

75 IDELR 136

119 LRP 36946

**Chicago (IL) Public Schools
Office for Civil Rights, Midwestern
Division, Chicago (Illinois)**

05-18-1436

January 25, 2019

Related Index Numbers

405.050 Harassment/Retaliation

10.072 Retaliation

150.040 Violent Students

445.015 In General

Judge / Administrative Officer

Aleeza Strubel, Supervisory Attorney

Ruling

The Office for Civil Rights found no evidence that an Illinois district retaliated against a parent for advocating on behalf of an IDEA-eligible student with an undisclosed disability. It closed the parent's Section 504 and Title II complaint without ordering remedial action.

Meaning

Most states require educators to report potential child abuse or neglect to appropriate state authorities. However, because such an adverse action could qualify as retaliation, districts must ensure there is a nondiscriminatory basis for the report. Although this student presented violent behaviors, harmed her dedicated aide, and expressed homicidal ideations during a risk assessment, the mother rejected the district's referral to a community crisis center. Because the district reasonably concluded the student needed intensive mental health services, its decision to report the parent to the state department of children and families for alleged medical neglect was appropriate under the circumstances.

Case Summary

An Illinois district's legitimate concern for a student who exhibited homicidal ideations refuted

claims that it retaliated against the parent when she declined to assess the student's eligibility for mental health services at a community crisis center. OCR closed the parent's complaint, determining that the district had a nondiscriminatory reason for reporting the parent to the state department of children and families. OCR explained that to establish unlawful retaliation under Section 504 and Title II, a parent had to show that: 1) the district acted adversely against her; and 2) the adverse action had a causal connection to a protected activity. Here, OCR opined that although the parent routinely advocated for the student during IEP meetings and due process hearings, the district's decision to report her for alleged medical neglect did not amount to retaliation. According to the evidence, the student frequently presented violent behaviors toward others and, in one occasion, she physically harmed her dedicated paraprofessional even though the district appropriately implemented her behavioral intervention plan. Additionally, OCR noted that a risk assessment conducted by the school psychologist indicated that the student had homicidal ideations and was at "low-to-moderate risk" of hurting herself and others. Despite this, OCR observed, the parent rejected two district referrals to a community crisis center that would assess the student's need for intensive mental health services. Instead, the parent picked up the student from school each time she had an emotional meltdown. Under the circumstances, the district had a reasonable basis to be concerned about the student's wellbeing, OCR remarked. OCR also pointed out that because state law required the district to report any potential incidents of abuse or neglect, including medical neglect, the district acted appropriately in reporting the parent's rejection of a mental health assessment. Finding that no retaliation occurred, OCR closed the complaint.

Full Text

Dear Dr. Jackson:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation

of the complaint filed against Chicago Public Schools District #299 (District) alleging retaliation. Specifically, the complaint alleged that the District retaliated against the Complainant for advocating for her daughter's (Student A) disability-related needs by reporting Student A to the Department of Children and Family Services (DCFS) and Screening, Assessment and Support Services (SASS) throughout the [] school year and during the [].

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Both of these laws prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II.

In making its determination, OCR interviewed the Complainant and District staff, and reviewed documents submitted by both parties. As explained below, OCR determined that there is insufficient evidence to establish retaliation as alleged.

Relevant Policies and Procedures

Notice of Nondiscrimination

The District prohibits discrimination based on a number of protected statuses, including disability, and also prohibits retaliation.¹

Crisis Management Manual

The District's Crisis Management Manual (Crisis Manual) delineates the protocol for District staff if a student poses a risk to herself or others. If a student expresses homicidal ideation or serious bodily harm, a school counselor or clinician must "conduct a brief risk assessment to determine if the student is a danger

to him/herself or others." If the counselor determines that the student is not at risk to herself or others, the school informs the parents and pertinent school personnel about safety precautions, monitors the student's behavior, and provides parents with appropriate referrals, if necessary. If the evaluation determines that the student is at risk but not an imminent risk², the school informs the parents and calls the hotline for Crisis and Referral Entry Services (CARES), a service that handles mental health crisis calls for Illinois children, to determine if the student is eligible for Screening, Assessment and Support Services (SASS). SASS provides intensive mental health services for children who may need hospitalization for mental health care. If the student is SASS-eligible, the school will alert the parent that the school is contacting SASS, and will ask the parent to come to the school. If the parent is "not compliant," such as by not agreeing to "take the student for an evaluation that day," the Crisis Manual states that the school should contact the DCFS hotline to report medical neglect.

