



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

July 3, 2018

Re: OCR Docket #06181207

Mr. Patrick D. Jenkins, Superintendent  
Saint Landry Parish School Board  
1013 East Creswell Lane  
Opelousas, Louisiana 70571

Via first class mail

Dear Mr. Jenkins:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint which was received in our office on January 16, 2018, and filed against the Saint Landry Parish School Board (Recipient or SPSB), in Opelousas, Louisiana. The Complainant alleged that the SPSB discriminated against XX---phrase redacted---XX (Student) on the basis disability XX---phrase redacted---XX and retaliated against the Student.

OCR is responsible for determining whether entities 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 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704 (amended 1992), and its implementing regulations at 34 C.F.R. § Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. Section 504 and Title II also prohibit retaliation. The SPSB is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR has jurisdiction to resolve this complaint under Section 504 and Title II.

OCR investigated the following legal issues:

1. Whether the SPSB discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by SPSB Staff, (e.g., XX---phrase redacted---XX), which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2017-2018 school year, in violation of Section 504 and Title II, at 34 C.F.R § 104.4, and 28 C.F.R. § 35.130, respectively.

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

2. Whether the SPSB discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student’s individual educational needs (e.g., XX---phrase redacted---XX), and thereby denied the Student a free appropriate public education (FAPE) during the 2017-2018 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.
3. Whether the SPSB retaliated against the Student by XX---phrase redacted---XX during the 2017-2018 school year, because the Complainant and the Student spoke to school administrators about XX---phrase redacted---XX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that a particular proposition is more likely than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict (for example, due to the lack of corroborating witness statements or additional evidence), OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In reaching our determination, OCR reviewed documents provided by the SPSB and information obtained during interviews with SPSB Staff. In addition, OCR interviewed the Complainant and reviewed information provided by XX---to end of sentence redacted---XX. Based on our review, OCR found insufficient evidence to support a conclusion of noncompliance with respect to Issues 1 and 3. Regarding Issue 2, the SPSB has voluntarily entered into a resolution agreement (Agreement) which, when fully implemented, resolves Issue 2. OCR’s review and analysis for each issue is explained below.

### **Issue 1**

Whether the SPSB discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by SPSB Staff, (e.g., XX---phrase redacted---XX), which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2017-2018 school year, in violation of Section 504 and Title II, at 34 C.F.R § 104.4, and 28 C.F.R. § 35.130, respectively.

### **Legal Standard:**

Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. According to OCR policy, a violation of Section 504 and Title II may be found if a recipient has created or fostered a disability-based hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on disability and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated incidents to create a disability-based hostile environment.

Further, a determination of whether conduct is “severe” or “pervasive” must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Section 504 and Title II if it has effectively caused, encouraged, accepted, or failed to correct a disability-based hostile environment of which it has actual or constructive notice.

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether a disability-based hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient’s response to harassing conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

**Findings of Fact:**

Evidence obtained by OCR indicates the Student was enrolled in the Magnet Academy for Cultural Arts (MACA) during the 2017-2018 school year. The Complainant alleges the Student’s XX---to end of sentence redacted---XX. The Complainant specified that the XX---phrase redacted---XX Teacher spoke to her classes about cheating and said she would XX---phrase redacted---XX to other students. Correspondence obtained by OCR indicates the Complainant e-mailed SPSB administrators in XX---phrase redacted---XX, indicating that the XX---phrase redacted---XX Teacher XX---to end of sentence redacted---XX. The Complainant also indicated XX---phrase redacted---XX told a MACA principal about this issue but that the issue was not addressed.

OCR interviewed SPSB Staff. According to the XX---phrase redacted---XX Teacher, she became aware that students in two of her XX---phrase redacted---XX class periods were sharing answers on tests. The XX---phrase redacted---XX Teacher stated she told her students about her concerns, and that she would monitor them more closely to ensure cheating did not continue. The XX---phrase redacted---XX Teacher stated she did not name or otherwise identify the students she suspected of cheating in the presence of other students. Further, the XX---phrase redacted---XX Teacher denied XX---to end of sentence redacted---XX. According to the MACA assistant principal (AP), the Student told her the XX---phrase redacted---XX Teacher accused a student of cheating in front of other students but did not identify XX---phrase redacted---XX by name. The AP and the MACA Principal stated they responded to the Complainant and Student’s concerns by questioning the XX---phrase redacted---XX Teacher about her comments to students regarding cheating. The XX---phrase redacted---XX Teacher reported that she did not identify any student. The Principal told OCR she spoke with XX---phrase redacted---XX who corroborated the XX---phrase redacted---XX Teacher’s assertion that she did not identify the

students she suspected of cheating. The Principal stated she also asked the XX---phrase redacted--XX to describe how the XX---phrase redacted--XX Teacher interacted with them. The Principal indicated XX---phrase redacted--XX felt the XX---phrase redacted--XX Teacher was sometimes XX---to end of sentence redacted--XX. The Principal did not indicate that any XX---to end of sentence redacted--XX. The Principal stated that based on the information she gathered, she did not believe the XX---phrase redacted--XX Teacher accused XX---to end of sentence redacted--XX.

On May 24, 2018, OCR contacted the Complainant to provide XX---phrase redacted--XX the opportunity to respond to the information provided by the SPSB. The Complainant stated the XX---phrase redacted--XX Teacher told students XX---phrase redacted--XX she would XX---to end of sentence redacted--XX. Further, the Complainant stated accusations of XX---phrase redacted--XX were part of a longer pattern of mistreatment by the XX---phrase redacted--XX Teacher who worked with the Student XX---to end of sentence redacted--XX.

