



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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NORTH DAKOTA
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January 30, 2014

Dr. Jeff Hendrix
Sunman-Dearborn Community Schools
1 Trojan Place, Suite B
St. Leon, IN 47012

Re: OCR #05-13-1342

Dear Dr. Hendrix:

This is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on July 3, 2013, against Sunman-Dearborn Community Schools (Corporation) alleging retaliation. Specifically, the complaint alleged that the Corporation subjected an employee to retaliation in the spring of 2013 for complaining about mistreatment of a XXXXXX disabled student and other students with disabilities, in that it terminated her employment.

OCR is responsible for enforcing Title VI of Civil Rights Act of 1964 (Title VI), 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100, 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12132, and its implementing regulation at 29 C.F.R. Part 35. Title VI prohibits discrimination on the basis of race, color or national origin in any education program or activity operated by a recipient of Federal financial assistance. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. All of these statutes prohibit retaliation for engaging in protected activities. As a recipient of Federal financial assistance from the Department and as a public entity, the Corporation is subject to these laws.

The regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. §100.7(e), prohibits a recipient of Federal financial assistance from engaging in intimidating or retaliatory acts against any individual because the person opposed a discriminatory policy, asserted protected rights, or made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VI. The regulation implementing Section 504, at 34 C.F.R. §104.61 incorporates this regulation by reference. The regulation implementing Title II, at 28 C.F.R. §35.134(b), contains a similar provision prohibiting retaliation, intimidation, threats, coercion, and interference with an individual's right to engage in activities protected by Title II.

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

Section 504 and Title II

In accordance with Section 302 of OCR’s *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR’s investigation, the Corporation requested to resolve the allegations as they pertain to Section 504 and Title II.

On January 30, 2014, the Corporation signed the enclosed agreement (Agreement) which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the Agreement are aligned with the issues raised by the allegations and the information obtained during OCR’s investigation and are consistent with the applicable regulations. OCR will monitor the Corporation’s implementation of the Agreement.

Title VI

OCR conducted an investigation of the allegation as it relates to Title VI. As part of its investigation, OCR interviewed the Complainant and Corporation personnel and reviewed data provided by the Complainant and the Corporation. Based on a careful analysis of this information, OCR has determined using a preponderance of the evidence standard that there is insufficient evidence to establish a violation of Title VI. The reasons for this determination are set forth below.

Facts

The Corporation is a public school in Southeastern Indiana. The Corporation prohibits discrimination on the basis of race and disability, among other bases. Corporation Policy 4362¹, entitled “Anti-Harassment,” provides that the Corporation will maintain an education and work environment free from all forms of unlawful harassment. The Policy also prohibits retaliation. The Corporation has a separate policy, 4362.01², which prohibits threatening and intimidating behavior toward staff.

The Complainant worked at XXXXXXXXXX, initially as a XXXXXXXX and starting on XXXXX, as an aide XXXXXXXX. As an aide, the Complainant was assigned to assist a XXXXX student XXXXXXXXXXXXXXX. The Complainant stated that in this connection, she observed Teacher A mistreating Student A and punishing him inappropriately.

Corporation Policy 3211³ states that if the actions of employee may violate Federal or Indiana law, Board policy, or administrative guidelines, the employee “shall bring” the matter to the attention of the employee’s immediate supervisor, unless the immediate supervisor is the officer or employee whose words or actions are in question. In that case, the

¹ <http://www.neola.com/sunman-in/>

² *Id.*

³ *Id.*

employee “shall make the report” to the Superintendent. On or about January 30, 2013, the Complainant met with the Principal and reported the mistreatment and inappropriate punishment of Student A. On February 25, 2013, the Complainant notified the Principal of what she perceived to be the continued mistreatment of Student A. She did not report her concerns to the Superintendent.

The Complainant reported to OCR and the Principal confirmed that on neither of these occasions did the Complainant assert that the mistreatment of Student A was because he is XXXXXX. On or about April 23, 2013, the Complainant again went to meet with the Principal. In addition to other concerns, the Complainant told the Principal that Teacher A made a comment about Student A that was inappropriate, and she thought he did so because he is XXXXXX. In interviews with OCR, the Principal denied this assertion.

In an April 24, 2013 meeting with the Principal and the Director of Support Services (DSS), the Complainant was notified that the Corporation was terminating her employment, but would give her the opportunity to resign. On April 26, 2013, the Complainant signed a resignation letter and the termination was rescinded.

Analysis and Conclusion

The regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. §100.7(e), prohibits a recipient of Federal financial assistance from engaging in intimidating or retaliatory acts against any individual for the purpose of interfering with any right or privilege secured by the regulation or because the person opposed a discriminatory policy, asserted protected rights, or made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under the regulation. The regulation implementing Title II at 28 C.F.R. § 35.134, also prohibits retaliation.

A *prima facie* case of retaliation exists when each of the following is established: 1) an individual engaged in an activity protected by a statute OCR enforces; 2) the recipient had notice of the protected activity; 3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and, 4) there is an inferable causal connection between the protected activity and the adverse action.

If a *prima facie* case is established, then OCR considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, then OCR considers whether the reason asserted is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

In making a determination regarding compliance, OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegation. While the Complainant indicated that on one occasion she reported that Teacher A made a comment about Student A because he is XXXXXX, the Principal denied that

assertion and while the Principal acknowledged receiving the above described complaints about Teacher A's treatment of Student A, she denied that the Complainant asserted at any time that Student A was being subjected to discrimination because he is XXXXX. OCR could not corroborate the Complainant's assertion through other documentary evidence or testimony. In the absence of other information, OCR determined that the preponderance of the evidence does not support that the Complainant engaged in any activity protected by Title VI. Therefore, the evidence is insufficient to establish a violation of Title VI with regard to the allegation in this complaint.

This concludes OCR's investigation of the Title VI allegation and should not be interpreted to address the Corporation's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Please be advised that the Corporation 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 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 file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you and your staff, and particularly the Corporation's counsel, Mr. Thomas F. Wheeler, for the cooperation extended to OCR during the processing of this complaint. If you have any questions, please feel free to contact Lauren Skerrett at 312-730-1603 or by e-mail at Lauren.Skerrett@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

cc: Thomas E. Wheeler, II, Esq.

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Enclosure