

ADMINISTRATIVE PROCEEDING  
IN THE  
UNITED STATES DEPARTMENT OF EDUCATION

In the Matter of

CAPISTRANO UNIFIED SCHOOL DISTRICT,  
San Juan Capistrano, California,

Respondent

Docket No. 89-33-CR  
(89-IX-3)  
Compliance Proceeding  
Under Title IX of the  
Education Amendments  
of 1972, 20 U.S.C. § 1681

FINAL DECISION  
OF THE  
CIVIL RIGHTS REVIEWING AUTHORITY

I.

Procedural History

This is a compliance proceeding initiated by the Office for Civil Rights (OCR) of the United States Department of Education against the Capistrano Unified School District (CUSD) and the California Department of Education 1 under the authority of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. (Title IX), and the implementing regulation at 34 C.F.R. § 100.7(e), incorporated at 34 C.F.R. § 106.71. A Notice of Opportunity for Hearing was filed by OCR on May 25, 1989, and amended on October 25, 1989. CUSD filed its answer on June 15, 1989, and amended it on November 7, 1989. On September 8, 1989, the Civil Rights Reviewing Authority issued an Order designating Administrative Law Judge John F. Cook (ALJ) to preside over this matter and render an Initial Decision.

A hearing on the matter was held in Dana Point, California on June 7, 8, and 11, 1990. Final briefs were filed by both parties on October 31, 1990. The ALJ issued his Initial Decision on July 19, 1991, finding CUSD in violation of Title IX and ordered the termination of certain Federal financial assistance. CUSD filed exceptions to the Initial Decision with the Civil Rights Reviewing Authority on August 9, 1991.

II.

## Statement of Facts

Ms. Ruth Geis (complainant) has been employed by the Capistrano Unified School District since July, 1974 and has 29 years of teaching experience. CUSD assigned the Complainant to teach the Speech/Debate course in the English Department and the speech/debate Co-curricular activity at San Clemente High School from the 1974-75 school year through the 1980-81 school year. CUSD paid the complainant a stipend for her work with the speech/debate co-curricular activity for the 1980-81 school year.

For the 1981-82 school year the CUSD involuntarily transferred the Complainant to the Niguel Hills Junior High School. As a result of this transfer, the Complainant filed a claim charging the CUSD with age and sex discrimination with the California Department of Fair Employment and Housing in September, 1981. In December of 1982, the Complainant filed a claim with the California Department of Fair Employment and Housing charging Respondent School District with retaliation.

By her own request, the Complainant was transferred back to San Clemente High School for the 1983-84 school year. The CUSD informed the Complainant that the speech/debate co-curricular activity at San Clemente High School would not be funded for the 1983-84 school year. Thus, she would not receive the stipend for coaching the activity. The CUSD offered the stipend for the speech/debate co-curricular activity every year from the 1974- 1975 school year through the 1986-87 school year, except for the 1983-84 school year.

On February 12, 1984, the CUSD entered into a settlement agreement with the Complainant to resolve all possible causes of action from August 1, 1981, through September 1, 1983.

The CUSD informed the Complainant prior to the 1984-85 school year that the Speech/Debate course and Co-curricular activity would be reassigned to another teacher. OCR was informed of this and inquired of the CUSD on April 4, 1985, why this action was being taken. The CUSD replied that it was beneficial to have rotational assignments and that this permitted additional opportunities for other teachers.

On September 17, 1984, the Complainant filed a retaliation claim with the California Department of Fair Employment and Housing. On November 24, 1984, the Complainant filed a Title IX Complaint with OCR and a civil lawsuit in Superior Court, Orange County, California on January 23, 1986.

OCR notified CUSD by letter dated September 11, 1987, that it had violated Title IX and its implementing regulations by retaliating against the Complainant. OCR informed the CUSD that the Complainant had engaged in an activity protected by Title IX. OCR offered the CUSD many opportunities to voluntarily resolve the complaint, but the School District insisted that the complaint could not be voluntarily resolved. Subsequently, this proceeding was initiated by OCR with the filing of the Notice of Opportunity for Hearing.

In his Initial Decision, the ALJ found that OCR had legal jurisdiction in this matter to enforce Title IX and statutory and regulatory jurisdiction under 34 C.F.R., Part 106, 34 C.F.R. ? 100.6 - 100.11 AND 34 C.F.R., Part 101.

