



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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UTAH
WYOMING

February 1, 2023

Hilario Chavez, Superintendent
Santa Fe Public Schools
610 Alta Vista Street
Santa Fe, NM 87505

By email only to xxxxxxxx@xxxxxxxx

Re: OCR Complaint No. 08-22-1497
Santa Fe Public Schools

Dear Hilario Chavez:

This is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Santa Fe Public Schools (the District).

The Complainant alleges that the District retaliated against her because she advocated for students with disabilities during the 2021-22 school year when:

- 1) it reprimanded her in xxxx xxxx for violating FERPA when she provided a legal guardian a copy of their student's IEP; and
- 2) it reorganized the class rosters for the 2022-23 school year to exclude students with disabilities from her classroom, causing other District personnel to speculate that she had engaged in misconduct.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination based on disability by recipients of Federal financial assistance and by public entities, respectively. Individuals filing a complaint, participating in an investigation, or asserting a right under Title II and Section 504 are protected from retaliation, intimidation, or coercion by 28 C.F.R. § 35.134 and 34 C.F.R. § 104.61, as it incorporates 34 C.F.R. § 100.7(e).

During the initial stages of the investigation, OCR reviewed documents provided by the District and the Complainant and interviewed the Complainant and one additional witness. Based on the preliminary information gathered, OCR identified compliance concerns. First, OCR identified a concern regarding the adverse action taken by the District in issuing a letter of reprimand to the Complainant and a potential second adverse action in removing students with disabilities from her classroom. In addition, during the course of OCR's investigation, OCR identified concerns regarding the District's policies and procedures related to retaliation and a potential concern

regarding staff at the School making pre-determinations regarding the appropriate placement of students with disabilities at staffing meetings prior to IEP team meetings. Before the completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint and signed the enclosed Resolution Agreement to address the complaint allegations and the identified compliance concerns.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 106.71, and Title II regulation at 28 C.F.R. § 35.134, prohibit retaliation.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established:

1. 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
2. an individual experienced an adverse action caused by the recipient; and
3. there is some evidence of a causal connection between the protected activity and the adverse action.

A protected activity is any action taken to further a right guaranteed by the statutes and regulations enforced by OCR or to express opposition to any practice made unlawful by the statutes and regulations enforced by OCR.

An act is an adverse action if it is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

In determining whether the recipient took the adverse action because an individual engaged in a protected activity or for the purpose of interfering with a protected activity, OCR considers whether there is some evidence of a causal connection between the adverse action and the protected activity. The evidence may include changes in the treatment of the individual after protected activity occurred, the proximity in time between protected activity and adverse action, the recipient's treatment of the individual compared to similarly-situated individuals, or the recipient's deviation from established policies or practices.

If all the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

Investigation to Date

A. Relevant District Policies

1. Employee-Specific Retaliation Policy

District Policy AR 200 and AR 218 set forth the District's prohibition and investigation procedures for employee allegations of discrimination, harassment, and retaliation. The Policies, however, do not define any of these terms and do not specify that the protection against retaliation includes protection for engaging in protected activity on behalf of students.

2. Student-Specific Retaliation Policy

A District Policy titled "Discrimination and Harassment – Students" (hereafter "Student Policy") addresses discrimination and harassment of students. The policy prohibits discrimination and harassment based on multiple protected classes. However, the policy does not contain the Title IX Coordinator or Section 504 Coordinator's contact information.¹ In addition, the policy also does not have OCR's contact information or state that allegations of discrimination, harassment, or retaliation may be filed with OCR.

The Student Policy also addresses retaliation. Where the Student Policy discusses the District's procedures for investigating harassment, the Student Policy states that:

the District, and any employee, shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or any other law under this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

The Student Policy then directs complaints alleging retaliation to be made to the Title IX Coordinator.

However, later in a subsection labeled "Retaliation," the Student Policy states:

the District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, or a student who, in good faith, makes a report of harassment or discrimination, serves as a witness, or participates in an investigation.

3. Student Records

District Policy New AR 321 (Student Records Policy) governs the District's procedures regarding student records. The Student Records Policy contains extensive discussion of the District's obligations under the Family Educational Rights and Privacy Act (FERPA).

