



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

REGION V  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

October 7, 2020

Dr. Kristen Weikle  
Superintendent  
McLean County Unit District No. 5  
1809 W Hovey Avenue  
Normal, Illinois 61761

*Sent electronic mail only to:* [weiklek@unit5.org](mailto:weiklek@unit5.org)

Re: OCR Complaint #05-20-1340  
Complainant: XXXXXXXXX

Dear Dr. Weikle:

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), in May 2020 against the Mclean County Unit District No. 5 (District) alleging retaliation. The complaint alleged the District retaliated against Student A for filing a complaint with OCR on XXXXX, when it sent a Safety and Security Officer to Student A's home on XXXXX, to XXXXX's XXXXX, directed Student A to have no communication with District administrators, and filed a XXXXX alleging XXXXX.

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. Each of these laws also prohibits retaliation for engaging in certain protected activities. 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. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

### **District Policies and Procedures**

The District's Equal Educational Opportunities policy (Policy 7.10) provides for the equal educational opportunities of all students, without regard to, among other things, disability<sup>1</sup>. The District has also adopted a Uniform Grievance Procedure (Policy 2.260), which includes the

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<https://www.unit5.org/cms/lib/IL01905100/Centricity/domain/66/policies/professional%20personnel/Policy%205.10.pdf> (last viewed 9/15/20).

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

right to appeal adverse findings to the School Board<sup>2</sup>. The grievance procedure identifies the District's in-house legal counsel as the "Nondiscrimination Coordinator and Complaint Manager," and its Director of Communications and Community Relations as the "Complaint Manager," and provides each individual's name, address, email, and phone number.

The District's Access to Electronic Networks Policy (Policy 5.165) includes Student Acceptable Use of Electronic Networks. Policy 5.165 requires all use of the District's electronic networks to be in support of education or research, or for a legitimate school business purpose. Policy 5.165 states that use of the District's electronic network is a privilege, not a right, and prohibits transmission of inappropriate materials, including but not limited to those containing threatening material, racism, inappropriate language, or materials that disrupt the educational experience of others. Policy 5.165 further requires students to follow certain rules of etiquette, and prohibits them from, among other things, harassing, insulting or attacking others, and sending or displaying offensive messages or pictures. Students and parents are required to initial the Student Acceptable Use of Electronic Networks statement and sign a receipt and acknowledgement section of the student handbook before students are granted access to the District's electronic networks.

## **Facts**

During the 2019-2020 school year, Student A was an XXXXX grade student in the District, which he had attended since XXXXX. Student A received special education and related services for other XXXXX, pursuant to an Individual Education Program (IEP). Student A's XXXXXIEP placed him a XXXXX. The Complainant, Student A's parent, objected to the placement and instead provided the District with documentation to support a request for XXXXX. Throughout the 2019-20 school year, the District provided Student A XXXXX.

On XXXXX, the District convened an IEP meeting for Student A to consider his placement for the 2020-2021 school year. The District's Director of Special Education, Student A's school education team, the Complainant, and the Complainant's friend attended the meeting. The IEP team recommended continued placement in a XXXXX program, over the Complainant's continued objection. Shortly after the XXXXX IEP meeting, at XXXXX, Student A sent the Director of Special Education an email with the subject line "Retaliation." The content of the email read "Retaliation Federal law prohibits schools from retaliating against you, your child, or school staff for acting in the best interests of your child." The next XXXXX, on XXXXX, Student A sent four additional emails between XXXXX. and XXXXX. The first email was sent at XXXXX. to the District's incoming Superintendent with a blank subject line. The content of the email read "Requesting investigation of [Director of Special Education]." The incoming Superintendent forwarded this email to the Assistant Superintendent, who then forwarded the email to the Director of Special Education. The second email was sent at XXXXX to a District Board Member with a subject line "Possible Investigation." The content of the email read "I am wondering if you can investigate [Director of Special Education] and how she conducts her

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<https://www.unit5.org/cms/lib/IL01905100/Centricity/domain/66/policies/board%20of%20education/Policy%202.260.pdf> (last viewed 9/15/20).

meetings and handling my iep along with possible acts of retaliation.”<sup>3</sup> The third email was sent at XXXXX to the Director of Special Education with the subject line “Unit 5 misconduct.” The content of the email included a forwarded copy of Student A’s correspondence with OCR in which he wrote “I’d like to report illegal and misconduct for handling my iep done by the [Director of Special Education] the head of special education in unit 5 and possible acts if retaliation.” The forwarded email also included OCR’s response, which provided information about OCR’s complaint filing procedure, with attached complaint and consent forms. Student A sent the fourth email to the District’s outgoing Superintendent at XXXXX, with the subject line “Report to us department of education.” The content of the email read “If an investigation is not launched on [Director of Special Education] and her actions I will file a formal complaint to the us department of education.” On or about XXXXX, Student A sent an email to the District’s general mailbox without a subject line. The content of the email was a picture of the Director of Special Education and the outgoing Superintendent, edited to have XXXXX