The ALJ also held that the CUSD retaliated against the Complainant when it refused to fund the speech debate co- curricular activity for the 1983-84 school year in violation of 34 C.F.R. 100.7(e) which prohibits retaliation for the purpose of interfering with any rights or privileges secured by Title IX. Additionally, the CUSD was found to have retaliated against the Complainant because she was involved in a protected activity as identified under the Title IX regulations at 34 C.F.R. § 106.71, incorporating 34 C.F.R. §100.7(e). Despite claims to the contrary, a causal connection was found between the Complainant's protected activity and CUSD's adverse action.

The ALJ further held that the Complainant's private suit against the CUSD did not bar OCR from conducting this enforcement action. Additionally, the CUSD's affirmative defense of laches was denied because the ALJ held that CUSD failed to prove that they sustained any prejudice to its case by any delay in the proceedings.

### III.

#### Rulings on Capistrano Unified School District's

#### Exceptions

##### Exception I

CUSD excepts to the ALJ's rejection of certain proposed findings of fact without responding to each individual proposed finding.

This exception is DENIED.

The ALJ addressed all of the proposed findings of fact in his decision when he stated:

CUSD and OCR filed their posthearing briefs which contained proposed findings of fact and conclusions of law. Such briefs, insofar as they can be considered to have contained proposed findings and conclusions have been considered fully, and except to the extent that such findings and conclusions have been expressly or impliedly affirmed in this decision, they are rejected on the grounds that they are in whole or in part, contrary to the facts and law or because they are immaterial to the decision in this case.

##### Initial Decision at 71.

Despite a thorough discussion of the facts and law in the Initial Decision, CUSD asserts that the ALJ's unwillingness to respond separately and individually to all of their 85 proposed finds of facts was in error. We reject this assertion. The ALJ is under no obligation to provide a rationale for each rejected finding. It is proper for the ALJ to accept and reject findings of fact generally

and in a summary fashion as he did in this Initial Decision. In a lengthy analysis, the ALJ made it abundantly clear which findings of fact were accepted and his statement that other proposed findings were immaterial or contrary to the facts is an adequate rejection of those not accepted.

In support of this exception, CUSD also alleges that OCR failed to file proposed findings of fact and that this failure somehow requires the ALJ to adopt CUSD's Proposed Findings 4 through 17, 29, and 31 through 85. The absence of one party's proposed findings of facts provides no support for the adoption of another party's findings when they have been found to be immaterial or contrary to the facts. Moreover, OCR did in fact propose findings in its Post Trial Brief and Proposed Order Submitted by the Assistant Secretary for Civil Rights filed on September 17, 1990.

### Exception II

CUSD excepts to the ALJ's holding that the San Clemente High School Speech/Debate Class and/or Co-curricular activity are subject to OCR's jurisdiction.

This exception is DENIED.

CUSD asserts that "OCR must have established that the San Clemente High School Speech/Debate program receives federal financial assistance in order to have jurisdiction over this matter". CUSD's Exceptions at 26. The identification of the Speech/Debate Class as a "program" reflects a misunderstanding of the programmatic approach that defines OCR's jurisdiction under Title IX. The term "program" was defined in the Supreme Court's decision in Grove City v. Bell, 465 U.S. 555 (1984), and later applied to elementary and secondary school systems by the Reviewing Authority Final Decisions in Pickens County School District, South Carolina, Docket No. 84-IX-11, October 28, 1985 and Dillion County School District No. 1, South Carolina, Docket No. 84-VI-16, April 17, 1987. The ALJ correctly defined program for jurisdictional purposes when he stated:

An education program is identified by 1) determining the earmarked or nonearmarked nature of the funding statute; If the funds are non earmarked, Title IX jurisdiction is institution-wide 2) if earmarked, then by identifying the earmarked statutory purpose of the grant, and 3) identifying the functional activity of the recipient institution effectuating the earmarked purpose.

Initial Decision at 21.

The record in this proceeding amply supports OCR's jurisdiction over the Speech/Debate Class and/or Co-curricular activity under any of the three Federal grant statutes through which CUSD receives Federal financial assistance. Moreover, it is not whether a single class or subject is a program for the purpose of establishing OCR's jurisdiction but whether CUSD receives Federal financial assistance. Once that determination is made, OCR need not establish that the Speech/Debate Class and/or Co-curricular activity directly receives Federal financial assistance in order to obtain jurisdiction.

