



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
ARIZONA
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NEW MEXICO
UTAH
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May 26, 2017

Jody Johnson
Superintendent
Pointe Schools
5940 West Union Hills Drive, Suite B-100
Glendale, Arizona 85308

Re: **Pointe Schools**
OCR Complaints 08-16-1024, 08-16-1424, and 08-16-1427

Dear Ms. Johnson:

The U.S. Department of Education, Office for Civil Rights, (OCR) received the following three complaints of discrimination against the Pointe Schools, with the above referenced case numbers:

Complaint number 08-16-1024 was received in OCR on October 20, 2015. The Complainant (the Father) alleged that Pointe Schools retaliated against him for participating in his son's (Student) educational disability lawsuit against Pointe Schools. Specifically, the Complainant alleged that Pointe Schools refused to provide the Student transportation to his daycare provider because of the Complainant's participation in the lawsuit.

On August 9, 2016, OCR received two complaints of discrimination against Pointe Schools (Pointe). In Case Number 08-16-1424, the Complainant (the Father) alleged that Pointe retaliated against him for participating in his son's (Student) educational disability lawsuit against Pointe Schools. Specifically, the Father alleged that because of his participation in the lawsuit, Pointe Schools refused to provide the Student transportation to his educational placement at Aurora Day School and issued the Father threatening emails.

In the second August 9, 2016 complaint - Case Number 08-16-1427, the Complainant (the Mother) alleged that Pointe Schools retaliated against her for participating in her son's (Student) educational disability lawsuit against Pointe Schools. Specifically, the Mother also alleged that because of her participation in the lawsuit, Pointe Schools refused to provide the Student transportation to his educational placement at Aurora Day School. Additionally, the Mother alleged that, in retaliation, Pointe Schools issued her threatening and non-responsive emails, refused to comply with her request to hold an August 2016 Individual Education Program (IEP) meeting at Aurora Day School, and refused to notify Aurora Day School representatives of the IEP meeting.

We determined that we had the authority to investigate these allegations consistent with our complaint procedures and applicable law.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of a public entity. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504, and Title II are protected from retaliation or intimidation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. Pointe Schools receives Federal financial assistance from the Department and is a public entity, and is therefore subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Legal Standard

Under the implementing regulations, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Section 504 and Title II. In analyzing a retaliation claim, we first determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Section 504 and Title II or believed the individual might engage in a activity protected by Section 504 and Title II in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation.

Background

OCR opened an investigation of each complaint identified previously in this letter, and contacted Pointe Schools to obtain information. Pointe Schools provided its responses to our data requests. Based on the data from both Pointe Schools and the Complainants, we established that the Complainants had engaged in a long-running disability education dispute and lawsuit with Pointe Schools, which is ongoing, and in which a court ordered Pointe Schools to pay for the Student's private placement, transportation to that placement and the Complainants' attorney's fees. Additionally, the Student's IEPs consistently included transportation as a related service.

Facts

Case: 08-16-1024

OCR established in this case that Pointe Schools provided curb to curb transportation from the parents' homes to the out of school placement for the Student alternating between the mother's home and father's home each day. The Complainant requested a transportation delivery location change for after school transportation for one specific day early in the 2015-16 school year. Pointe Schools agreed and provided that transportation to a different location other than the mother's home on that requested day. The parents then asked Pointe Schools to transport the

Student on the mother's days each week to a developmental day care program rather than her home. Pointe Schools denied the parents' request to change the Student's transportation delivery location on the mother's days.

