



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

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

March 26, 2020

Mr. Dan Caesar
Houston Regional Superintendent
XXX

Ref: #06-20-1078

Dear Mr. Caesar:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the KIPP Houston (District), Houston Texas, which was received on October 15, 2019. The Complainant alleged that the District subjected XXX to retaliation, because XXX advocated on behalf of XXX XXX (Student) as a student with a disability. Specifically, the Complainant alleged that the District retaliated against XXX by not moving forward with District internal grievances following XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX XXX.

This agency 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. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits 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 regulation 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, including public elementary and secondary educational institutions.

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

Based on the Complainant’s allegation and OCR’s jurisdictional authority, OCR investigated the following legal issue:

Whether the District retaliated against the Complainant by failing to resume processing grievances that XXX filed using the District’s internal grievance procedures, following XXX XXX XXX XXX XXX XXX in XXX XXX, because XXX advocated on behalf of the Student as a student with a disability, in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.13.

During our complaint resolution proceedings, OCR collected and analyzed information provided by the Complainant and the District, including pertinent policies, procedures, and grievance records. OCR also provided the Complainant with the opportunity to respond to information provided by the District.

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.

Background

The Complainant alleged that the District subjected XXX to retaliation by failing to process various grievances that XXX filed using the District's internal grievance procedures, because XXX advocated for the Student as a student with a disability. The Complainant and the District provided information reflecting that the Complainant advocated for the Student's disability-related rights in multiple communications with the District prior to the grievances at issue in this complaint. According to the Complainant, XXX active grievances were abated by the District pending XXX XXX XXX XXX XXX XXX XXX by the District on XXX XXX XXX with the XXX XXX XXX XXX XXX. The XXX was dismissed on XXX XXX XXX. However, the Complainant maintained that the District failed to resume processing the grievances following the conclusion of XXX XXX.

In an email dated XXX XXX XXX, the District informed the Complainant that XXX grievances were abated until the conclusion of XXX XXX XXX XXX. Additionally, in its initial response to OCR regarding this complaint, the District maintained that following the dismissal of the XXX XXX XXX XXX, the Complainant did not indicate to the District that XXX wished to proceed with the abated grievances. Therefore, the District did not conclude its processing of some of XXX grievances, which it indicated were dismissed as moot. There was no indication that the District provided the Complainant notice of its decision that the grievances were moot.

Analysis

OCR's investigation to date reveals that the Complainant engaged in protected activities under the laws enforced by OCR and that the District had notice of XXX protected activities. Additionally, the District acknowledges that it did not conclude its processing of XXX grievances that had been abated. Although the District states that its reason for doing so was because the Complainant did not reinstate the grievances, which it determined were moot, the District's failure to conclude the processing of the grievances, or to provide the Complainant with a written notice of its determination that the grievances were moot, appears to be inconsistent with the District's policy. While OCR has not reached a determination regarding the issue investigated at this time, OCR has concerns regarding the processing of the Complainant's grievances.

Resolution

OCR's *Case Processing Manual*, Section 302, states 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 in 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. After the investigation of this complaint began, but before OCR reached an investigative compliance determination, the District expressed a desire to voluntarily resolve the complaint, and OCR determined that resolution of the complaint was appropriate.

The District submitted the enclosed Resolution Agreement (Agreement) to memorialize the steps that it will take to resolve the compliance issue raised by the complaint allegation. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance issue raised by the complaint allegation. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the District's efforts to implement the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

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. The Complainant has been notified of this action.

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.

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 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, 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 Tamara Williams, the OCR Investigator assigned to this complaint, at (214) 661-9607, or at tamara.williams@ed.gov. You may also contact me at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

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

Enclosure (as stated)