



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

December 23, 2019

Dr. Don Coker, Superintendent
Ouachita Parish Schools
100 Bry Street
Monroe, LA 71201

Ref: 06-19-1758

Dear Dr. Coker:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the above-referenced complaint filed against the Ouachita Parish School Board (OPSB), Monroe, Louisiana, which was received by OCR Dallas on July 10, 2019. The complainant alleged that the OPSB discriminated against XXXX XXXX (Student 1) on the basis of sex (female) and disability (XX – phrase redacted – XX). The complainant also alleged that the OPSB retaliated against Student 1 and XXXX XXXX (Student 2) because she raised concerns of potential disability discrimination with the OPSB.

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 this Department are in compliance with Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by certain public entities, including elementary and secondary educational institutions. Further, the regulations implementing Title IX, at 34 C.F.R. § 106.71, and Section 504, at 34 C.F.R. § 104.61, incorporate by reference the prohibition against retaliation found in the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which provides, in relevant part:

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 section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under this part.

The regulation implementing Title II contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

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 OPSB is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational system. Therefore, OCR has jurisdiction to process this complaint to resolution pursuant to Title IX, Section 504, and Title II.

Issues Investigated

Based on the complaint allegations and OCR’s jurisdictional authority, OCR opened the following legal issues for investigation:

1. Whether the OPSB treated Student 1 differently on the basis of sex in the context of an educational program or activity and thereby interfered with or limited the ability of Student 1 to participate in or benefit from the services, activities, or privileges provided by the OPSB during the 2018-19 school year, in violation of Title IX, at 34 C.F.R. § 106.31.
2. Whether the OPSB discriminated against Student 1 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 2018-19 school year, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.
3. Whether the OPSB discriminated against Student 1 on the basis of disability by failing to appropriately evaluate Student 1’s need for regular or special education and related aids and services prior to making a change to the related aids and services identified as necessary to meet Student 1’s individual educational needs, and thereby denied Student 1 a FAPE during the 2018-19 school year, in violation of Section 504, at 34 C.F.R. § 104.33 and 104.35, and Title II, at 28 C.F.R. § 35.130.
4. Whether the OPSB discriminated on the basis of disability during the 2018-19 school year when it failed to provide the complainant notice of procedural safeguards prior to implementing changes to the Student’s IAP, in violation of Section 504, at 34 C.F.R. § 104.36, and Title II, at 28 C.F.R. § 35.130.
5. Whether the OPSB retaliated against Student 1 by XX – phrase redacted – XX because the complainant raised concerns that Student 1’s IAP had not been implemented by XXXX XXXX XXXX staff, in violation of Section 503, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.135.
6. Whether the OPSB retaliated against Student 2 during the XXXX XXXX semester because Student 2 reported concerns regarding XX – to end of phrase redacted – XX, in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.135, when the paraprofessional:

XX – remainder of paragraph redacted – XX.

As a preliminary matter, 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 that it is more likely than not that unlawful discrimination occurred). Where 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 its investigation of this complaint, OCR reviewed information provided by the complainant and the OPSB. OCR also interviewed the complainant and OPSB witnesses. Finally, OCR followed up with the complainant to offer her the opportunity to provide additional information to support her allegations. Based on a careful review of the evidence obtained during OCR’s investigation, OCR has determined that the evidence is insufficient to support a finding of noncompliance with Title IX, Section 504, or Title II, with respect to Issues 1, 5, and 6. Prior to OCR concluding its investigation and making a compliance determination regarding Issues 2 through 4, the OPSB requested to voluntarily resolve these issues. An explanation of the legal standards applicable to the issues under investigation, OCR’s findings with respect to Issues 1, 5, and 6, and OCR’s resolution of Issues 2, 3, and 4, is provided below.

Resolution – Issues 2, 3, and 4 (FAPE/Disability Discrimination)

Background

During the XXXX XXXX school year, Student 1 was a – XX – to end of sentence redacted – XX. Documentation provided by the OPSB reveals that the OPSB has determined that Student 1 requires related aids and services because of XX – to end of sentence redacted – XX. The OPSB has developed an “Individual Accommodation Plan” (IAP) which identifies the related aids and services determined necessary to meet Student 1’s individual educational needs.