Upon receiving the second email from Student A at XXXXX, the Director of Special Education spoke with the District’s Safety and Security Director, and expressed XXXXX XXXXX Student A as a result of the emails, and in consideration of Student A’s XXXXX District. The Safety and Security Director recommended XXXXX in order to cease the communications because Student A XXXXX educational purposes since the school year XXXXX. The Safety and Security Director drove to Student A’s residence at approximately XXXXX and spoke with Student A’s parent to inform him about the first two emails Student A sent XXXXX. The Safety and Security Officer spoke with the Complainant before leaving the residence and informed her that Student A was not allowed to correspond with anyone from the District office except through the Complainant. The Safety and Security Director learned of the additional emails sent to the Board Member, both Superintendents, and other District staff as he was leaving the residence, which Student A sent via his cell phone while the Safety and Security Director was at his residence. The following day, on XXXXX, the Director of Special Education and the Safety and Security Director were informed of the email containing the XXXXX. In response, the Safety and Security Director called the Complainant to inform her that Student A did not comply with his request regarding ceasing communication with District personnel, and that he was going to inform the Director of Special Education to XXXXX.

On XXXXX, the Director of Special Education XXXXX regarding the preceding incidents and in consideration of Student A’s XXXXX. The XXXXX that received the report is also the District’s assigned XXXXX and was familiar with the Complainant and Student A. The Director of Special Education explained to the SRO that she took Student A’s emails as a XXXXX. The SRO contacted the Complainant and discussed the incidents, informing her that a XXXXX would be generated and possibly reviewed by XXXXX. The report was administratively closed by the XXXXX, and no further action taken.

## Legal Standards

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<sup>3</sup> OCR did not investigate whether the District provided Student A with a prompt and equitable review of his underlying complaint of disability discrimination and retaliation to the District. However, the District has acknowledged that it did not treat Student A’s communications as a request for investigation pursuant to its Uniform Grievance Procedure and has indicated to OCR that it will address Student A’s complaint pursuant to its policies and procedures.

The Title VI implementing regulation at 34 C.F.R. § 100.7(e), which is incorporated through the Section 504 implementing regulation at 34 C.F.R. § 104.61, states that “no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.” The Title II implementing regulation at 28 C.F.R. §35.134(a), states that “no private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.”

### **Analysis and Conclusion**

Prior to the conclusion of this investigation, the District expressed an interest in resolving the complaint allegation through a voluntary resolution agreement (Agreement) pursuant to section 302 of the *Case Processing Manual* (CPM) in the interest of efficiency. OCR determined that it was appropriate to resolve the complaint at this point because OCR’s investigation has identified concerns that can be addressed through a resolution agreement.

On October 5, 2020, the District submitted the enclosed, signed Agreement to OCR. When fully implemented, the Agreement will address the District’s compliance with the Section 504 regulations at 34 C.F.R § 104.61 and the Title II regulations at 28 C.F.R. § 35.134 and will address the Complainant’s allegation regarding Student A. Pursuant to the Agreement, the District will:

- 1) provide training to its Director of Special Education, Board President, and Safety and Security Director on the non-discrimination and non-retaliation provisions of Section 504 and Title II<sup>4</sup>.
- 2) send the Complainant and Student A a letter informing them that it has removed XXXXX with District personnel. The District’s compliance with Item 2 does not waive its right to implement its policies in a nonretaliatory manner, including but not limited to its policies on technology use and student conduct.

OCR will monitor the District’s implementation of the Agreement. When OCR concludes the District has fulfilled the terms of the Agreement, OCR will close the case. 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 District may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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<sup>4</sup> Although the District’s then-incoming Superintendent had not yet commenced her job duties within the District at the time of the alleged incidents, OCR encourages her to participate in the District’s training.

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

OCR looks forward to the District's monitoring report, which is due by November 2, 2020. OCR wishes to thank Ms. Teri Engler, Counsel for the District, for the cooperation extended to OCR in this case. If you have questions, please contact Hasti Anderson at [Hasti.Anderson@ed.gov](mailto:Hasti.Anderson@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: Ms. Teri Engler, Counsel for the District