



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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November 20, 2017

Dr. Jodi Johnson, Superintendent  
10215 North 43rd Avenue  
Phoenix, Arizona 85051

*By email only to [jjohnson@pointeschools.org](mailto:jjohnson@pointeschools.org)*

Re: Pointe Schools  
Case Number: 08-17-1267

Dear Superintendent Johnson,

We are notifying you of our decision in this case. The Complainant alleged that the School retaliated against her for advocating on behalf of her disabled daughter (Student). Specifically, the Complainant alleged that the School retaliated by restricting the Complainant's access to campus on December 9, 2016.

Through this investigation, OCR determined that the preponderance of the evidence supports a conclusion that the School retaliated as alleged. Upon being advised of these findings, the School voluntarily agreed to enter into a resolution agreement to resolve the matter. A copy of the signed agreement is enclosed with this letter.

We initiated an investigation of this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; 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 by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the School is subject to these laws and regulations. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134.

In reaching a determination, OCR reviewed documents provided by the Complainant and the School, and interviewed the Complainant and School staff.

### **Background**

In May 2016, the Complainant enrolled her three daughters in the School, a K-6 school. Though each of the Complainant's daughters was receiving special education services pursuant to an Individualized Education Program (IEP) created at a previous school district, the advocacy for

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

which the Complainant alleged she was retaliated against for was for her eldest daughter (the “Student”), a fourth grader during the 2016-2017 school year.

On or about September 8, 2016, the Complainant began questioning the Student’s resource teacher, classroom teacher, and the School’s Director of Special Programs (the “ Director”) about the Student’s IEP and whether or not her IEP was being implemented fully. Specifically, the Complainant asked whether the School was implementing provisions in the IEP that provided for access to an amplification device in the classroom, a Velcro strip under the Student’s desk to help with attention, and the breaking down of assignments into smaller parts to help with processing specific information, among others.

Over the next two months, from approximately September 8th to November 7, 2017, the Complainant attended several formal and informal meetings where the Complainant continued to raise issues over the perceived failure of the School to adequately implement the Student’s IEP accommodations. In addition to meetings meant to respond to her concerns over the alleged failures, and to review the IEP accommodations generally (appropriateness, the meaning, and the individual responsible for implementation); the Complainant also sent 37 emails to different recipients raising her concerns despite the meetings.

In an email on November 7, 2016, the Executive Director (the “ED”) informed the Complainant that moving forward the Complainant’s primary contact was changed from the Director to the Principal of the School. The ED explained that while the Complainant could communicate with the Director or any teacher, he asked that the Complainant make sure the Complainant include the Principal in any request or concern that the Complainant communicated to others.

On November 28, 2016, an incident occurred that was unrelated to the Complainant’s advocacy for the eldest daughter, but which provided the basis for an escalation to the communication protocol. The Complainant’s youngest daughter, the six-year old, removed her uniform skirt while at school and was only wearing a one-piece sheer undergarment. After picking up the child, while in the office the Complainant reported the skirt incident to the Principal. The Principal indicated she would look into the matter to understand what occurred. Despite the Principal’s assurance, the Complainant later emailed the child’s resource teacher at 4:29 p.m., copying the Principal, Vice Principal, and ED on the email. In the email, the Complainant stated that she was very concerned that the child had no skirt on, and then asked the resource teacher to explain what happened.

Shortly after the Complainant’s email, on the same evening, the ED emailed the Complainant a response and informed the Complainant that “because you have continued harassment of my employees with endless complaints, you will no longer be permitted to communicate either in person, or electronically with any Pointe Schools other than myself.”

The ED then emailed the Complainant two weeks later on December 9, 2016, informing the Complainant that because “you have chosen to ignore my previous directives, you are no longer permitted on our campus unless I have approved your visit in advance.” The ED continues, saying that the Complainant is permitted to drop off and pick up her children so long as she remains in her vehicle.

On December 12, 2017, the Complainant withdrew her children from the School.

### Analysis and Conclusion

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Section 504 or Title II. In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 or Title II of which the recipient had knowledge; the recipient took adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, whether the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

There is no dispute by either party that the Student is disabled. Furthermore, the School does not dispute that prior to restricting the Complainant's access to campus on December 9, 2016, that the Complainant had advocated for the Student and her disability-related needs. We therefore conclude that the Complainant engaged in protected activity of which the School had knowledge.

Also, we determined that the Complainant was subject to an adverse action when the School emailed her On December 9, 2016 to notify her of the campus restriction. We are further able to infer that a causal connection exists based on the close proximity in time between the Complainant's advocacy efforts and the School's action of restricting access on the campus.

Because we find that a causal connection can be inferred between the protected activities and the adverse action, we sought to determine whether the School has a legitimate, non-retaliatory, non-pretextual reason for its actions.

The School explained that it sent the restriction email because, despite many requests, the Complainant was unable to "normalize" her communications, continued to disregard the ED's previous directives, that as of November 28th she had ignored the ED's pleas and continued to confront school personnel about accusations that were resolved, and at the time of the December 9th email "continued to 'harass' school personnel through visits, emails, and phone calls." The School explained the determination to restrict the Complainant's access was made consistent with School policies and procedures; which are included in the student handbook.

We reviewed the handbook excerpt the School referenced. The excerpt titled, "Secure Campus," provides that the Principal has the authority to restrict parent access to the campus if in his/her opinion it is not in the best interest of the educational environment.