¹ The District does have Title IX and 504 Coordinators.

The Student Records Policy, however, contains no explicit instruction as to how parents/guardians are provided electronic or printed copies of records, such as a student's IEP, when or near to when the IEP is created. The District provided no other policy that identifies the way in which the District delivers electronic or printed copies of records to parents/guardians at or near the time the records are created.

B. Evidence Obtained to Date

1. Letter of Reprimand

During the 2021-22 school year the Complainant taught in a general education classroom at xxxxxxxxxx Elementary School (School). According to the Complainant, throughout the year, she raised concerns to the School's Principal that the School was not providing a free appropriate public education to students with disabilities or placing such students in the least restrictive environment. For example, the Complainant stated that in April 2022, she attended an IEP meeting for Student A. The Complainant told OCR that after the meeting the Principal told her that she should not raise issues that had not been previously discussed in the school staffing prior to the team meeting and that the Complainant needed to be "on the same page" as her. The Complainant told OCR that she believed that because she advocated for Student A during that IEP meeting, the Principal began to retaliate against her.²

The Complainant provided corroborating evidence for her assertion that the Principal began to target her because she advocated for increased services for Student A during the April 2022 IEP meeting. For example, immediately after the IEP meeting, the Complainant exchanged texts with Teacher A about the meeting. The Complainant reported to Teacher A that the Principal and another teacher had been "really mean" during the meeting. In the text exchange, Teacher A responded that "[t]hey were both pretty hostile towards you in the meeting." Teacher A also stated that "I can't figure out why [the Principal] seems to be targeting you . . . it's crazy when the parents are raving about the job you're doing and she's trying to trick them into saying that their kids aren't doing okay because of you." Later in the text exchange, Teacher A repeats the sentiment that the Principal seems to be targeting the Complainant, concluding the text exchange stating "[i]t was surprising to me to hear how persistent she was with trying to make it sound like you were doing something wrong." In addition, the Complainant provided an audio recording of a May 20, 2022 conversation with Teachers A and B in which the Complainant asked Teachers A and B if they had told the Principal that they did not wish to work with her in the upcoming school year. Teachers A and B denied telling the Principal that they did not wish to work with the Complainant, and instead asserted that the Principal had told them that she would not

² The Complainant described other protected activity in her complaint, noting that she informed the Principal and other District staff several times that she believed that the District was not implementing student IEPs. Specifically, she indicated that she advocated for provisions to be included in Student A's IEP, expressed concern about Student A not receiving IEP services during a staffing on December 13, 2021 and again in a meeting with the Principal on December 16, 2021; suggested additional IEP services that the Principal had not approved in a discussion and subsequent emails on February 19, 2022; advocated for a less restricted environment for a student with disabilities on March 22, 2022; raised the question of whether a student was receiving IEP services in a conversation with the Principal on April 29, 2022; and discussed her advocacy for students with disabilities during a meeting with the Principal on May 20, 2022. Because the District requested to resolve the Complaint pursuant to Section 302, OCR had not yet interviewed District staff to confirm the Complainant's assertions.

consider moving the Complainant to a 5th grade position for the 2022-23 school year and instead would move Teacher C to the position or seek another teacher for the position. During the conversation, Teachers A and B state that the Principal is “trying to get her to quit” and that she had targeted other teachers previously.

According to records provided by the District, on xxxxxxxx, Teachers A and B emailed the Principal, less than one hour apart, with assertions that the Complainant had engaged in misconduct. Teacher A stated that the Complainant had recorded a recent conversation.³ Teacher B stated that the Complainant “shared with me that she was printing IEPs of her current students. She said that she was doing it to help parents file grievances this summer.” The Principal forwarded the email to the District’s Director of Exceptional Student Services (Director) and Assistant Superintendent for Instruction and School Support (Assistant Superintendent).

On xxxxxxxx, without having interviewed the Complainant or Teacher B about Teacher B’s allegation, the District determined that the Complainant’s alleged action violated FERPA. The Assistant Superintendent wrote to the Principal, the District’s Executive Director of Human Resources (HR Director), and a District HR Specialist stating that the District should schedule a meeting with the Complainant, retrieve the documents, and prepare a letter documenting the District’s determination that the Complainant had violated FERPA.