The ALJ properly identified the educational programs of the CUSD that grant OCR its jurisdiction under Grove city, Pickens and Dillion. CUSD's receipt of Chapter 1 funds 1 earmarked for educationally deprived children and designated by CUSD for its language arts program grants jurisdiction over the School District's language arts program of which the Speech/Debate Class and/or Co-curricular activity are a component. Initial Decision at 24-25. The receipt of Chapter 22 funds confers jurisdiction over CUSD's entire elementary and secondary instruction program. In his analysis the ALJ properly found that the use of Chapter 2 2 funds to assist CUSD's general educational program had the effect of benefiting every student and every school within the district. Initial Decision at 25-26.

The ALJ also properly found that the receipt of Impact Aid funds 3 confers institution-wide jurisdiction over CUSD. As non earmarked Federal assistance to school districts adversely affected by the impact of Federal activities resulting in a loss of tax revenues, Impact Aid funds can be used for general revenue funding without any specific educational purpose or restriction. Therefore, the receipt and use of Impact Aid funds grants OCR jurisdiction over the entire CUSD school system. Arline v. School Board of Nassau County, 772 F.2d 759 (11th Cir. 1985), aff'd on other grounds, 101 U.S. 1123 (1987); Birmingham City School District. Alabama, Docket No. 86-IX-6, Final Decision of Reviewing Authority, January 13, 1989; Lauderdale County School District. Alabama, Docket No. 84-504/IX-8, Final Decision of Reviewing Authority, August 21, 1986.

The evidence in the record and the Initial Decision's extensive analysis of the use of Federal financial assistance clearly demonstrates that San Clemente High School Speech/Debate Class and/or Co-curricular activity are a component of a program that is subject to OCR's jurisdiction in this matter under the criteria established by Grove City v. Bell, supra and our decisions in Pickens and Dillion. 4

### Exception III

CUSD excepts to the ALJ's holding that the U.S. Department of Education has the legal authority to terminate CUSD's Federal financial assistance.

This exception is DENIED.

The legal authority to terminate CUSD's Federal financial assistance in this proceeding is found in Title IX which provides:

Compliance with any requirement adopted pursuant to this section may be affected (1) by the termination of or refusal to grant or to continue assistance under such programs or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program or part thereof, in which noncompliance has been so found.

Once an express finding of discrimination under Title IX has been made, the Department of Education has the authority to terminate a recipient's eligibility for Federal financial assistance. However, the statute requires that the funds subject to termination must be those that support the "particular program or part thereof" in which the discrimination has been found. In his analysis of the use by CUSD of the Federal funds under Impact Aid, Chapter 1, and Chapter 2, the ALJ correctly demonstrated that all of these funds, at least in part, are being used to support a program in which discrimination has been found.

Applying the standards that this body announced in both Pickens and Dillion, the ALJ properly analyzed the use of chapter 1 funds that are earmarked to supplement the education of educationally deprived children. In its Chapter 1 application, CUSD designated the use of those funds for use in its reading, language, writing and math programs. Given the designated use of these funds the ALJ correctly found:

The complainant in this case was retaliated against in the context of her speech/debate teaching assignments. Speech/debate is a component of CUSD's language arts "program". Consequently upon a finding that CUSD retaliated against the complainant, Chapter 1 funds to CUSD's language arts program should be terminated.

Initial Decision at 67-68.

The record in this proceeding also supports the ALJ's termination of all Chapter 2 funds. Local school districts have the discretion to determine how Chapter 2 funds will be divided among the many purposes and activities authorized by the Statute. Under Chapter 2, the school district submits an application to the state that must designate the intended use of the funds. CUSD's application designated the funds for instructional materials and school library resources; improvement in local education practice; and guidance counseling and testing. The ALJ properly held that the use of these funds benefitted CUSD's entire elementary and secondary instructional program. Given that the discrimination against the Complainant occurred within the elementary and secondary instructional program, the ALJ properly terminated all Chapter 2 funds.

As we said in our response to Exception II, Impact Aid is nonearmarked Federal assistance which can be used for general revenue funding without any specific educational purpose or restriction. Therefore, the funded program that benefits from Impact Aid is the CUSD. Arline v. School Board of Nassau County, supra. Given the discrimination against the Complainant by CUSD, the ALJ properly also terminated these funds. [5](#)

CUSD also questions the Department's legal authority to terminate its funds by characterizing this case as nothing more than an employment dispute in which the Complainant Ms. Geis "objects to two personnel decisions made by Principal John Smart which affected her own personal situation..." CUSD's Exceptions at 44. The objective of this proceeding is not to protect the individual interests of one teacher in a local school district but to insure that Federal funds are not used in a discriminatory environment. This is the objective of the Department that has been clearly recognized by the United States Supreme Court in North Haven Board of Education v. Bell, 456 U.S. 512 (1982) which held that Title IX provides for the termination of Federal funds based on a recipient's discrimination against individual employees.