We determined the reason provided by the School for limiting the Complainant's access to campus was a legitimate and non-retaliatory justification. We next sought to determine whether the School's justification was a pretext for retaliation.

In evaluating the Schools stated reasons for restricting the Complainant's access, we reviewed the frequency, type, and tone of any communication or contact the Complainant had with School staff and administrators, as well as interviewed staff that may have information relating to the

ED's assertions that the Complainant "harassed" school personnel through visits, emails, and phone calls.

We requested the School provide all correspondence it believes support its assertion that the Complainant "harassed" school personnel. Although the Complainant provided copies of 53 emails she sent between September 8th, and the date she was restricted from campus (December 9th), the School only responded with copies of four email communications sent by the Complainant between November 7th and November 28th, the dates the ED directed that the Complainant's primary contact had been changed from the Director to the Principal and the date the ED restricted the Complainant's communications to him alone, respectively. We reviewed the emails. One was a brief email dated November 28th where she expressed her concern about her daughter not having a skirt on when she picked her up, requesting for an explanation. Another was a November 17th email briefly inquiring whether a decision had been made regarding a scheduled meeting. Finally are two November 15th emails, both of which the Complainant requested for written documentation explaining the District's reason for not accommodating the Student in a particular way during the 1st quarter. With respect to language in the emails where the Complainant demanded a "written explanation" for not implementing accommodations and for "dated factual logs," we provided the Complainant an opportunity to explain her request. The Complainant explained that even though the School had addressed implementation issues in the past, she felt the School should provide them in order to justify the School's recommendation in a draft IEP to remove the same accommodations from the Student's IEP. Although it appears the Complainant acknowledged that this issue was raised several times, we note that based on the Complainant's explanation, the Complainant's 4 email communications provided by the School were neither inappropriate nor harassing.

We also interviewed the ED, the Vice Principal (acting Principal for most of the time), the Director, and a teacher.

The ED explained that his use of the term "harass" was his interpretation of the situation, and that it was never used by staff during the relative time period. The ED deferred to the Vice Principal, the Director, and to teachers to provide an explanation of the types of behaviors the Complainant may have engaged in between August 2017 and December 9, 2017 that would justify the decisions to first limit the Complainant's communications, and then to restrict the Complainant's access to campus.

In interviews with the Principal, the Director, and a teacher, although each of them expressed generally that the Complainant had emailed too often, and that in several meetings between September and December 2017 the Complainant would interrupt meeting members while continuing to raise concerns that they felt had been adequately addressed several times over, none of them could recall a particular incident after November 28, 2017 that was sufficient to restrict the Complainant's access to the campus. The teacher recalled that her last communication with the Complainant occurred on or near October 11th, two months prior to the campus restriction. The Director could not recall an incident when the Complainant had acted inappropriately, other than by approaching her during an event at the School when she was with her own family. Additionally, the Director stated that after November 7th, the Complainant only courtesy copied her on a few emails when contacting the ED or the Vice Principal, as required by

the communication protocol the ED put in place on November 7th. The Vice Principal indicated that the Complainant had at times stated to staff that she “knew professionals” and that the Complainant would also make comments through the fence to staff during break-outs. However, with the exception of the Complainant’s contact in the office concerning the pants incident involving the Complainant’s other child on November 28th, the Vice Principal could not recall any instance when the Complainant had come on campus since November 7th and spoke to, or confronted staff. In fact, the Vice Principal reported she was “shocked” to learn that the Complainant had been restricted from campus.

The School was also asked to provide examples of other parents, if any, who were similarly restricted from the campus for similar reasons in the past three years. The School stated that while it had limited electronic access for parents due to safety concerns, this was the first and only time a parent’s access was limited “due to the amount of time the parent absorbs from school personnel resulting in their ability to do their job.” We note that the reason provided, the “amount of time the parent absorbs,” directly contradicts the School’s stated reason for restricting the Complainant’s access on campus, that the Complainant “harassed school personnel through visits, emails, and phone calls.” Especially in light of the fact that the “time” referenced by the School in this instance refers to time committed to address IEP implementation concerns.

Based on the evidence, we determined that while the School may have been justified in establishing a communication protocol on November 7th based on the amount of email to different recipients, the reason and supporting evidence provided by the School for restricting the Complainant’s communication on November 28th to the ED and to limiting the Complainant’s access to campus on December 9th, was a pretext for retaliation. Moreover, we conclude that the action of the School was meant to have a chilling effect on the Complainant’s efforts to assert her rights under Section 504 and Title II. Thus, we found the School retaliated against the Complainant on December 9, 2016, when it restricted the Complainant’s access to campus.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient’s implementation of the enclosed resolution agreement (Agreement) to ensure that the commitments made are implemented timely and effectively and that the recipient’s policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, all of the compliance concerns found in this investigation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the School fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This concludes OCR’s investigation of this complaint and should not be interpreted to address the School’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The 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 School 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 Complainant 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.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

If you have any questions, please contact XXXX, Equal Opportunity Specialist at XXXX or by email at XXXX , or me at XXXX.

Sincerely,

Thomas M. Rock  
Supervising General Attorney

Enclosure: Resolution Agreement

cc w/out enclosure: Honorable Diane Douglas  
State Superintendent of Public Instruction