The OPSB reported to OCR that, in addition to a districtwide Section 504 Coordinator, the OPSB has designated a separate Section 504 Coordinator for XXXX. OCR reviewed the OPSB’s records reflecting the OPSB’s evaluation history of Student 1 and also interviewed the XXXX Section 504 Coordinator (504 Coordinator).

XX – remainder of Background redacted – XX.

Legal Standards

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’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special

education or related services (or may need a change in services). As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations, including re-evaluations. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

Further, the Section 504 regulations, at 34 C.F.R. § 104.36, provide that:

[a] recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by counsel, and a review procedure.

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.

Analysis and Resolution

OCR’s preliminary investigation of Issues 2, 3, and 4 identified concerns that the OPSB did not evaluate Student 1 pursuant to Section 504’s procedural requirements. It appears based on the information received by OCR that the OPSB did not consider information from a “variety of sources” prior to making a determination regarding appropriate related aids and services for Student 1, nor were the determinations made by a “group of persons.” Moreover, OCR has concerns that the Student’s parents were not provided with the procedural safeguards required pursuant to Section 504, as XX – to end of sentence redacted – XX. Finally, OCR has some concerns that the related aids and services identified as necessary to meet Student 1’s needs – as reflected in her IAP – were not consistently provided in the same manner by all of her teachers.

Prior to OCR concluding its investigation of these issues and making a compliance determination, the OPSB requested to voluntarily resolve the concerns identified by OCR during its investigation. Section 302 of OCR’s *Case Processing Manual* (CPM) provides that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination, the recipient expresses an interest resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. The CPM further states that the provisions of the resolution agreement will be tied to the allegations and the evidence obtained during OCR’s investigation, and will be consistent with applicable regulations.

On December 17, 2019, the OPSB executed a Voluntary Resolution Agreement (Agreement) to resolve the concerns identified by OCR during investigation. A copy of the Agreement is enclosed with this letter. The provisions of the Agreement are aligned with the complaint allegations and information obtained during OCR’s investigation. OCR has determined that, upon full implementation, the Agreement resolves these complaint allegations. Accordingly, as of the date of this letter, OCR is closing its investigation of these issues. OCR will monitor the OPSB’s implementation of the Agreement.

OCR Findings – Issue One

Background

XX – Background redacted - XX

Legal Standard

The Title IX implementing regulation, at 34 C.F.R. § 106.31, prohibits recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by

the recipient because of the individual's sex. In considering allegations that a recipient has discriminated on the basis of sex, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of sex, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of sex discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another sex. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for sex discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Analysis and Conclusion

OCR received conflicting information regarding this allegation from the complainant and OPSB witnesses. XX – sentences redacted – XX. Accordingly, OCR determined that the evidence is insufficient to support a finding that the OPSB discriminated against Student 1 on the basis of her sex in violation of Title IX.

OCR Findings – Issue Five

Background

XX – Background redacted – XX

Legal Standard

OCR interprets the regulations it enforces, consistent with case law regarding analogous provisions, to require satisfaction of the following three elements to find a *prima facie* case of retaliation:

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.

An act of intimidation, threat, coercion, or discrimination constitutes adverse action for the purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes and regulations enforced by OCR. Under

that perspective, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Whether an action is adverse is judged from the perspective of a reasonable person in the complainant’s position.

Although all three elements must exist to establish a *prima facie* case, OCR need not address all three elements if it determines one is missing. 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 reason was (or reasons were) for the intimidation, threat, coercion, or discrimination.

Analysis and Conclusion

OCR’s investigation corroborated that Student 1 XX – to end of sentence redacted – XX. Further, OCR’s investigation corroborated that, prior to XX – phrase redacted – XX, the complainant had raised concerns regarding implementation of accommodations in Student 1’s IAP with her Principal. OCR’s investigation revealed that these concerns were raised with the Principal approximately one to two months prior to XX – to end of sentence redacted – XX. Accordingly, for purposes of establishing a *prima facie* case of retaliation, OCR has determined that Student 1 experienced adverse actions, that the OPSB had knowledge of the complainant’s protected activity, and that, due to the proximity in time between the adverse actions and protected activity, a causal connection is inferred.