On xxxxxxxx, still without having interviewed the Complainant or Teacher B about Teacher B’s allegation, the Principal, Assistant Superintendent, HR Director, and HR Specialist met to discuss how to address the Complainant’s behavior as described by Teacher B’s email. The District concluded the Principal would have an informal discussion with the Complainant to get more information from the Complainant about Teacher B’s allegation and the Complainant’s reason for not making or directing the guardian to make a formal request from the District’s Special Education Records Department.

Emails among District administrators show that shortly after the xxxxxxxx administrator meeting, the District took its first step to assess the veracity of Teacher B’s allegation. The District ran an “audit log” that showed the Complainant accessed and printed material from Student A’s file on xxxxxxxx,⁴ between approximately 5pm and 7pm. The audit log showed that the Complainant did not access or print the files for any other student. After receiving the Audit Log, the Assistant Superintendent asked for logs for two other students – and the District determined that the Complainant did not access those students’ files.

The District provided a summary of a xxxxxxxx virtual meeting between the Complainant, the Principal, the Assistant Superintendent, and a union representative. The information provided by the District shows that at this time, the District knew that the Complainant had accessed and printed only Student A’s IEP. Nonetheless, the Principal asked the Complainant whether she printed multiple IEP documents to help parents file grievances. The Complainant acknowledged

³ The Complainant told OCR that Teacher A is a current or former union representative and had advised school staff to record conversations when they believe they might be subject to discipline.

⁴ The District’s 2021-2022 [calendar](#) shows that xxxxxx was the final day of school for students but that teachers were under contract and working through xxxxxx.

that she had printed documents for Student A's Guardian⁵ but had "no clue" regarding the Principal's allegation that she intended to file grievances on behalf of parents.

Approximately two weeks after the meeting with the Complainant, the Principal sent the Complainant an "Informal Discussion Letter" to sign and return. The letter re-states Teacher B's assertion that the Complainant was printing IEPs of multiple students to help parents file grievances – even though the District's audit showed that the Complainant printed the records for only one student. The letter states that the complainant acknowledged printing the records and giving them to the Guardian outside of school at the Guardian's request. The letter states that the "printing of these student records without following SFPS confidential records protocol is unprofessional." The Informal Discussion Letter references the "SFPS confidential records protocol" but does not cite to a specific District policy. In addition, the letter asserts that the Complainant's action violated FERPA even though FERPA states that an educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by 34 C.F.R. § 99.30 to the parent/guardian of the student. *See* 34 C.F.R. § 99.31(a)(8). The letter warns the Complainant that her action was misconduct, and that failure to correct her behavior would be considered insubordination. The letter states that the Principal would like her to receive training on the SFPS confidential records request protocol. The letter further indicates the letter would remain in the Complainant's employment records for one year, stating "this memo will be removed from your on-site file by June 30th of the following school year."

The District provided OCR with a rebuttal to the Informal Discussion Letter written by the Complainant on xxxxxx, in which she asserted:

- that the Student was still listed on her class roster while she finalized student grades and thus was not a former student;
- her conduct did not violate FERPA;
- the District had not provided the Complainant with a copy of its "Confidential Records Protocol;" and
- that her belief that the District's actions were retaliation for expressing concern that the District had not provided FAPE to the School's students during the 2021-22 school year.

The District did not respond to the Complainant's rebuttal.

In addition, the District's submission to OCR indicated that District officials contacted Student A's Guardian and that the Guardian did not confirm or deny that she had requested a copy of the IEP from the Complainant.⁶ OCR interviewed the Guardian on xxxxxx x, 2022. The Guardian told OCR in her interview that she had requested the IEP from the Complainant and when contacted by the District had informed the Assistant Superintendent that she had done so. The Guardian also told OCR that she felt intimidated by the call from the Assistant Superintendent.

⁵ The Complainant told OCR that Student A's Guardian was xxxx xx xxxxx xxxx and had difficulty accessing email or printing documents. In addition, the audit log provided by the District shows that Student A's IEP was not finalized until xxxxxxxx; thus the Guardian's request came a few days after the IEP was emailed to her.