#### Exception IV

CUSD excepts to the ALJ's finding that OCR has statutory and regulatory jurisdiction over the retaliation complaint brought by the complainant Geis against CUSD.

This exception is DENIED.

This exception raises two fundamental questions about the enforcement of Title IX. 1) Does the anti-retaliation provision of Title IX at 34 C.F.R. § 100.7(e) cover retaliation for filing a) a sex discrimination complaint with a state administrative agency and b) a lawsuit in a state court alleging, among other things, sex discrimination? 2) Is retaliation a Title IX violation when it is retaliation for actions involving other than OCR's regulatory authority and processes?

We believe that the answers to both these questions must be in the affirmative. An individual's action to remedy employment discrimination based on sex is a protected activity under the anti-retaliation provision of Title IX. The fact, as in the instant proceeding, that these actions did not take the form of complaints filed with OCR, in no way diminishes the protection that Title IX provides. [6](#) We agree with the ALJ when he said:

These are rights or privileges secured by Title IX, such that no recipient or other person shall retaliate against an individual for the purpose of interfering with the exercise of such right or privilege.

Initial Decision at 27.

#### Exception V

CUSD excepts to the ALJ's holding that the Equal Employment Opportunity Commission (EEOC) regulations, 29 C.F.R. § 1691 did not affect the right of OCR to pursue this Title IX enforcement action.

This exception is DENIED.

The above cited EEOC regulations do establish procedures by which Federal agencies may refer Title VI and Title IX employment discrimination complaints to E.E.O.C.. However, the ALJ found and the record amply supports the finding that OCR did not refer Ms. Geis's complaint to E.E.O.C. because at the time of its filing (Nov. 21, 1984), OCR was required by a Federal court order in Adams v. Bell, Civil Action No. 3095-70, U.S. District Court for the District of Columbia (March 10, 1983), to accept and investigate all Title VI, Section 504 and Title IX complaints within prescribed time frames. Therefore, the Geiss complaint was properly handled by OCR in accordance with the order of the District Court in effect at the time of its filing.

CUSD also argues that the complainant Ms. Geis should have been referred to E.E.O.C. and that her possible Title VII remedies precluded OCR from pursuing this Title IX action. As we said in our response to Exception III, CUSD mischaracterizes this proceeding as a dispute between one

teacher and her employer school district. The Title IX enforcement process is an effort to ensure non-discrimination in the use of Federal funds. North Haven v. Bell, *supra*, 34 C.F.R. § 106.1.

### Exception VI

CUSD excepts to the ALJ's finding that the CUSD retaliated against the complainant Ms. Geis in violation of Title IX by refusing to fund the Speech/Debate Co-Curricular Activity for the 1983-84 school year.

This exception is DENIED.

As an appellate forum, the Reviewing Authority's primary function is to rule on matters of law and to accept the findings of fact as found in the Initial Decision issued by the ALJ unless they are unsupported by the record or the clear weight of the evidence is to the contrary. Additionally, in a decision of the Secretary of Education in School District of the City of River Rouge, Michigan, Docket NO. S-127, May 22, 1990, it was stated:

An ALJ's findings should not be overruled when the evidence supports the findings, assuming that the correct legal standard was applied. The ALJ is in the best position to determine the weight to be accorded the evidence presented particularly where the credibility of live testimony is involved. The CRRRA {Civil Rights Reviewing Authority} should only overrule an ALJ's factual findings when those findings are not supported by the weight of the evidence.

After reviewing the thorough Initial Decision, transcripts and the briefs of both parties, we hold that there is ample evidence to support the ALJ's findings that the CUSD retaliated against the complainant Ms. Geis in violation of Title IX by refusing to fund the SPEEch/Debate Co-Curricular Activity for the 1983-84 school year. Given the thoroughness of the ALJ's analysis of the testimony, briefs and exhibits in this case which it is unnecessary to repeat or even summarize [7](#), we need only ask whether the ALJ applied the correct legal standard.

We agree with the ALJ that in the absence of extensive case law interpreting the Title IX anti-retaliation provision, one should turn to cases interpreting Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* for direction. We also believe that the ALJ applied the proper legal standard when he stated:

The order and allocation of proof in a Title VII retaliation case follows the general pattern set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Yartzoff v. Thomas, 809 F.2d 1371 (9th Cir. 1987). The petitioner must prove a prima facie case of retaliation. The respondent has the burden of establishing a legitimate, nondiscriminatory reason for its action. The burden then shifts back to the petitioner to show that the proffered reason was pretextual.

