



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

August 25, 2022

Via e-mail only to: LAnthony@bricker.com

Ms. Laura Anthony
Attorney
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215

Re: OCR Docket No. 15-22-1040

Dear Ms. Anthony:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXX XXXXX with the U.S. Department of Education, Office for Civil Rights (OCR), against Trimble Local School District (the District) alleging that the District discriminated against a student (the Student) based on disability and retaliated against XXXXX. Specifically, the Complainant alleged that in response to advocacy related to the Student's XXXXX XXXXX, the Student's teacher XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and the District XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also protected from retaliation. As a recipient of federal financial assistance from the Department of Education and as a public entity the District is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: whether the District intimidated, threatened, coerced, or discriminated against any individual for the purpose of interfering with any right or privilege secured by Section 504 and/or Title II, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61 and Title II's implementing regulation at 28 C.F.R. § 35.134.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District staff.

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

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Facts

At the start of the XXXXX school year, the Student was in XXXXX grade at the XXXXX XXXXX school. The Student had an Individualized Education Program (IEP) in place XXXXX XXXXX XXXXX XXXXX. The Complainant alleged that during the XXXXX XXXXX XXXXX, the District retaliated against the Student in two ways because XXXXX had previously asserted the Student’s XXXXX multiple times, including XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

District documentation showed that the Student’s IEP team met on XXXXX XXXXX XXXXX XXXXX made a number of amendments to the Student’s IEP plan. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

District information included XXXXX documentation regarding an event that took place in early XXXXX, where District staff found XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

XXXXX – PARAGRAPH REMOVED - XXXXX.

XXXXX – PARAGRAPH REMOVED - XXXXX.

Legal Standard

The regulation implementing Title VI, at 34 C.F.R § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation. This requirement is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

In analyzing retaliation claims, OCR examines whether: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR’s regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual’s position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Under some factual circumstances, the promise of a benefit can be just as coercive as the threat of harm.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient’s written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient’s treatment of the individual compared to others; or the recipient’s deviation from established policies or practices.

If the above elements of a prima facie case of retaliation are established, OCR examines whether the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. If the recipient identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation. The evidentiary factors for causal connection discussed above are equally applicable for determining pretext.

If OCR determines that a recipient took an adverse action for an illegitimate retaliatory reason and a legitimate non-retaliatory reason, OCR analyzes, based on the evidence, if the recipient would have made the same decision but for the retaliatory motivation.

Analysis

The Complainant alleged that the District retaliated against the Student because XXXXX had previously asserted XXXXX XXXXX XXXXX XXXXX to teachers and the Student’s IEP team, including XXXXX right to the accommodations in XXXXX IEP plan. XXXXX – SENTENCE REMOVED - XXXXX. XXXXX – SENTENCE REMOVED - XXXXX.

XXXXX – SENTENCE REMOVED - XXXXX. OCR finds that the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, do not constitute adverse actions for retaliation purposes in this case. XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX, the District proffered a legitimate reason for needing to

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by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX, or by e-mail, at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure