

June 2, 2016

Dr. Judith A. Palmer, Superintendent
Northwestern Regional School District No. 7
100 Battistoni Drive
Winsted, Connecticut 06098

Re: Case No. 01-14-1235
Northwestern Regional School District No. 7

Dear Dr. Palmer:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Northwestern Regional School District No. 7 (the District). The Complainant alleged that the District discriminated on the basis of disability. Specifically, the Complainant alleged that the District retaliated against her daughters (XXXXXXXX X and X) for her disability-related advocacy, by targeting XXXXXXXX X and X for a residency investigation. Before OCR completed its investigation, the District requested to resolve the allegation of retaliation by entering into the enclosed Resolution Agreement pursuant to Section 302 of OCR's *Case Processing Manual* (CPM).¹ The Resolution Agreement is aligned with the allegation, and it is also consistent with applicable law and regulations. OCR's investigative findings to date are discussed below.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 or activities receiving Federal financial assistance. In addition, OCR is responsible for enforcing 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of Federal financial assistance, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate the complaint under Section 504 and Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which provides 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 the regulations enforced by OCR, or because one has made a complaint, testified, assisted, or

¹ Section 302 of the CPM states: Allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

participated in any manner in an investigation, proceeding or hearing. The regulation implementing Title II contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR interviewed the Complainant, and reviewed documentation from the District, including its policies and procedures pertaining to its residency requirement, internal and external correspondence, and comparator data for similarly situated students the District investigated for suspected violations of its residency policy.

In analyzing whether retaliation has occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/alleged injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the Complainant engaged in a protected activity when she advocated on behalf of her son, whom the District placed at a therapeutic school, and on behalf of Student 1, who was found eligible to receive special education services, and the District was aware of the Complainant's protected activity. OCR also determined that the District's residency investigation of Students 1 and 2 constituted an adverse action subsequent to the District's learning of the Complainant's protected activity, and a causal connection between the protected activity and adverse action may be inferred.

The Complainant alleged that the District retaliated against XXXXXXXX X and X for her disability-related advocacy, by targeting XXXXXXXX X and X for a residency investigation. The Complainant informed OCR that she requested a planning and placement team (PPT) meeting for XXXXXXXX X on XXXXX XX, 2014, and that on XXX XX, 2014, the PPT determined XXXXXXXX X eligible to receive special education services. The Complainant asserted that during XXXXX 2014, the District hired private investigators to investigate the residency of XXXXXXXX X and X, and the day after the PPT determined XXXXXXXX X was eligible to receive special education services, the District sent the Complainant a letter informing her that it intended to dis-enroll XXXXXXXX X and X for failure to reside within the District.

District Policy 5118, entitled "School Accommodations to Resident and Non-Resident Children in the [District]", provides that children who permanently reside with a parent/guardian of XXXXXXXXXXXX, XXXXXXXXXXXX, XXX XXXXXXXXXXXX, and XXXXXXXX with "present intent to permanently remain within the District" are entitled to attend District schools without tuition.² Policy 5118 further provides that if the District determines that any student is not a resident of the above-referenced towns and the District removes the student for residency reasons, the Superintendent and/or his/her designee shall: inform the parent/guardian of hearing rights before the District Board of Education (the Board); that upon request, a transcript of the hearing will be

² Policy 5118 provides a list of factors for determining a student's residence as "permanent," including legal documents explaining guardianship and/or custody issues; where clothing and personal possessions are located; the student's driver's license, library card, place of worship, club affiliations; the residence of the student's immediate family; where the student spends substantial time when school is not in session; the student's age and emancipation status; the number of days that the student is actually in residence in the District.

provided; and that a Board decision may be appealed to the Connecticut State Board of Education. The District did not have written procedures with respect to the maintenance of information related to the referral of suspected violations or the manner in which it conducts residency investigations.

The District informed OCR that in XXXXX 2014, it received credible information that XXXXXXXX X and X were residing with the Complainant in XXXXXXXX, a town that is not within the District, as opposed to residing with XXXXX XXXXXX, a resident of XXX XXXXXXXX, which is within the District. The District informed OCR that it could not recall which staff member or source provided the preliminary residency information regarding XXXXXXXX X and X; however, the District asserted that the information was credible in light of the same concern regarding the Complainant's residency during the previous year. On XXXXX XX, 2014, the District and a private investigation firm entered into a contract to investigate the residency of XXXXXXXX X and X; the investigation began on XXXXX XX, 2014. The investigation concluded that based on evidence collected, XXXXXXXX X and X resided with the Complainant in XXXXXXXX. Consequently, the District mailed a letter to the Complainant, dated XXX XX, 2015, informing her that the District "recently became aware that [XXXXXXXXX X and X] were residing in XXXXXXXX" and would be "terminating school accommodations at XXXXXXXXXXXXXX XXXX XXXXXXXX and XXXXXXX XXXXXXXX for [XXXXXXXXX X and X] effective XXX XX, 2014"; the District attached the Board policy, which outlined the right to a hearing.

The District mailed a second letter to the Complainant, dated XXX XX, 2014, informing her that the residency hearing for XXXXXXXX X and X was scheduled for XXXX XX, 2014, and advised that XXXXXXXX X and X were entitled to continue attending school within the District pending a decision by the Board following the residency hearing. However, the District informed OCR that due to witness unavailability for the residency hearing, the District decided to discontinue disenrollment proceedings, and XXXXXXXX X and X remained enrolled in the District.

The District provided documentation regarding 15 similarly situated students investigated for potential residency violations for school years 2012-2013 and 2013-2014; the District dis-enrolled seven students from the District for residency violations, five students provided sufficient evidence of residency within the District, and three subsequently moved into the District and remained enrolled. The District informed OCR that none of the 15 similarly situated students' parents/guardians had engaged in any protected activity. The District also informed OCR that the sources and evidence used as the basis for their residency investigations ranged from District staff, teachers, social media, undeliverable mail receipts, and admissions by students and their respective families, but that in the interest of protecting referral sources of residency information from retribution, the District does not maintain records of or disclose the sources of such information.

Based on the foregoing, the District proffered a legitimate non-retaliatory reason for its initiating a residency investigation concerning XXXXXXXX X and X; specifically, the District asserted that it received credible information that XXXXXXXX and X were residing outside of the District. However, based on the evidence obtained to date, OCR had not yet made a compliance determination with respect to whether the legitimate non-retaliatory reason was a pretext for unlawful retaliation. Specifically, OCR had not yet determined the referral source of the information giving rise to the investigation, the specific information reported, and the extent to which the District's reliance on such information was consistent with its policies and procedures or its practice for initiating similar investigations.

The District voluntarily signed the enclosed Resolution Agreement (“Agreement”) to resolve this complaint on XXX XX 2016. OCR has determined that the provisions of the Agreement are aligned with the complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the District’s implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR’s investigation of this complaint. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. 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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

If you have any questions, please contact Kensley Barrett, Civil Rights Attorney, at (617) 289-0072 or Kensley.Barrett@ed.gov.

Sincerely,

Diane M. Henson
Regional Director

Enclosure

cc: XXXX XXXXXXXXXXXXXXX, XXX.