Because a *prima facie* case of retaliation is supported by a preponderance of the evidence, OCR must next determine whether the OPSB has identified non-retaliatory reasons for the adverse actions. If non-retaliatory reasons are offered by the OPSB, OCR must analyze the evidence to determine whether the reason offered is a pretext for unlawful retaliation. Here, the OPSB offered non-retaliatory reasons for Student 1’s XXXX: [phrase redacted]. XX – sentences redacted – XX. Accordingly, OCR has determined that the evidence is insufficient to support a finding that the OPSB retaliated against Student 1 in violation of Section 504 or Title II with respect to Issue 5.

OCR Findings – Issue Six

Background

XX – Background redacted – XX

Legal Standard

In determining whether the OPSB retaliated against Student 2 in violation of Section 504 or Title II, OCR applies the same legal standard stated in the above discussion of Issue 5.

Analysis and Conclusion

The first step in OCR’s retaliation analysis is to determine whether Student 2 experienced adverse actions caused by the recipient. OCR’s investigation did not corroborate that XX – to end of sentence redacted – XX. Accordingly, OCR determined that the preponderance of the evidence does not support a finding that Student 2 was subjected to an adverse action XX – to end of sentence redacted – XX.

XX – paragraph redacted – XX

XX – paragraph redacted – XX

As explained above, for purposes of establishing a *prima facie* case of retaliation, an action is “adverse” if is likely to dissuade a reasonable person in the complainant’s position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes and regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. OCR determined that XX – phrase redacted – XX did not cause any tangible harm to Student 2. Considering the context in which the statement was made – XX – phrase redacted – XX – OCR has determined that the mere statement is minor and would not dissuade a reasonable person from engaging in further protected activity. Accordingly, OCR has determined that the evidence is insufficient to support a *prima facie* case of retaliation with respect to Issue 6.

Conclusion

As discussed in further detail above, the OPSB requested to voluntarily resolve issues 2 through 4 pursuant to Section 302 of OCR’s CPM. Regarding Issues 1, 5, and 6, OCR has determined that the evidence is insufficient to support a finding of discrimination or retaliation in violation of Title IX, Section 504, or Title II with respect to these issues.

This letter concludes OCR’s consideration of Issues 1, 5, and 6. OCR will take no further action regarding these issues as of the date of this letter. This letter should not be interpreted to address the OPSB’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. The complainant may file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR’s findings of insufficient evidence with respect to Issues 1, 5, and 6 within 60 calendar days of the date indicated on this letter.¹ 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

¹ The complainant does not have the right to appeal those issues resolved with the OPSB pursuant to Section 302 of OCR’s CPM (Issues 2, 3, and 4).

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 OPSB. The OPSB has the option to submit to OCR a response to the appeal. The OPSB must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the OPSB.

Regarding Issues 2, 3, and 4, the OPSB submitted the enclosed Agreement, which was signed by the OPSB on December 17, 2019. Based on the commitments the OPSB has made in the Agreement, OCR has determined that it is appropriate to close the investigation of this complaint. The OPSB has agreed to provide data and other information demonstrating implementation of the Agreement in a timely manner in accordance with the reporting requirements of the Agreement. OCR will not close the monitoring of the Agreement until it has determined that the OPSB has complied with the terms of the Agreement and is in compliance with Section 504 and Title II. Should the OPSB fail to fully implement the Agreement, OCR will take appropriate action to ensure the OPSB's compliance with Section 504 and Title II, including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the OPSB written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Please be advised that the OPSB 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 another 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, 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.

OCR would like to thank you and your staff for your cooperation throughout OCR's investigation of this complaint. If you have any questions or concerns regarding this letter, please contact Rachel E. Caum, Attorney, at (214) 661-9632, or at rachel.caum@ed.gov. You may also contact me, at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

/s/

Lori Howard Bringas
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement

cc: XXXX XXXX, XXXX XXXX (*email only*)