



## UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

### Civil Rights Protections Against Retaliation

*A Resource for School Communities*

The U.S. Department of Education's (Department) Office for Civil Rights (OCR) enforces federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities by recipients of federal financial assistance from the Department.<sup>i</sup> All of the federal civil rights laws enforced by OCR prohibit retaliation.<sup>ii</sup> This resource provides an overview of the key elements of retaliation, includes examples of protected activities, outlines how OCR assesses retaliation claims, provides scenarios that, depending on facts and circumstances, could raise concerns of retaliation, and provides information about how to file a complaint with OCR.

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*The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights laws.*

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#### Question 1: What is retaliation?

In general, retaliation may take the form of intimidation, threats, coercion, or another adverse action that would deter a reasonable person from exercising civil rights protected under the laws enforced by OCR and occurs when a person is discriminated against for taking actions that are protected by civil rights laws.

#### Question 2: Who is protected from retaliation?

Federal civil rights laws offer protection for people who exercise their civil rights, oppose discrimination, report discrimination, or participate in civil rights investigations or proceedings, including students, siblings, parents, guardians, teachers, counselors, coaches, or third parties advocating for the rights of a student. OCR enforces federal civil rights laws as applied to schools and educational institutions that receive federal funding or other assistance from the Department.

#### Question 3: What are the elements of a retaliation claim?

These are the three elements of an initial retaliation case, also known as a *prima facie* case:

- 1) An individual complained about discrimination or otherwise engaged in **protected activity**;
- 2) An individual experienced an **adverse action**;
- 3) There is some evidence of a **causal connection** between the adverse action and the protected activity.

#### Question 4: What is a protected activity?

Exercising your civil rights, opposing or reporting on actions that you reasonably and in good faith believed violated civil rights laws, and participating in a matter that reasonably or in good faith alleged a violation of civil rights laws are protected activities. For example, protected activities may include anything from raising concerns about alleged civil rights violations with a school or with OCR to making an informal or formal civil rights complaint; testifying or participating in a school's or OCR's investigation of possible discrimination; or exercising rights guaranteed under civil rights laws, such as requesting

reasonable modifications for a student with a disability, English language services for a student who is an English learner, or a translation of an important school document or proceeding for a parent who is not proficient in English.

**Question 5: What is an adverse action?**

In general, an act of intimidation, threat, coercion, or discrimination constitutes an adverse action if it is likely to discourage a reasonable person from making or supporting a complaint of discrimination or from exercising a right or privilege under the laws enforced by OCR. Whether an action is adverse is judged from the perspective of a reasonable person in the complainant's position (e.g., a reasonable person in a parent's position may be deterred from complaining if they knew their child would be subject to threats and intimidation).

Intimidation, threats, coercion, or discrimination against a person other than the individual who engaged in protected activity may constitute adverse action in some circumstances. For example: A complaining student's parent, spouse, or sibling might be subjected to intimidation, threats, coercion, or discrimination because of the student's protected activity. If such conduct is likely to discourage the student from moving forward with their complaint, it would be considered an adverse action.

**Question 6: What type of facts may show a causal connection between an adverse action and a protected activity?**

Evidence of a causal connection is anything indicating that the adverse action took place because an individual engaged in a protected activity or for the purpose of interfering with protected activities (e.g., to deter an individual from filing a complaint). This will vary based on each individual case. For example, evidence may consist of a written statement, oral statement, or the adverse action itself.

Examples of other types of evidence that may, depending on the circumstances, point to a retaliatory motive, either on their own or together, include: closeness in time between a protected activity and an adverse action; changes in treatment of an individual after a protected activity occurred; treating an individual who engaged in a protected activity differently compared to other individuals; failing to follow a school's established policies or practices; and inconsistent or shifting explanations for an adverse action.

**Question 7: In an OCR complaint, if the initial elements of a retaliation case are met, what happens next?**

In general, if OCR receives and investigates a complaint alleging retaliation and finds that all three of the above elements are present (i.e., adverse action with a causal connection to protected activity), a recipient will have an opportunity to show that there is a legitimate, non-retaliatory reason for the adverse action that is not a pretext or cover for retaliation. OCR will examine all available evidence to determine whether any reasons given for the adverse action are credible and whether the adverse action would have occurred if the individual had not engaged in protected activity. If OCR finds that all three of the above elements are met and no credible, non-retaliatory reason for the adverse action exists, OCR may find that unlawful retaliation occurred and seek voluntary compliance from the school to remedy its effects, and if unable to achieve voluntary compliance, take appropriate enforcement action.