Initial Decision at 31.

### Exception VII

CUSD excepts to the ALJ's finding that the CUSD retaliated against the complainant Ms. Geis in violation of Title IX by reassigning the SPEEch/Debate Classes to another teacher for the 1984-85 school year.

This exception is DENIED.

We hold that there is ample evidence to support the ALJ's finding.

Also see our discussion in response to Exception VI.

### Exception VIII

CUSD Excepts to the ALJ's exclusion of CUSD's proposed exhibits CI through CJ (less EJ, EP and FY) regarding other discrimination complaints closed by OCR from November 1, 1985, through March 22, 1988, and the ALJ's ruling that CUSD failed to establish arbitrary and capricious determinations regarding jurisdictional and other legal and enforcement standards by OCR.

This exception is DENIED.

The ALJ's exclusion of these proposed exhibits regarding other cases closed by OCR for lack of jurisdiction under Grove City as irrelevant to this proceeding was correct. These excluded exhibits were "closure memoranda" detailing why OCR had decided not to initiate an enforcement proceeding in response to individual discrimination complaints filed with OCR. These memoranda have no precedential value and are nothing more than jurisdictional decisions based on other facts that are not relevant here. The ALJ's role was to determine whether OCR had established proper jurisdiction under existing legal standards in view of the facts of this case.

CUSD's purpose in offering these memoranda was to somehow show that OCR had acted arbitrarily and capriciously by pursuing this enforcement action against CUSD when it had decided not to act in 103 other cases detailed in these exhibits. We agree with OCR that since these 103 cases comprise only a small fraction of the cases received by OCR from November 1, 1985, through March 22, 1988, they are nothing more than an unrepresentative sample of OCR's jurisdictional determinations in that period. OCR Reply to CUSD's Exceptions at 30. Even if they were admitted into the record, they could not support a finding that OCR acted in an arbitrary and capricious manner. We agree with the ALJ when he said:

OCR's disposition of other complaints, *i.e.* whether or not to investigate and initiate enforcement action, is a decision committed to agency discretion and consequently is not reviewable. The Supreme Court has clearly recognized that an agency's decision not to initiate enforcement action in civil or criminal proceedings is within the agency's sole discretion. (citations omitted)

Initial Decision at 11.

In its argument in support of this exception, CUSD petitions the Reviewing Authority to allow them to introduce supplementary documentary evidence obtained only after the close of the

hearing that pertains to their affirmative defense of arbitrary, and capricious decision-making and additional documentary evidence regarding OCR case closure decisions. CUSD's Exceptions at 64- 65. In view of our discussion of the relevancy of these closure memoranda, we deny the petition.

#### Exception IX

CUSD excepts to the ALJ's ruling that Exhibit BB which is an award of an arbitrator in a private cause of action between Ms. Geiss and CUSD is irrelevant and had no bearing upon OCR's jurisdiction.

This exception is DENIED.

As we have said previously in our responses to Exceptions III and V, this is an enforcement action initiated by OCR against CUSD. Any private cause of action by Ms. Geiss and any resultant arbitration award does not bar any OCR enforcement proceeding. This proposed exhibit has no relevance to OCR's jurisdiction or the ultimate decision in this matter

#### Exception X

CUSD exceptions to the Initial Decision's entire Article IV, Opinions and Additional Findings of Fact, D. Complainant's Private Suit Against CUSD Does Not Bar OCR From Conducting this Enforcement Action, E. Termination Authority, F. Affirmative Defense; Section VII, Conclusions of Law; Section VIII, Determinations as to Proposed Findings of Fact and Conclusions of Law and Section IX, Order.

This exception is DENIED.

This broad exception is little more than a blanket objection to various parts of the Initial Decision. It is certainly not an exception as contemplated by 34 C.F.R. § 101.103 (Exceptions to Initial or Recommended decisions). Given the absence of any argument or reasons in support of this exception, it will be summarily denied.

#### IV.

#### ORDER

In view of the disposition of the exceptions filed by the Capistrano Unified School District, we affirm the Initial Decision and hold the Respondent CUSD in noncompliance with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq.

and the regulations promulgated pursuant thereto.