If the student is not SASS-eligible, the Crisis Manual instructs school staff to help the parent/guardian find an "appropriate evaluator within their medical insurance" and to have the parent sign a "Verification of Conference" form. The form asks the parent to acknowledge being "notified that my child has been exhibiting significantly disruptive behavior which could be considered a danger to her/himself or others," and that the parent has been advised to "seek further psychiatric/psychological consultation from the mental health community," and that the school has provided "community names/resources."

The Crisis Manual also states that, under Illinois law, every school employee has an obligation to call DCFS "when they have reason to believe that a child they know in their professional or official capacity may have been abused or neglected." The Crisis Manual instructs staff to call DCFS whenever they "believe that a person who is caring for the child, who lives with the child, who is a family member, or who works with or around children has caused injury or

harm or put the child at risk of physical injury."

Finally, the Crisis Manual directs District staff to create "safety plans" to "provide special supervision to individual students," and states that the plan "should include specific interventions which target dangerous or potentially dangerous behavior," in order to "minimize the risk of harm to the student or others."

During the [] school year, Student A was in the [] grade at [] (School). Her Individualized Education Plan (IEP) for the [] school year, for her disability of [] included paraprofessional support (dedicated in some classes and shared in others), preferential seating, sensory breaks, frequent eye-contact and check-ins from classroom teachers, social work services, and the opportunity to earn a "preferred activity" if she did not accumulate three marks during the day for undesired/physically aggressive behavior.

On [] the Complainant filed [] (Paraprofessional A) []. The Complainant asserted to OCR that the School failed to report this incident to DCFS, as required. OCR interviewed the Principal, who said that as soon as she learned of the Complainant's allegation against Paraprofessional A, she called DCFS. The Principal told OCR that DCFS returned her call on [], and said that the agency would not investigate the claim because there was not enough information to substantiate it.

On [] a new paraprofessional assigned to Student A (Paraprofessional B) reported to the Assistant Principal³ that Student A had been [] and that when Paraprofessional B told her to stop, Student A [] OCR interviewed the Assistant Principal, who said that Paraprofessional B had Student A fill out a "[]" in the Assistant Principal's office, to give her the opportunity to reflect on her behavior with the []. According to the Assistant Principal, Student A [] on the sheet, and a []. When the Assistant Principal saw this, she contacted the School Counselor to conduct a risk assessment. OCR interviewed the Counselor, who said that she conducted the risk assessment, per the Crisis Manual, and determined that Student A was at "low-to-moderate" risk and should be evaluated by

SASS. The School notified the Complainant, who denied the SASS evaluation and took Student A home early that day.

The District provided OCR with a copy of the "Homicidal Ideation Assessment" form completed by the Counselor on [], stating that the School called SASS and the Complainant denied the SASS evaluation. The District also provided OCR with a copy of the "Verification of Emergency Conference" form signed by the Complainant, the Assistant Principal, and the Counselor on [], acknowledging that the School advised the Complainant that Student A should [] and that the School provided referrals [].

On [], Student A []. According to the Principal, Paraprofessional B brought Student A to the office, where Student A apologized for hurting Paraprofessional B and said that [] and []. The Counselor was present in the office and told OCR she heard Student A tell the Principal that a [] towards Paraprofessional B and that [] in the office. Again, concerned that Student A's behavior suggested a risk to herself and/or others, the School called SASS and the Complainant, who again denied a SASS evaluation and took Student A home. The District provided OCR with a copy of the "Verification of Emergency Conference" form signed by the Complainant on [] acknowledging that she denied the SASS evaluation, that Student A should receive []. The Counselor told OCR that she was concerned about Student A's well-being when she left school that day because the Complainant had denied the SASS evaluation.