⁶ The District did not provide any documentation relating to its call to the Guardian, or provide a date on which the Guardian was contacted.

As noted previously, the District did not provide the Complainant or OCR a specific policy that prohibits a teacher from providing a printed copy of an IEP to a student's guardian at or near the time an IEP is finalized. In its response to OCR, the District asserted that its [website](#) prohibits such conduct. The page, titled "Contact US for Special Education Records" (Page), states that requests for any record for special-education students must be made through the ESS Records Office. The Page states that the request may be filled out in person or sent via fax, mail, or email. The Page does not refer to any formal District policy or procedure for this statement that is published in the District's policies or in student, parent, or teacher handbooks. OCR noted that the Page is not accessible via a link from the Exceptional Student Services (ESS) main [webpage](#). Rather, a person can access the Page only by entering its the specific web address or by typing "records" into the search function, for which it is one of many results. OCR noted that the sitemap to the District's website indicates that the Page was modified on August 23, 2022, five days after OCR notified the District of the complaint.⁷

2. Classroom Roster Change

The Complainant also alleges that during summer 2022, the District altered class rosters to remove all students with disabilities from the Complainant's classroom. The District acknowledges that there are not students with disabilities in the Complainant's classroom, and states there is only one student with a disability on an IEP in the 4th grade.

Analysis and Resolution

In accordance with Section 302 of OCR's Case Processing Manual, a complaint may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. On November 18, 2022, the District requested to resolve the complaint pursuant to Section 302. In light of the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate.

A. Retaliation Allegations

OCR has identified compliance concerns related to the District's decision to reprimand the Complainant and any action it may have taken to exclude all students with disabilities from the Complainant's classroom.

The Complainant indicated in statements to OCR that she engaged in protected activity when she advocated for special education services. The Complainant was subjected to an adverse action when she was issued a letter of reprimand. In addition, the timing and fact that the adverse actions are related in nature to the Complainant's protected activity shows a potential causal connection.

⁷ <https://www.sfps.info/sitemap.xml>

OCR's investigation to date indicates the following:

- Teachers A and B both made statements to the Complainant days before the alleged adverse actions indicating their belief that the Principal had been targeting the Complainant;
- Teachers A and B, despite recently informing the Complainant of their belief, submitted allegations to the Principal on the xxxxx xxx of the 2021-22 school year less than one hour apart;
- The District began preparing a reprimand letter prior to reviewing print logs or speaking with the Complainant about what records she printed and why;
- the District did not provide OCR any information to show that it questioned Teacher B about her allegation regarding the Complainant either before or after it learned that the Complainant had accessed and printed only Student A's IEP;
- Student A's Guardian stated to OCR that she requested a printed copy of the student's IEP;
- Providing a copy of an educational record to a parent or guardian does not constitute a FERPA violation; the District repeatedly and inaccurately stated that Complainant's conduct violated FERPA when in fact it did not;
- the District's position statement to OCR states that the Complainant "was disciplined because she failed to follow Board policy which was unrelated to any of her opinions related to the alleged inadequacies of special education providing services to students with IEPs."
- in issuing the reprimand letter, the District did not identify any Board policy prohibiting teachers from delivering a printed copy of an IEP to a parent/guardian shortly after the finalization of the IEP; rather the District relied on a webpage that does not specifically address how IEPs are delivered to parents/guardians, is not easily located, and appears to have been updated shortly after the District received notice of the OCR complaint.

These facts are sufficient to warrant an agreement to address this compliance concern. To complete an investigation of whether the District retaliated against the Complainant, the following items warrant further investigation and analysis:

- the timing and motivation of Teacher A and B's emails to the Principal, including whether the Principal requested the emails;
- examination of Teacher A and B's text messages and audio recorded statements regarding their perception of the Principal's retaliatory intent with regard to the Complainant and others;
- whether there is specific language in a District policy prohibiting providing printed copies of IEPs to parents/guardians upon request, and if so, how this policy has been disseminated and applied to other teachers/persons within the District;
- whether the District has provided training to its staff members regarding its confidential records protocol, including any prohibition against providing a printed copy of an IEP to parents/guardians;
- whether other District teachers have provided printed copies of IEPs to parents/guardians, and whether they have received misconduct letters for having done so;

- the Guardian’s assertion to OCR that she informed the District that she had requested a copy of Student A’s IEP, which contradicts the District’s statement to OCR;
- the disparity between Teacher B’s allegation regarding the Complainant and the information noted in the District’s audit log of Complainant’s actions;
- the manner in which the Complainant’s classroom roster was determined and/or changed to exclude students with disabilities from her classroom; and
- any other relevant information provided by witnesses during the course of investigative interviews.

