



February 22, 2018

To: All Staff, Board Members  
From: Christopher Mahoney, Executive Director

This memo specifically relates to Spark's operational policy regarding unlawful retaliation. Its purpose is to 1) summarize the legal prohibitions against retaliation; 2) provide examples of the types of activities individuals may engage in without fear of retaliation, and 3) provide examples of prohibited retaliatory action.

Retaliation against any member of Spark's community not only goes against the heart of our school's mission, but also is unlawful. Section 504, Title II of the ADA, Title IV of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, prohibit retaliation against individuals who take action to assert the rights of parents, students, and others to be free from discrimination based on race, color, national origin, sex, disability, or age. Unlawful retaliation is prohibited by school policy, and there are consequences for employees who engage in such conduct.

It is Spark's policy to maintain an educational and work environment that is free from all forms of unlawful harassment and discrimination. This commitment applies to all school operations, programs, and activities. Accordingly, all students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful retaliation.

## **What constitutes Protected Activity?**

Protected activity includes:

- (1) asserting your right to be free from discrimination;
- (2) asserting the right of others to be free of discrimination;
- (3) opposing a practice believed to be unlawful;
- (4) filing a complaint or participating in a complaint investigation process or hearing under a Federal anti-discrimination law.

It is against Federal law to discriminate against students, staff, parents, Board Members, guardians, and third parties for engaging in protected activity.

Examples of protected activity may include, but are not limited to:

- (1) A parent notifies a teacher/administrator via e-mail, in person or in a Uniform Complaint Procedure (UCP) complaint of the parent's belief that a student experienced discrimination at school;
- (2) A teacher advocates for services for a student with a Section 504 plan or an IEP, or for a student suspected of needing regular or special education and related aids and services;
- (3) A teacher recommends to an administrator that a student suspected of having a disability be evaluated;
- (4) A teacher or parent expresses disagreement with the offer of a Free Appropriate Public Education (FAPE) at a Section 504 or IEP meeting;
- (5) A teacher notifies an administrator of a belief that the current curriculum or available educational materials were insufficient to meet the needs of the teacher's English Learner (EL) students;
- (6) A student tells a teacher or an administrator about being bullied or harassed due to skin color, race, national origin or cultural background;
- (7) A student writes a letter to a teacher or an administrator about being bullied or harassed for receiving RSP or speech and language services;
- (8) A parent meets with a teacher to share that a student was disparaged due to level of English proficiency or for being an EL student;
- (9) A parent e-mails an administrator to complain that the school was not implementing a student's Section 504 plan or IEP;

Once an individual complains to a school about a potential civil rights violation or participates in an OCR investigation, Spark, as a recipient of Federal funds, is prohibited from retaliating against the individual because of the individual's complaint or participation. Retaliating may include, but is not limited to, intimidating, threatening, coercing, or in any way discriminating against the individual who made the complaint or the individual that is the subject of the complaint.

It is also unlawful to retaliate against an individual for participating in an OCR investigation or in a Spark complaint investigation. Once a student, parent, teacher, coach, or other individual complains to a school about a potential civil rights violation or participates in an OCR investigation, Spark is prohibited from retaliating against that individual.

For example, if a parent files a complaint against Spark alleging that a student is being bullied on the basis of disability, or that Spark is not implementing the Student's Section 504 plan or IEP, Spark is prohibited from retaliating against the parent and/or the child.

## **What constitutes Retaliation?**

Examples of retaliatory actions toward those who have engaged in a protected activity such as the ones described above may include, but are not limited to:

1. Refusing to respond to e-mail messages or return phone calls from a parent or student who complained to the school about discrimination

2. Not allowing parents to view student records
3. Canceling school meetings and conferences
4. Making a false complaint to Child Protective Services (CPS)
5. Imposing unwarranted truancy charges against a student
6. Obtaining an unwarranted protective order against a parent
7. Unfair or undeserved grading of a student's work
8. Intentional, unwarranted criticism of a student or a parent
9. Unwarranted discipline of a student
10. Denial of or exclusion of a student from services, activities, or benefits afforded other students
11. Restricting parents' school or classroom visits as a consequence of their advocacy for their child

## **Staff Responsibilities**

If staff members witness or are informed of any form of prohibited behaviors noted above, they are required to report such behaviors to their immediate supervisor or school administrator within one-to-two business days. Please refer to "Dear Colleague" letter from the U.S. Department of Education, Office for Civil Rights, dated April 24, 2013. (See attached). It explicitly outlines schools' responsibilities under Federal law to ensure that individuals who alert them to possible civil rights problems are not retaliated against for doing so.

*"The Federal civil rights laws make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. If, for example, an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. Thus, once a student, parent, teacher, coach, or other individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. OCR will continue to vigorously enforce this prohibition against retaliation."*

## **Conclusion**

Spark does not tolerate any form of harassment or discrimination. Individuals who believe harassment or discrimination have occurred have a right to file complaints either via e-mail, in-person or via UCP complaint. Spark Board members, employees and other staff are prohibited from retaliating against any individual who has made or participated in the complaint.