If OCR determines that a school took an adverse action for both an illegitimate, retaliatory reason and a legitimate non-retaliatory reason, OCR may still find the action may still be unlawful if retaliation contributed to the decision.

## **Question 8: What if someone experiences retaliation or discrimination under the federal civil rights laws enforced by OCR?**

If you believe that you or someone else experienced discrimination, or that you were or someone else was subjected to unlawful retaliation for complaining of discrimination or participating in an investigation or proceeding regarding violation(s) of federal civil rights laws enforced by OCR, or for otherwise asserting rights under the laws enforced by OCR, you can file a complaint using OCR's [Electronic Complaint Assessment System](#). Complaint forms and other resources are available in languages other than English on OCR's [Resources Available in Other Languages website](#).

If OCR completes an investigation and finds that unlawful retaliation occurred, OCR will seek voluntary compliance from the school to remedy the effects of retaliation, and if unable to achieve voluntary compliance, take appropriate enforcement action.

OCR will continue to vigorously enforce prohibitions of retaliation under all civil rights laws within our jurisdiction. The ability of individuals to oppose discriminatory practices, and to participate in OCR investigations and other proceedings, is critical to ensuring equal educational opportunity in accordance with federal civil rights laws.

### **Examples of the kinds of incidents that could, depending upon facts and circumstances, raise concerns about unlawful retaliation include:<sup>iii</sup>**

**Example 1:** After a student's guardian complained to school administrators that the school discriminated against the student based on sex in how it disciplined the student for violating the code of conduct, an administrator threatened to reclassify the infraction as a more serious offense.

**Example 2:** The day after a university student expressed concerns of discrimination on the basis of race in grading by his instructor, the instructor filed two academic integrity reports against him—each relating to assignments that had been reviewed and graded by the instructor before the student expressed his concerns.

**Example 3:** A principal instituted a new dress code policy that prohibited girls from dressing "provocatively." In response, several students complained to the school that the dress code discriminated against girls. The principal then threatened expulsion of the students who complained and limited their access to school activities and extracurricular programming.

**Example 4:** After a community college student filed an internal complaint about the college's failure to provide academic adjustments for the student's disability in a course, the professor and the department chair stopped communicating with the student entirely, including not responding to the student's questions about the final exam, and an attorney for the college informed the student that there are consequences for filing complaints.

**Example 5:** After a parent filed repeated complaints with her child's school alleging that her child experienced racial harassment at school and requested that her child be transferred to another school in the school district to avoid the harassment, the school principal requested that Child Protective Services visit the student's house to question the parent.

**Example 6:** After a graduate student submitted a university complaint via email alleging that a professor had sexually harassed her, the university disabled the student's email account.

**Example 7:** After a school district received notice that a parent filed a complaint with the state's department of education alleging the school's failure to implement the student's Section 504 plan at a

competitive district magnet school, the district disenrolled the student from the magnet school and prohibited the student from reenrolling.

**Example 8:** After a parent raised concerns about whether her child received appropriate English language services and said that her child’s teacher did not care about students who are English learners, the school stopped providing English language services to her child and told the parent to return to her country of origin to seek a different educational experience for her child.

**Example 9:** After a parent filed an OCR complaint alleging disability discrimination against her child, and subsequently sent an email to the school expressing concerns with her child not receiving disability-related services, the superintendent informed the parent he would not tolerate her questioning decisions made by his staff and canceled previously scheduled Section 504 meetings with the parent.

**Example 10:** A school administrator initially informed a parent that their child would receive a verbal warning for alleged misconduct during school, but after the parent raised concerns of racial harassment relating to use of racial epithets by a teacher, the school administrator increased the student’s punishment to a multiple-day suspension.

**Example 11:** After a group of parents advocated for students with disabilities, a school district’s advisory board for issues involving special education amended its bylaws to prevent individuals who file complaints against the district from occupying positions on the board.

