

Ms. Rose Mary Grant
Head of School
Highlander Charter School
42 Lexington Ave.
Providence, RI 02907

Re: Complaint No. 01-15-1197
XXXXXXXXXXXX Charter School

Dear Ms. Grant:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint against the XXXXXXXXXXXX Charter School (School). The complaint alleged that the School retaliated against a student (Student) by excluding his picture and name from the XXXXX grade class section of the XXXX-XXXX XXXXXXXXXXXX because his parent (Complainant) had previously engaged in protected activities, including filing a XXXX complaint with the Rhode Island Department of Education (RIDE) and participating in special education team meetings and mediation in the spring of 2015. Prior to OCR completing its investigation, the School expressed an interest in resolving this case by entering into a voluntary resolution agreement (Agreement) that OCR has determined resolves the complaint allegations. A copy of the Agreement is enclosed.

OCR investigated this complaint under the jurisdiction of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504), as well as Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination based on disability. Both laws also prohibit retaliation against individuals who advocate for rights protected by those laws. The School is subject to the requirements of Section 504 because it is a recipient of Federal financial assistance from the Department and it is subject to the requirements of Title II because it is a public entity operating an elementary and secondary school program.

OCR investigated the following issue:

- Whether the School retaliated against the Student, due to the Complainant's 2013 RIDE complaint and spring 2015 participation in special education team meetings and related mediation, in violation of 34 C.F.R. Section 104.61, which incorporates by reference 34 C.F.R. Section 100.7(e), and 28 C.F.R. Section 35.134.

During the course of OCR's investigation, OCR reviewed documentation provided by both the School and Complainant, including email correspondence regarding the 2014-2015 yearbook, selected pages from the 2014-2015 yearbook, and relevant student attendance records. After OCR reviewed the School's initial data response, but before OCR interviewed School staff and completed its investigation, the School requested to resolve this complaint in accordance with Section 302 of OCR's *Complaint Processing Manual* (CPM).

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the procedural provisions of the regulation implementing Title VI at 34 C.F.R. § 100.7(e), 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 laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing in connection with a complaint. The regulation implementing Title II, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

When investigating a complaint of retaliation, OCR determines whether: (1) the complainant engaged in a protected activity; (2) the complainant experienced a materially adverse action by the recipient; and (3) there is a causal connection between the protected activity and the materially adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all three elements are established, however, a *prima facie* case of retaliation exists. OCR then inquires whether the recipient had a legitimate, non-retaliatory reason for taking the adverse action. If so, the evidence is analyzed to determine whether the preponderance of the evidence establishes that the proffered reason is merely an excuse or pretext for retaliation. While OCR would need to address all of the elements to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation.

Investigation and Resolution

The Complainant alleged that she engaged in protected activities when she filed a complaint with RIDE in XXXX, and when she provided a Parent's Input and Concerns for Consideration (PICC) form to the Individualized Education Program (IEP) team regarding the Student's disability-based needs in the spring of 2015. Both the School and Complainant recognized that the Student's headshot and name were subsequently omitted from the X^{XX} grade class section of the XXXX-XXXX XXXXXXXXX. The Complainant alleged that this omission was retaliatory. The School provided information suggesting that the Student was absent on picture day in November 2014 and that the yearbook vendor had no record of photographing the Student on the picture retake day in December 2014. Additionally, in reviewing documentation provided by the School, there were at least five other students who, like the Student, were omitted from the yearbook following their absence on picture day.

After negotiations with OCR, the School agreed to take a number of steps in accordance with the Agreement to resolve these allegations. These actions include: an opportunity for the Student and others omitted from the XXXX-XX XXXXXXXXX to re-take their picture and to be included via a supplemental sticker insert; to notify parents that if a student is absent or otherwise declines to have his/her picture taken on picture day and picture re-take day, the School will not include his/her headshot or name in the yearbook; and to adopt and, upon OCR approval, widely disseminate the School's anti-retaliation statement to the parents of students in their community.

OCR determined that the Agreement is aligned with the allegations and with information obtained by OCR. In addition, the resolution offered is consistent with Section 504 and Title II. Accordingly, we are closing this investigation as of the date of this letter. Consistent with our usual practice, OCR will monitor the School's implementation of the Agreement. OCR will close the monitoring of this matter, and will notify the parties in writing of the monitoring closure, once it determines that the School has

satisfied the terms of the Agreement. The School has agreed to provide OCR with an initial monitoring report by January 1, 2016, and a final monitoring report on February 1, 2016.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the School's compliance with the regulations implementing Section 504/Title II, or the other laws enforced by OCR, that may exist but are not discussed here. Please note that the Complainant may have the right to file a private law suit regarding the matters raised in this case, whether or not OCR identified compliance concerns. Also, 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, OCR will seek to protect all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that the School may not harass, coerce, intimidate, or discriminate against the Complainant because she filed this complaint or participated in this complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

OCR thanks you and Attorney Matt Plain, for the cooperation you afforded to OCR in resolving this matter. If you have any questions or concerns about the information contained in this letter, please feel free to contact Ms. Diana Otto, Civil Rights Investigator, at (617) 289-0073, or via email at Diana.Otto@ed.gov, or Ms. Abra Francois, Civil Rights Attorney, at (617) 289-0142, or via email at Abra.Mason@ed.gov, or Ms. Nicole Newman, Civil Rights Attorney, at (617) 289-0199, or via email at Nicole.Newman@ed.gov. You may also contact me at (617) 289-0052.

Sincerely,

Meighan A.F. McCrea
Acting Team Leader/Civil Rights Attorney

Enclosure

cc: Matthew Plain, Esq.
Greg Vanden-Eykel, Esq.