The Complainant told OCR that the School should not have contacted SASS on [] or [] because [] and denies that Student A was in crisis. The Complainant told OCR that Student A told the Complainant that what she told the Principal about [].' The Complainant asserts that the School contacted SASS to retaliate against the Complainant for advocating for Student A's disability-related needs.

Because Student A was absent on [] and the School received no information from the Complainant about Student A receiving [] and the Complainant

had twice denied SASS evaluations, the Principal told OCR that she acted in accordance with the Crisis Manual by calling DCFS on [] to report []. The Principal told OCR that DCFS followed up with the Counselor the next day, and provided OCR with a copy of a [] DCFS reporting form, completed by the Counselor, stating that the Complainant had refused SASS evaluations after Student A had been '[]' and claimed to '[]'. The Complainant told OCR that DCFS informed her on [], that the agency would investigate the School's [].

On or around [], the Complainant provided the School with a letter from Student A's pediatrician, stating that the physician saw Student A that day and that Student A would be released to return to school on [] as Student A was awaiting evaluation from a [] on []. The [] wrote a letter, dated [] which the Complainant provided to the School, stating that she was able to meet with Student A on that date but could not conduct a full assessment because it was her first appointment with Student A. However, the [] wrote that she would be treating Student A on a regular basis. The Principal told OCR that the Complainant confirmed with the School that Student A would attend [].

On [], the School, per the Crisis Manual, convened a safety re-entry plan meeting for Student A, which the Complainant attended along with Student A, the Principal, Assistant Principal, Counselor, and Paraprofessional B. The Principal, Assistant Principal, and Counselor each told OCR that during the meeting, the team discussed triggering factors and helpful interventions to minimize Student A's disruptive behavior. The Safety Plan, which the Complainant signed, said that the Counselor would check in with Student A. The Safety Plan also referenced Student A's Behavior Intervention Plan (BIP) in effect at the time. The BIP included the following interventions: redirection, visual and verbal calming strategies, social stories, calming/sensory breaks, and a sticker reward system. Additionally, the BIP stated that the School would call the Complainant whenever Student A was removed from class and

would maintain a daily log entry of Student A's behaviors.

On [] the Complainant alleged that Paraprofessional B [] Student A. As she did on [] with respect to the Complainant's allegation against Paraprofessional A, the Principal, per the Crisis Manual, reported the Complainant's allegation to DCFS that day. The Principal told OCR that DCFS returned her call the next day, stating that they would not investigate the claim and noting that the Complainant had [].

The Complainant told OCR that on [], she received a call from DCFS stating that the agency had received another report against the Complainant for [] regarding Student A's []. The Principal told OCR that she did not make any reports to DCFS regarding Student A's/the Complainant after [] and said that she followed up with school staff and none were aware of another DCFS report by School staff against the Complainant during the [] school year. The Assistant Principal and Counselor also told OCR that they did not report the Complainant to DCFS for the rest of the [] school year.⁵

On [] DCFS sent the Principal a letter stating that it had completed its investigation of the School's report of suspected [] and determined that the report was unfounded and notified the Principal of her right to seek a written appeal of the determination. DCFS's letter listed the reporting date as [], not [].⁶ As stated above, the Principal, Assistant Principal and Case Manager each told OCR that they did not report the Complainant to DCFS during the [] and the Principal could not ascertain any staff that did so. The Principal told OCR that she did not appeal DCFS's determination nor speak to anyone at DCFS about the outcome of the investigation.

The Complainant told OCR that she has on numerous occasions engaged in protected conduct, and she believes that School staff made the SASS and DCFS referrals because of her protected conduct. Specifically, the Complainant reported to OCR that she complained of alleged Section 504 violations to the District, and, in support of this, she provided OCR

with a timeline containing several examples of her protected conduct, dating back to [] when she was asked to come to the School because Student A had []. Other examples included the Complainant complaining to the Illinois State Board of Education in [] about Student A not having a dedicated paraprofessional and filing a complaint with the state Attorney General in []. The Complainant also reported to the School at the beginning of the [] school year that the District's policies violate Section 504, she disagreed with some of the team's decisions at Student A's IEP meeting on [] and she asserted that the School did not follow Student A's IEP throughout the [] school year.