Cases: 08-16-1424 and 08-16-1427

The evidence OCR collected thus far shows that at an IEP meeting in March 2016, it was agreed upon by the team, including by the parents, that transportation as a related service would be removed from the Student's IEP. Pointe Schools subsequently developed a written transportation policy for students with disabilities, which provided that Pointe Schools would not provide transportation to a student if it was not included in a student's IEP as a related service. Pointe Schools then informed the Complainants that the Student would not receive transportation for the 2016-17 school year because transportation was no longer a related service in his IEP. Pointe Schools asserts that the court order was no longer in effect, and that once it was removed from the IEP, Pointe Schools was no longer obligated to provide transportation to the Student. The Complainants assert that because a court had ordered Pointe Schools to provide transportation, Pointe Schools was obligated to provide the transportation regardless of whether it was in the IEP as a related service, and that Pointe Schools ceased to provide transportation to the private placement in retaliation for their participation in the lawsuit, and in particular based on a court decision that was rendered in the parent's favor in July 2016. Although Pointe Schools asserts that it had been in the process of developing a transportation policy for students with disabilities for several months, including prior to July 2016, and that it was unrelated to the parent's participation in the disability lawsuit, we recognize that these incidents, on their face, are adverse actions that appear to have a causal connection due to their close proximity with the protected activities.

Case: 08-16-1424

The father also alleged that Pointe Schools sent him threatening emails in retaliation for his participation in the lawsuit. The evidence collected thus far shows that after the father was notified that Pointe Schools would no longer provide transportation to his son, he sent several emails to Pointe Schools' staff. Pointe Schools in return sent an email to the father, which the father considered threatening.

Case: 08-16-1427

The mother also alleged that Pointe Schools issued her threatening and non-responsive emails, refused to comply with her request to hold an August 2016 IEP meeting at Aurora Day School, and refused to notify Aurora Day School representatives of the IEP meeting in retaliation for her participation in the lawsuit. The evidence collected thus far shows that after the mother was notified that Pointe Schools would no longer provide transportation to her son, a series of emails were sent between the mother and Pointe Schools' staff, which the mother considered threatening and non-responsive. Additionally, Pointe Schools did not hold the August 2016 IEP meeting at the Aurora Day School, but did ultimately notify the Aurora Day School representatives of the IEP meeting, which they attended.

Request to voluntarily resolve allegations

During the course of the investigation, Pointe Schools contacted us and expressed interest in taking action to resolve the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues, and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

Additional information needed

At this time, we would need additional information in order to make a determination as to whether Pointe Schools retaliated against the parents. Regarding the alleged refusals to transport the Student to an alternative after school location and later to provide any transportation services, we would need to conduct interviews with school staff members, gather additional evidence regarding transportation services provided to students by Pointe Schools, and evaluate whether Pointe Schools position on this matter is legitimate and non-retaliatory or a pretext for prohibited retaliation.

Regarding the alleged threatening emails to the father and mother, we would need to conduct interviews to determine the reason(s) Pointe Schools sent the type of emails it sent and whether it had sent similar emails to other parents or guardians. Similarly, we would need to conduct interviews to determine the reasons Pointe Schools did not allegedly honor the Mother's request for the IEP meeting to be held at Aurora Day School, and the reason it did not initially invite the Aurora Day School representatives, to determine if they are legitimate non-retaliatory reasons, or a pretext for retaliation.

Conclusion

Since Pointe Schools expressed willingness to enter into an agreement that would wholly address the specific issues raised in the complaints we determined that it was appropriate to enter into an agreement without completing the investigation.

We drafted a Resolution Agreement ("the Agreement") and met with Pointe Schools to discuss it. On April 13, 2017, we received the signed Agreement, a copy of which is enclosed.

When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from Pointe Schools demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If Pointe Schools fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of these complaints and should not be interpreted to address Pointe Schools' compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that Pointe Schools 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.

This letter sets forth OCR's determination in these individual cases. 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.

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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions or concerns, you may contact Virginia Wilson-Cobble or Ginger Yee, the attorneys assigned to these complaints, respectively at (303) 844-4538 or (303) 844-4556 or Virginia.Wilson-Cobble@ed.gov or Ginger.Yee@ed.gov.

Sincerely,

/s/ Ginger Yee for

Virginia Wilson-Cobble
Designated Team Leader

Enclosure

cc: Diane Douglas
Arizona Superintendent of Public Instruction (without enclosure)