



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

March 12, 2020

Mr. Eugene P. Kotulka
Superintendent
Alleghany County Public Schools
100 Central Circle
Low Moor, VA 24457

Re: OCR Complaint No. 11-20-1117
Notification/Data Request Letter

Dear Superintendent Kotulka:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received a complaint on December 26, 2019 against Alleghany County Public Schools (the Division). The Complainant alleges that the Division engaged in disability-related retaliation against him, due to his disability-related advocacy, including his complaints about the Division's use of special education funding and its discriminatory practices against students with disabilities. Specifically, the complaint alleges that the Division retaliated against the Complainant when:

1. On July 3, 2019, the School Board failed to:
 - a. Recognized the Complainant's work on the Salary Committee for the 2018-2019 school year, even though it did so for other members; and
 - b. Reappoint the Complainant to the Salary Committee for the 2019-2020 school year.
2. On October 10, 2019, the Superintendent notified the Complainant that he was found responsible for violating Division Policies GBB and GBA/JFHA, due to the allegations he raised against two Division employees in his complaints filed with the Auditor of Public Accounts, Inspector General, and the Superintendent of the State Police.¹
3. On October 21, 2019, the School Board did not appoint the Complainant to serve on the Special Education Advisory Committee for the 2019-2020 school year.
4. On October 21, 2019, the School Board meeting agenda listed the Complainant as up for appointment to the Report Card and Grading Committee for the 2019-2020 school year,

¹ The Superintendent's letter, dated October 10, 2019, indicates that after the Complainant filed complaints with the entities named above, these two Division employees subsequently filed complaints against the Complainant, on or about June 19, 2019, in which they alleged that through the filing of the Complainant's complaints, he harassed them and created an abusive work environment.

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

even though he had previously informed the Director of Instruction that he was not interested in serving on this committee.

5. On November 18, 2019, the Complainant was not allowed to complete your statement at the monthly School Board meeting, when the Superintendent interrupted him and attacked his character at the meeting.

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 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), 42 U.S.C. §§ 12131 et seq., 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 prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. 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.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainant, the Division, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegations in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.pdf>. Also, in accordance with the *Case Processing Manual*, OCR will provide a copy of the complaint to the Division under separate cover. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Our goal is the prompt, appropriate resolution of the complaint. While we are proceeding with an investigation, there are other approaches that can achieve this goal. Information on OCR's complaint processing procedures is available at <http://www.ed.gov/ocr/complaints-how.html>.

Please note the section on resolution agreements reached during an investigation. If the Division expresses an interest in resolving the complaint and OCR determines that resolution of the complaint prior to the completion of the investigation is appropriate, OCR may attempt to negotiate an agreement with the Division pursuant to Section 302 of the *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. OCR requests that the Division submit this information within 15 calendar days of the date of this letter (i.e., by March 27, 2020). We prefer that you submit information electronically, if feasible.² If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact

² If your submission cannot be sent via email, OCR can set up a secure site for you to upload your submission. You may contact us for more information about this option.

us as provided below prior to the expiration of the 15-day period. Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

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, assists, or participates in a proceeding under a law enforced by OCR. 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 look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Mordecai Simha, the OCR attorney assigned to this complaint, at 202-453-7084 or Mordecai.Simha@ed.gov.

Sincerely,



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

Allegheny County Public Schools
OCR Complaint No. 11-20-1117

Data Request
Complainant: Donnie T.A.M. Kern

Please provide the following data by March 27, 2020. The Department's regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(c), which is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61, gives OCR the authority to request this information.³ OCR hereby notifies the Division that OCR will consider the Division's response to this data request to be its full and complete response pursuant to OCR's right of access to information under the regulations cited above, unless the Division notifies OCR otherwise. If the Division obtains any additional information or documents responsive to this data request or otherwise relevant to the allegations in this case, the Division must promptly inform OCR of its existence and supplement the data response within 15 days of its discovery. OCR reminds the Division that a failure to provide requested information may be considered a denial of access in violation of the regulations cited above.