### Analysis:

Based on the information above, OCR found a significant conflict in the evidence regarding whether the alleged conduct by the XX---phrase redacted--XX Teacher occurred. While the Complainant reported the XX---phrase redacted--XX Teacher told students she would XX---phrase redacted--XX, SPSB witnesses reported no such conduct occurred. Because OCR's investigation revealed no corroborating evidence of the XX---phrase redacted--XX Teacher's alleged conduct, OCR was unable to resolve this significant conflict in the evidence. Nor did the investigation reveal evidence of conduct by the XX---phrase redacted--XX Teacher resulting in a hostile environment based on disability as defined above. Accordingly, OCR determined there is insufficient evidence of a violation of Section 504 and Title II with respect to Issue 1.

### Issue 2

Whether the SPSB discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (e.g., XX---phrase redacted--XX), and thereby denied the Student a FAPE during the 2017-2018 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

### Legal Standard:

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define an "appropriate education" as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student's Section 504 plan, also

known as an “individualized education program,” or “IEP.” When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student’s needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student’s individual needs were or are being provided. If they have not been provided, OCR will determine the district’s reason for failing to do so and the impact of the failure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

Resolution:

Prior to the completion of OCR’s investigation, the SPSB notified OCR of its interest in voluntarily resolving the complaint. OCR’s case processing procedures provide that issues under investigation may be resolved at any time when, prior to the conclusion of OCR’s investigation, the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. On June 18, 2018, OCR approved the SPSB’s request to resolve Issue 2 prior to the conclusion of OCR’s investigation. The SPSB signed the attached Agreement on July 3, 2018, which OCR has determined addresses Issue 2 and, when fully implemented, resolves the issue. As of the date of this letter, OCR is closing the investigation of Issue 2. However, OCR will monitor implementation of the Agreement. If the SPSB fails to implement the Agreement, OCR will resume enforcement action with respect to Issue 2.

Issue 3

Whether the SPSB retaliated against the Student by XX---phrase redacted---XX during the 2017-2018 school year, because the Complainant and the Student spoke to school administrators about XX---phrase redacted---XX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

Legal Standard:

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) A prima facie case of retaliation can be established, which involves consideration of whether:
  - a. An individual experienced an adverse action caused by the recipient; and

- b. The recipient knew that the individual engaged in protected activity or believed the individual might engage in a protected activity in the future; and
  - c. There is some evidence of a causal connection between the adverse action and protected activity
- (2) The recipient identifies a facially legitimate reason for taking the adverse action other than the protected activity; and
- (3) Whether the recipient’s reason is a pretext for retaliation and/or whether multiple motives exist for the recipient taking the adverse action.

If OCR does not find that a *prima facie* case exists, OCR will conclude that there is insufficient evidence to support a finding of retaliation. If, however, the evidence demonstrates a *prima facie* case of retaliation, an inference of unlawful retaliation is raised and OCR proceeds to the next stage of the analysis. To ascertain whether this inference might be rebutted, OCR will then determine whether the recipient can identify a non-retaliatory reason for its actions. If such a reason is identified, OCR’s investigation proceeds to the third stage. At the third stage, OCR examines the evidence to resolve what the real reason was (or reasons were) for the intimidation, threat, coercion, or discrimination.

Findings of Fact:

The Findings of Fact for Issue 3 are the same as found under Issue 1 above.

As noted under Issue 1 above, on May 24, 2018, OCR contacted the Complainant to provide XX---phrase redacted---XX the opportunity to respond to the information provided by the SPSB. The Complainant reiterated XX---phrase redacted---XX retaliation allegation and stated XX---phrase redacted---XX felt the SPSB was “covering its tracks” with regard to SPSB Staff’s treatment of the Student.

Analysis:

OCR first determines whether the Student experienced an adverse action caused by the SPSB. As noted under Issue 1 above, OCR found a significant conflict in the evidence regarding the alleged adverse acts. While the Complainant reported that the XX---phrase redacted---XX Teacher XX---phrase redacted---XX Teacher denied she engaged in such acts. Because the investigation revealed no corroborating evidence of the XX---phrase redacted---XX Teacher’s alleged adverse action, OCR was unable to resolve this conflict in the evidence. Thus, the investigation did not establish by a preponderance of the evidence, a *prima facie* case of retaliation. OCR found insufficient evidence of a violation of Section 504 and Title II with respect to the Issue 3.

OCR’s determination should not be interpreted to address the SPSB’s compliance with any other statutory or 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. A 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 recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a complaint with OCR.

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, it 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 about this letter, you may contact Najwa-Monique Sharpe, the attorney assigned to investigate your complaint, at (214) 661-9642, or by e-mail at [najwa-monique.sharpe@ed.gov](mailto:najwa-monique.sharpe@ed.gov). You may also contact me at 214-661-9648 or by e-mail at [timothy.caum@ed.gov](mailto:timothy.caum@ed.gov).

Sincerely,

/s/

Timothy D. Caum  
Supervisory Attorney/Team Leader  
OCR, Dallas Office

CC: Wayne Stewart, Counsel for Saint Landry Parish School Board  
Via e-mail only (wstewart@hamsil.com)