It is therefore ordered that:

1. Federal financial assistance administered by the United States Department of Education to CUSD's elementary and secondary instructional program, including but not limited to the financial assistance provided for in the below listed statutes, is hereby terminated and/or refused to be granted or continued to the discriminatory program:

a. School Assistance for Federally Affected Areas (Impact Aid), 20 U.S.C. § 236 et seq., insofar as such funds pertain to CUSD's language arts program.

b. Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. Section 2701 et seq., insofar as such funds pertain to CUSD's language arts program.

c. Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. Section 2911 et seq.

2. Additional Federal financial assistance for which CUSD would be eligible to apply and receive either directly from the United States Department of Education or through the California State Department of Education but for its noncompliance with Title IX shall not be granted to the discriminatory program (or programs).

3. This termination and refusal to grant or continue Federal financial assistance shall remain in force until CUSD corrects its noncompliance and satisfies the Assistant Secretary for Civil Rights that it has corrected its noncompliance with Title IX and the implementing regulations and that it will comply in the future with all applicable requirements of Title IX of the Education Amendments of 1972 and the implementing regulations issued thereunder.

Barbara Childs Wallace  
Chair, Civil Rights Reviewing Authority

Robert Horn  
Member

Analeslie Muncy  
Member

Issued:

#### CERTIFICATE OF SERVICE

I hereby certify that one copy of the Civil Rights Reviewing Authority's Final Decision was mailed/handcarried this 30th day of April, 1992 to:

Honorable John F. Cook  
Administrative Law Judge  
Office of Hearings & Appeals  
U.S. Department of Education  
L'Enfant Plaza

Building 490, 2100 Corridor  
Washington, D.C. 20202-36442

Christian M. Keiner, Esq.  
Biddle & Hamilton  
1121 L Street, Suite 510  
Sacramento, California 95814

Joseph R. Symkowick, General Counsel  
Attn: Gregory Rousere  
Staff Counsel  
California State Department of Education  
Legal Office, Room 552  
721 Capitol Mall  
Sacramento, California 94244-2720

R. Foster  
Frank Krueger  
L. Patricia Williams  
Division of Enforcement  
Policy and Enforcement Service  
Office for Civil Rights  
U.S. Department of Education  
330 C Street, S.W., Room 5225  
Washington, D.C. 20202-1331

Lecia T. Coffey, Hearing Clerk  
Civil Rights Reviewing Authority

---

1 The California Department of Education was dismissed as a party to this proceeding based upon its assurance that it would not disburse Federal financial assistance to any program or activity of the CUSD which might be identified by an Order of Termination as ineligible. Order of the Administrative Law Judge of April 17, 1990.

1 Throughout this proceeding and the ALJ's Initial Decision, Chapter 1 was cited as Chapter 1 of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 2701 *et. seq.* That statute was reconstituted in 1981 and is now known as Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 20 U.S.C. § 3801 *et. seq.*

2 Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 2701 *et seq.* is known as Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 20 U.S.C. § 3811 *et. seq.*

[3](#) Assistance for Federally Affected Areas, 20 U.S.C. § 236 et seq. of 1965, as amended, 20 U.S.C. 2701 et seq.

[4](#) Included in its discussion Exception II, is CUSD's objection to the ALJ's holding that jurisdiction is also established by the retroactive application of the Civil Rights Restoration Act, Pub. L. No. 100-259 (1988) (CRRRA). Given OCR's view that the CRRRA would not be applied retroactively to this proceeding and the clear demonstration of jurisdiction without its application, we need not address the ALJ's conclusion on this point.

[5](#) In the Order of the Initial Decision at 72, the ALJ limited the scope of the termination of Impact Aid Funds "insofar as such funds pertain to CUSD's language arts program". We agree with OCR's statement at p. 17 footnote 7 in its Reply of Assistant Secretary for Civil Rights to Exceptions of Capistrano Unified School District that the ALJ could have terminated the Impact Aid institution-wide. However, since OCR did not file an exception to the ALJ's holding, we will not modify the scope of the termination order.

[6](#) Anti-retaliation provisions have been used to prohibit retaliation against individuals whose actions did not include OCR complaints under other anti-discrimination statutes. Ross v. Allen, 515 F.Supp. 972 (S.D.N.Y. 1981) applying Section 504 of the Rehabilitation Act of 1973 and Paisey v. Vitale, 634 F.Supp. 741 (S.D. Fla. 1986), aff'd 807 F.2d 899 (11th Cir. 1986) applying Title VI of the Civil Rights Act of 1964.

[7](#) We incorporate by reference the detailed analysis of the finding of retaliation in the Initial Decision at 31-65.