1. The name and contact information of the individual who will serve as OCR's contact person during the investigation of this complaint.
2. The Division's narrative response to the allegations and all documents or records referenced in the narrative response.
3. The Division's policies and procedures pertaining to its School Board.
4. All correspondence between the Complainant and Division staff, and all internal correspondence among Division staff, pertinent to the allegations in this complaint. "Correspondence" includes letters, memoranda, emails, text messages, records/notes of telephone conversations, and records/notes of in-person meetings.
5. Copies of all formal or informal complaints made by the Complainant against the Division during the 2018-2019 and 2019-2020 school years, and all records pertaining to the Division's investigation into the complaints or reports, including but not limited to:
 - a. The name(s) and title(s) of the individuals who conducted the investigation;
 - b. A description and supporting documentation of all interim measures put in place during the investigation;
 - c. Interview notes;
 - d. Witness statements;
 - e. Documentary evidence;

³ Please note that OCR has the right of access to records that are necessary for OCR's investigation, even if those records contain names or other personally identifiable information. See 20 U.S.C. §§ 1232g(b)(1) and 1232g(b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act; see also 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii). However, please remove any social security numbers from responsive records due to the sensitive nature of this information.

- f. Correspondence between the Complainant and Division staff;
 - g. Internal correspondence between Division staff;
 - h. Investigation reports;
 - i. Notices regarding the outcome of the investigation;
 - j. A description and supporting documentation of all corrective actions taken by the Division, including but not limited to discipline, letters of reprimand, education, training, and counseling; and
 - k. All appeal(s) submitted by the Complainant, and the Division's response to such appeal(s).
- 6. The School Board's policies and procedures, or a description of its practices, regarding the appointment/reappointment of School Board members to serve on committees.
- 7. A list of the members of the School Board's Salary Committee for the 2018-2019 school year. For each member, state:
 - a. Whether that member was recognized for the work on the Salary Committee on July 3, 2019, and provide an explanation why or why not;
 - b. The name(s) and title(s) of the individuals responsible for such recognition; and
 - c. Whether that member filed any complaints of discrimination or otherwise asserted rights under anti-discrimination laws prior to the meeting on July 3, 2020. If so, please specify the nature of the complaint or activity and the date(s) it occurred.
- 8. A list of the members who were up for appointment/reappointment to the School Board's Salary Committee for the 2019-2020 school year as of July 3, 2019. For each member, state:
 - a. Whether that member was appointed/reappointed, and provide an explanation why or why not;
 - b. The name(s) and title(s) of the individuals responsible for the appointment/reappointment; and
 - c. Whether that member filed any complaints of discrimination or otherwise asserted rights under anti-discrimination laws prior to the meeting on July 3, 2020. If so, please specify the nature of the complaint or activity and the date(s) it occurred.
- 9. Copies of all formal or informal complaints made against the Complainant by Division employees during the 2018-2019 and 2019-2020 school years, and all records pertaining to the Division's investigation into the complaints or reports, including but not limited to:
 - a. The name(s) and title(s) of the individuals who filed complaints against the Complainant;
 - b. The name(s) and title(s) of the individuals who conducted the investigation;
 - c. A description and supporting documentation of all interim measures put in place during the investigation;
 - d. Interview notes;
 - e. Witness statements;
 - f. Documentary evidence;
 - g. Correspondence between the Complainant and Division staff;

- h. Internal correspondence between Division staff;
 - i. Investigation reports;
 - j. Notices regarding the outcome of the investigation;
 - k. A description and supporting documentation of all corrective actions taken by the Division, including but not limited to discipline, letters of reprimand, education, training, and counseling; and
 - l. All appeal(s) submitted by the Complainant or the other parties, and the Division's response to such appeal(s).
- 10. A list of the members who were up for appointment/reappointment to the School Board's Special Education Advisory Committee for the 2019-2020 school year as of October 21, 2019. For each member, state:
 - a. Whether that member was appointed/reappointed, and provide an explanation why or why not;
 - b. The name(s) and title(s) of the individuals responsible for the appointment/reappointment; and
 - c. Whether that member filed any complaints of discrimination or otherwise asserted rights under anti-discrimination laws prior to October 21, 2020. If so, please specify the nature of the complaint or activity and the date(s) it occurred.
- 11. A copy of agendas, and the meeting minutes or recordings, for School Board meetings held on July 3, October 21, and November 18, 2019.
- 12. Any additional information that the Division believes may be helpful in resolving this complaint.