**Example 12:** After OCR opened an investigation of a Title IX complaint filed by a tennis coach alleging that female athletes are given unequal practice and game schedules, equipment, locker rooms, and practice facilities, the school stopped responding to the coach’s emails and cancelled all planned meetings with the coach.

**Example 13:** A Palestinian law student reported to the academic dean that the law school has engaged in anti-Palestinian discrimination by cancelling an event supporting Palestinians and removing flyers supporting Palestinians posted around campus, while allowing other similar events and flyers. Two days later, the academic dean told the student that “there could be consequences” if she did not “keep her head down.” The next day, the academic dean notified the law student that due to her “participating in disruptive campus activities,” the university will hold a disciplinary hearing to decide whether to rescind her tuition scholarship.

**Example 14:** A Jewish high school student sent several emails to the school's principal complaining that he observed his classmates drawing swastikas in the bathroom. After the principal spoke to the classmates, they started following the Jewish student around school and shoving him in the hallways, using antisemitic slurs, and commenting that he and his “Israeli relatives should stop terrorizing Gazans.” The student again emailed the principal about the shoving and comments. The principal took no action to address the conduct of the classmates, which continued for the remainder of the school year.

**Example 15:** Following a meeting with the district’s special education director where several Black parents voiced concern that their advocacy for students with disabilities was met with repeated inaction by the district, as compared with a robust district response to address and resolve similar concerns raised by white parents, the district notified the Black parents that they would not be welcome on school premises for the remainder of the school year due to the “disruption” they caused at the meeting

## Additional resources:

OCR is available to provide technical assistance to schools and organizations that request assistance in complying with any aspect of the civil rights laws OCR enforces, including on those issues addressed in this resource. If you have any questions or would like technical assistance, please contact the OCR office serving your State or territory by using the [list](#) of OCR offices.

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact [OCR@ed.gov](mailto:OCR@ed.gov). If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-437-0833). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0818 or [ofe@ed.gov](mailto:ofe@ed.gov).

For additional information, please see the following resource:

- Dear Colleague Letter: [Retaliation](#) (April 2013)

The contents of this guidance do not have the force and effect of law and do not bind the public or create new legal standards. This document is designed to provide clarity to the public regarding OCR's understanding of existing legal requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.

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<sup>i</sup> The statutes that OCR enforces with respect to recipients of the Department's federal financial assistance include Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; the Age Discrimination Act of 1975 (Age Act), which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability. Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits discrimination on the basis of disability by State and local governments, regardless of whether or not those entities receive federal financial assistance. OCR and the U.S. Department of Justice share in the enforcement of Title II in public elementary and secondary education systems and institutions, public institutions of higher education, vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. The focus of this resource document is on rights and responsibilities under the civil rights laws applicable to federally assisted programs and activities.

<sup>ii</sup> See 34 C.F.R. § 100.7(e) (Title VI); 34 C.F.R. § 106.71 (Title IX); 34 C.F.R. § 104.61 (Section 504) (incorporating 34 C.F.R. §100.7(e) by reference); and 34 C.F.R. §108.9 (Boy Scouts Act) (incorporating 34 C.F.R. §100.7(e) by reference). The Age Act has similar regulatory language. See 34 C.F.R. § 110.34. Although not specifically addressed within this resource, Title II also prohibits retaliation. See 28 C.F.R. 35.134.

The Department's Title IX regulations were amended in 2020 ([2020 Notice of Final Rule](#); [2020 Title IX regulations](#)) and again in 2024 ([2024 Notice of Final Rule](#); [2024 Title IX regulations](#)). The 2020 and 2024 Title IX regulations both prohibit retaliation. As of November 25, 2024, pursuant to federal court orders, the Department is currently enjoined from enforcing the 2024 Title IX regulations in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule>. Per court order, this list of schools may be supplemented in the future. Pending further court orders, the Department's 2020 Title IX regulations remain in effect in those states and schools. Any updates on the status of the 2024 Title IX regulations will be posted at <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of-law>.

<sup>iii</sup> These examples are not exhaustive and do not predict or determine the outcome of any particular complaint that OCR might receive. Each of these examples is purely hypothetical.