMS staff because his clay pottery art project was never fired in the kiln and returned to the student during the 2013-2014 school year by his art teacher (AT). In addition, the complainant believes the Student was subjected to further retaliation when the yearbook teacher (YT/SET1) [who was initially the Student's special education teacher (SET1)] excluded the Student and two of his teachers' [special education teacher (SET2) and life skills teacher (LST)] individual portrait pictures from the 2013-2014 school yearbook but did include pictures of the Student that the complainant alleges were demeaning and degrading.

According to the complainant, one of the pictures of the Student included in the yearbook was demeaning as it depicted the Student sitting on the floor with his special education

teacher (SET2) “playing” with Legos while the other students were at a table engaged and working. The complainant contends that the circumstance depicted in the picture was a rare occurrence and that the Student was usually engaged in class like the non-disabled students pictured. Additionally, the complainant advised OCR that appropriate pictures of the Student that were provided to the YT/SET1 for inclusion in the yearbook by SET2 were intentionally not used by the YT/SET1. However, OCR’s review of the picture of the Student included in the yearbook by the YT/SET1 and described by the complainant as demeaning was determined not to be derogatory on its face and although it did not occur often, the complainant acknowledged that the Student did engage in this activity. As such, OCR did not include this incident in any further analysis of whether a *prima facie* case of retaliation was established.

Prima Facie Case of Retaliation

Protected Activity & Awareness: Established

As stated above, the complainant filed a previous complaint with OCR on September 20, 2013, which alleged denial of FAPE. The complainant also filed a complaint with the Texas Education Agency (TEA) around the same time that alleged that the Student had been subjected to inappropriate physical restraint by the YT/SET1, who was his special education teacher at that time. OCR resolved the complainant’s September 20, 2013 complaint through a voluntary resolution agreement with the LVISD, currently in monitoring. According to the complainant, TEA’s investigation of the physical restraint complaint concluded that the LVISD had not followed the required procedure(s) when it did not notify the complainant within 24 hours that the Student had been physically restrained on five different occasions. The complainant removed the Student for eight weeks after she learned of the inappropriate physical restraint the Student had been subjected to by the YT/SET1. Accordingly, OCR determined that the complainant was involved in a protected activity (i.e., filed previous OCR complaint) and the LVISD was aware of the complainant’s involvement in a protected activity (i.e., participated in the investigation and resolution of the previous complaint). Therefore, element #1 and #2 were satisfied for a *prima facie* case of retaliation.

Adverse Action: Established

The complainant further advised OCR that she returned the Student to school during December 2013, after the LVISD replaced the YT/SET1 with a new special education teacher, SET2. The complainant indicated that the SET2 provided the YT/SET1 pictures of the Student for inclusion in the 2013-2014 yearbook that the YT/SET1 determined to be unusable. The complainant also advised OCR that the YT/SET1 and the AT are close friends which is why she believes that the Student’s missing clay art project and the Student and two of his teachers (SET2 and LST) pictures being absent from the yearbook were intentional acts on the part of the YT/SET1 and the AT in retaliation for the complainant’s advocacy activities during the 2013-2014 school year. Although OCR could not definitively conclude that the photo of the student sitting on the floor with his special education teacher, the missing clay art project or the omission of the student’s two

teachers from the 2013-2014 LVMS' yearbook were adverse actions with the evidence available to date, OCR determined that the Student's individual portrait being omitted from the 2013-2014 yearbook was an adverse action that satisfied element #3 for a *prima facie* case of retaliation.

Causal Connection & Prima Facie Case: Established

The protected activity the complainant engaged in occurred on September 20, 2013 and ended with a voluntary agreement signed on March 17, 2014. Subsequently, the adverse actions alleged by the complainant occurred, later the same year, during the first semester of the following school year when the clay art project worked on by the student went missing. Therefore, OCR also determined that a causal connection between the protected activity of the complainant and the alleged adverse action(s) experienced by the student was established since the events occurred during a relatively close proximity in time and involved the same teacher. As such, element #4 for a *prima facie* case of retaliation was also satisfied.

Legitimate, Non-Discriminatory Reason

As part of the data requested, the LVISD rendered a written position statement which included their legitimate non-discriminatory reason(s) for the action(s) taken with regard to the adverse actions alleged by the complainant. Accordingly, OCR began preparing to conduct preliminary interviews with LVISD staff and collecting other necessary information in order to determine the validity of the proffered legitimate non-discriminatory reason afforded by the LVISD. However, On February 27, 2015, the LVISD expressed a desire to voluntarily resolve this complaint. Consistent with Section 302 of OCR's *Complaint Processing Manual*, LVISD submitted the enclosed Resolution Agreement (Agreement) signed on September 21, 2015, which OCR determined addresses the compliance issues raised and which when fully implemented, will resolve the allegations. OCR determined that the acceptance of the voluntary resolution agreement was appropriate at this stage in the investigation.

Accordingly, as of the date of this letter, OCR will cease all investigative action regarding this issue; however, OCR will actively monitor the implementation of the Agreement by the LVISD to determine whether the commitments made by the LVISD have been implemented consistently with the terms of the Agreement. If the LVISD fails to implement the Agreement, as specified, OCR will resume its investigation of the issue alleged. Based on OCR's monitoring of the implementation of the Agreement related to this issue, we are closing the investigative phase of this complaint in accordance with our case processing procedures.

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 the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is not intended, nor should it be construed to cover, other civil rights matters which may exist, but are not included herein.

Under OCR procedures we are obligated to advise the complainant and the institution against which a complaint is filed that intimidation or retaliation against a complainant is prohibited by the regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no 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 regulations enforced by OCR or because an individual has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

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.

If you have any questions regarding this letter, please contact Treslyn Patterson, the investigator assigned to your complaint, at (214) 661-9645 or by electronic mail to treslyn.patterson@ed.gov. You may also contact me at (214) 661-9608, or by email to paul.coxe@ed.gov.

Sincerely,

Paul Coxe
Supervisory General Attorney/Team Leader
Dallas Office

Enclosure