



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX

Via U.S. Mail and Email (eric.williams@lcps.org)

Dr. Eric Williams
Superintendent
Loudoun County Public Schools
21000 Education Court
Ashburn, Virginia 20148

Re: OCR Complaint No. 11-16-1206
Letter of Findings

Dear Dr. Williams:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Loudoun County Public Schools (the Division). The Complainant alleged that the Division retaliated against her on the basis of her advocacy for a student (the Student) with a disability at XXXX (School). XXXX SENTENCE REDACTED XXXX

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR also 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 Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division; interviewed the Complainant and Division staff; and listened to an audio recording of a meeting to develop the Student's XXXX held on XXXX.

After carefully considering all of the information obtained during the investigation, OCR determined that there was sufficient evidence to substantiate the Complainant's allegation, in violation of Section 504 and Title II. The Division agreed to resolve the violation through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*. OCR's findings and conclusions are discussed below.

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

Background

XXXX 2 SENTENCES REDACTED XXXX

OCR reviewed an audio recording of the meeting held on XXXX.¹ XXXX 3 SENTENCES REDACTED XXXX

XXXX 7 PARAGRAPHS REDACTED XXXX

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will consider: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took a materially adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

The Complainant alleged that after requesting to see the XXXX data that supported the development of the Student's draft XXXX during the XXXX meeting held on XXXX, reporting that the Student's XXXX, required by his XXXX.

OCR first considered whether the Complainant engaged in a protected activity. An individual engages in a protected activity if she opposes an act or policy that she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing.

OCR determined that the Complainant engaged in a protected activity of which the Division was aware when she attended the Student's XXXX meeting on XXXX as an advocate for the Student, and repeatedly requested to see the XXXX data that supported the draft XXXX. Further, the Complainant reported what she believed to be a violation of the Student's XXXX and XXXX when she discovered that the Student's XXXX. In addition, the Complainant recently had engaged in XXXX advocacy on behalf of XXXX.

¹ The audio recording was created by the Complainant and/or the Student's caregiver, which the Complainant submitted to OCR for review. However, the audio recording was also submitted to the Division, which the Division acknowledged to OCR.

Next, OCR determined that the Division took a materially adverse action against the Complainant when XXXX. An adverse action is something that could deter a reasonable person from engaging in further protected activity. OCR determined that XXXX was adverse because XXXX thereby potentially limiting her participation in students' educational activities and any further advocacy.

OCR also determined that there was evidence of a causal connection between the Complainant's protected activity and the Division's adverse action. XXXX SENTENCE REDACTED XXXX These events are close enough in time to infer causation, XXXX. As such, OCR determined that there was sufficient evidence to establish a prima facie case of retaliation.

OCR next considered whether the Division had a legitimate, non-retaliatory reason for taking an adverse action against the Complainant by XXXX. XXXX 3 SENTENCES REDACTED XXXX.

Finally, OCR considered whether the Division's proffered legitimate, non-retaliatory reason was actually pretext, or an excuse, for retaliation. XXXXX 5 SENTENCES REDACTED XXXX

XXXX 3 PARAGRAPHS REDACTED XXXX

XXXX 2 SENTENCES REDACTED XXXX. As a result, OCR determined that the Division's reason is pretext for retaliation.

The Division provided OCR with information about other XXXX. XXXX 2 SENTENCES REDACTED XXXX.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate the Complainant's allegation that the Division retaliated against her when XXXX. OCR determined that the Division's proffered legitimate non-retaliatory reasons served as a pretext for retaliation. Specifically, the Division failed to consistently apply its visitor's policy. Further, the Principal's stated reasons for XXXX, that the Complainant XXXX. Further, the Division's own conclusion that the Complainant did not XXXX further supports OCR's determinations. Accordingly, OCR determined that the Division retaliated against the Complainant in violation of Section 504 and Title II.

Conclusion

On April 19, 2018, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the Division is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the Division's implementation of the Agreement to ensure

that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the Division has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the Division on April 19, 2018, if the Division fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Anne E. Mickey, Esq.