B. Other Concerns

OCR’s investigation identified two other compliance concerns.

First, OCR notes that the District’s policies prohibiting retaliation are incomplete and unclear in that:

- they do not contain contact information for the Title IX or Section 504 Coordinator;
- they provide conflicting information about who is protected from retaliation;
- they provide conflicting information about how or to whom a retaliation allegation should be reported; and
- they do not include OCR’s contact information.⁸

Second, the Complainant asserts that the Principal’s animas arose because the Complainant offered opinions about Student A’s progress and placement that differed from the Principal.

Although OCR did not investigate this compliance concern, the Principal’s alleged action toward the Complainant and other Teachers’ statements regarding the Principal’s animas suggest the assertion warrants further investigation. The idea that all School personnel must be “on the same page” before an IEP meeting is concerning in that it suggests that differing ideas and thoughts about services and placement options should not be discussed by the fully constituted IEP team. To the extent that the Principal’s alleged comments suggest that the Principal utilizes pre-team meeting school staffings to pre-determine the content of an IEP, such a practice would violate the Section 504 Regulation at 34 C.F.R. § 104.35.

OCR received the District’s signed resolution agreement (Agreement) on January 30, 2023, a copy of which is attached to this correspondence. The Agreement requires the District to:

- (1) certify that the June 22, 2022 letter of reprimand was removed from the Complainant’s employee file, that the letter will not be utilized or relied on in any way in any future employment action, and that the District will not subject the Complainant to any adverse action because she filed this OCR Complaint;

⁸ The omission of OCR’s contact information is of particular concern given that the District asserted in its position statement to OCR that the Complainant’s decision to file a complaint with OCR rather than pursue an internal grievance is “evidence that the Complainant does not follow rules.” This inference is misplaced. A person may file a complaint with OCR without filing an internal grievance and should not be subjected to any negative inferences for asserting that right.

- (2) provide the Complainant with an opportunity to be evaluated by a person other than the Principal;
- (3) revise the District's student and employee policies prohibiting retaliation and provide notice to District staff of the changes;
- (4) provide training for the Principal and Assistant Superintendent on the Section 504 and Title II prohibition on retaliation;
- (5) provide training for the Principal on the Section 504 evaluation and placement procedures and the Section 504 prohibition of discrimination against students with disabilities, including treating students with disabilities differently than students without disabilities;
- (6) inform building-level administrators and special education staff that school staffings prior to IEP meetings may not be utilized to pre-determine the contents of an IEP; and
- (7) conduct a formal investigation (and take any necessary disciplinary action, if applicable) of the Principal to determine whether the Principal violated any District policy or federal statute or regulation prohibiting retaliation.

When fully implemented, the Agreement will resolve the compliance concerns identified in this letter. The provisions of the Agreement are aligned with the allegations and issues raised by the Complaint and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statutes and regulations.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR 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 the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement and is in compliance with the Section 504 and Title II regulations that were at issue in this case. When the monitoring phase of the case is complete, OCR will close case number 08-22-1497 and will send a letter to the District stating that the case is closed.

This letter sets forth OCR's determination in an individual 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.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

We thank the District for being willing to voluntarily address the allegations raised by the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions regarding this complaint, please contact Patrick Alexander, the attorney assigned to this case, at Patrick.Alexander@ed.gov or 303-844-3473.

Sincerely,

Sandra Roesti
Supervisory Attorney

cc: Carol Helms, Counsel, *via email to* chelms@cuddymccarthy.com
Laura Castille, Counsel, *via email to* lmcastille@cuddymccarthy.com
Joshua Granata, Counsel, *via email to* jgranata@sfps.k12.nm.us