Legal Standard

The Title VI regulation at 34 C.F.R. § 100.7(e), which is incorporated into Section 504 at 34 C.F.R. § 104.61, states that no recipient shall "intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Section 504]."

In determining whether a complainant has established a prima facie case of retaliation, OCR considers whether there is some evidence of a causal connection between the adverse action and the protected activity. A causal connection may be established through direct evidence or through circumstantial evidence such as changes in the treatment of the individual after protected activity occurred or the proximity in time between protected activity and the adverse action.

Analysis

OCR found that the Complainant engaged in protected activities throughout the [] school year, such as complaining to ISBE about Student A's lack of a dedicated paraprofessional in []; advocating for Student A's disability-related needs at her [] IEP meeting; and reporting, on [] that paraprofessionals had assaulted Student A.

Regarding the District's referring the Complainant to SASS on [] and [], OCR determined that these were not adverse actions. OCR found no

evidence that the School referred Student A to SASS as a means to intimidate, threaten, coerce, or discriminate against Student A or the Complainant. Rather, the preponderance of the evidence shows that the School contacted SASS on those dates out of legitimate concern for Student A's wellbeing, based on her [] and [] and her [].

OCR determined that the District's []⁷ referral of the Complainant to [] for [] as a result of the Complainant's refusing the [] evaluations on [], was an adverse action. However, OCR found no evidence of a causal connection between this adverse action and the Complainant's protected activities. The District and the Complainant agree that the Complainant has engaged in protected activities to advocate for Student A's disability-related needs since at least the beginning of the [] school year. OCR found no evidence that the Complainant escalated her protected activity in [] when the School contacted DCFS. Therefore, the evidence indicates that the School's DCFS report on [] was caused by Student A's behavioral conduct and the School's legitimate concern for her wellbeing, not by the Complainant's continuation of protected conduct. For these reasons, OCR determined that the Complainant failed to establish a prima facie case of retaliation and is closing the complaint effective the date of this letter.

The 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.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may

result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the District 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 privacy.

If you have any questions about this letter, you may contact Lauren Lowe at 312-730-1584 or lauren.lowe@ed.gov.

¹<https://cps.edu/Pages/NonDiscrimination.aspx>

²If the student is an imminent risk, the school calls 911 for police to transport the student to a hospital for psychiatric evaluation.

³The Principal was not at the School on this date.

⁴Paraprofessional B no longer works for the District and was not available for an interview by OCR.

⁵The Assistant Principal told OCR that she did make a report to DCFS during the [] school year, on [] when Student A alleged that her []. The Assistant Principal said that per the Crisis Manual, she contacted DCFS that day, and was told by DCFS that they would not investigate the report. The Assistant Principal noted that this was a report against the paraprofessional, not the Complainant.

⁶OCR notes that one possible explanation for the date discrepancy is that the School, on [] reported Paraprofessional B to DCFS after the Complainant complained that [] Student A. OCR lacks jurisdiction over DCFS and was unable to determine whether DCFS used an incorrect date in its letter reporting that the [] report against the Complainant was unfounded.

⁷OCR was unable to determine the reason for the discrepancy between the District's [] medical neglect report to DCFS and the [] report date listed on DCFS's letter to the Principal on []. As explained in this letter, OCR lacks jurisdiction over DCFS and could not interview its staff. The Principal, Assistant Principal, and Counselor credibly told OCR that they did not report the Complainant to DCFS after []. The District told OCR that staff are not obligated to inform administrators when they report parents/guardians to DCFS. OCR also notes that DCFS's listed report date of [] coincides with the timing of the School's mandatory reporting to DCFS regarding the Complainant's [] allegation that Paraprofessional B [] Student A. OCR cannot speculate or make a determination on DCFS listing [] rather than [] as the date on which the School reported the Complainant for possible medical neglect. However, OCR determined that even assuming that the school made another report against the Complainant (as opposed to a paraprofessional) to DCFS on or around [] such a report would not be an adverse act caused by the Complainant's protected activities, but rather another report made out of concern for the safety of Student A and School staff.