



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
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February 26, 2015

Via U.S. Mail and E-mail to smazingo@lenoir.k12.nc.us

Dr. L. Stephen Mazingo
Superintendent
Lenior County Public Schools
P.O. BOX 729
Kinston, NC 28502-0729

RE: OCR Complaint #11-14-1304
Resolution Letter

Dear Dr. Mazingo:

This letter is to advise you of the disposition of the above-referenced complaint filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department), against Lenoir County Public Schools (the District). The Complainant filed on behalf of her son (the Student), who attended XXXX School (the School) until April 2014, and subsequently received homebound instruction for the remainder of the 2013-2014 school year. The Complainant alleges that the District discriminated against the Student based on his disability. The Complainant also alleged that the District retaliated against her after she filed a complaint with the School Board and advocated for the Student's disability rights.

Specifically, the Complainant alleged the following:

1. School personnel denied the Student a free, appropriate public education (FAPE) when:
 - a. During the spring of 2014, the Student's XXXX teacher failed to provide preferential seating as required by his IEP;
 - b. During the 2013-2014 school year, the Student was suspended in excess of ten days without a manifestation determination;
 - c. During the spring of 2014, the School failed to develop a behavior intervention plan for the Student despite noting numerous behavioral concerns in his IEP and disciplining him for behavior related to his disability; and

- d. School personnel discriminated against the Student based on disability when, during the spring 2014, he was not allowed to attend field trips because of his behavior issues;
2. School personnel discriminated against the Student when he was removed from the School cafeteria on XXXX, for behavior issues; and
3. School personnel retaliated against the Complainant for her advocacy on behalf of the Student when they refused to provide the Student with extra work while on homebound and sent him a packet of work at the sixth grade level, despite the fact that the Student was in the seventh grade.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and their implementing regulations at 34 Code of Federal Regulations, Part 104; and 28 C.F.R. Part 35, respectively, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education and by public entities. OCR has determined that the applicable provisions of the Title II regulation do not provide greater protection than the applicable provisions of the Section 504 regulation and, therefore, has applied the relevant Section 504 standards.

The Section 504 regulation, at § 104.33(a), requires public school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability. Section 104.33(b)(1) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. Section 104.33(b)(2) provides that this requirement can be met by implementation of an IEP developed in accordance with the Individuals with Disabilities Education Improvement Act (IDEA).

In addition, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II and their implementing regulations.

The District expressed an interest in resolving the complaint prior to the completion of OCR's investigation. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District. On February 19, 2015, the District signed a voluntary resolution agreement (copy enclosed), which, when fully implemented, will resolve allegations **1a, b, c, d and 2** raised in the complaint. The provisions of the agreement are aligned with the allegations raised in the complaint and information obtained during the course of OCR's investigation and are consistent with the applicable regulations. OCR has notified the Complainant of the voluntary resolution agreement and we will monitor implementation of the agreement.

With respect to allegation 3, the Complainant alleged that School personnel retaliated against her for her advocacy on the Student's behalf when they refused to provide the Student with extra work while on homebound and sent him a packet of work at the sixth grade level, despite the fact that the Student was in the seventh grade.

When analyzing a claim of retaliation under Section 504, OCR will look at the following three elements to determine if the Complainant has stated an initial case: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) whether the District took a materially adverse action against the Complainant; and 3) whether there is some evidence that the District took the adverse action as a result of the Complainant's protected activity. If all these elements are present, this establishes an initial or prima facie case of retaliation. OCR then determines whether the District has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the District's reason for its action is a pretext or excuse for unlawful retaliation.

According to the Complainant, during the 2013-14 school year, she had two sons enrolled in the seventh grade at the School, the Student and Student 2. In April 2014, the Student was placed on homebound, until the end of the school year, based on his medical doctor's instructions. Both parties agree that while the Student was on homebound, a certified special education teacher provided services to the Student, including bringing school work to the Student's home. In a letter dated June 5, the Complainant raised concerns with the District regarding the District's handling of the Student's disability-related behavior problems. OCR considers this a protected activity because she was asserting the Student's rights under Section 504

Subsequently, the Complainant alleges, on June 11, the Student's former EC teacher mailed a packet of 6th grade work to her home. In her complaint filed with OCR, the Complainant states "On June 11, 2014 [the Student's EC Teacher] mailed a package of work to me for [sic] 6th grader with a personalize [sic] note attached about [the Student] needing practice. When I asked for extra work be [sic] sent home I was told no. [The Student] is in 7th grade not 6th." The Complainant stated that the EC Teacher took this action to humiliate her. However, the Complainant provided OCR with a copy of a letter that she sent to the Director of Human Resources, in which the Complainant writes that she received "a package of work from the [EC Teacher] that didn't even have the correct student grade or to which student it was intended, [Student 2 or the Student]." Thus, based on the information provided to OCR, there is a conflict between what the Complainant told the District regarding this allegation and what the Complainant told OCR. The Complainant was unable to provide OCR with documentation that the work was sent specifically to the Student with a note saying that the Student needed practice. OCR attempted to interview the EC Teacher, but she is no longer employed by the District. Thus, OCR is unable to corroborate that the EC Teacher took the action recounted in the complaint.

Even assuming the facts occurred as the Complainant alleged in her complaint to OCR, OCR finds insufficient evidence to support a prima facie case of retaliation because the alleged action taken by the School would not be materially adverse to the Complainant (under part two of the retaliation analysis outlined above). In order to be considered adverse in the context of retaliation, the action of the District must be enough to dissuade a reasonable person from engaging in the protected activity; petty slights or minor annoyances cannot qualify as an adverse

action. In this case, a parent receiving work at a sixth grade level for a seventh grade student on homebound would not dissuade a reasonable person from advocating on behalf of the Student. This is especially true because the Student was assigned a homebound teacher who was providing him with appropriate work for his academic level. The District told OCR it had no knowledge that the EC teacher sent work to the Student's home because she was not his homebound teacher and had not been sending work home. Thus, OCR will not proceed further with the retaliation analysis, and will close the retaliation allegation as of the date of this letter.

This concludes OCR's investigation of the complaint. This letter 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. 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.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Please be advised that the District may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. If you have any questions, please contact Ms. Samantha Shofar (202) 453-5929 or via e-mail at Samantha.shofar@ed.gov, or Ms. Deborah Kelly at (202) 453-5919 or via e-mail at Deborah.Kelly@ed.gov.

Sincerely,

/S/

Dale Rhines
Acting Team Leader, Team IV
District of Columbia Office

Enclosure

cc: Rebecca Fleishman
Tharrington Smith, LLP