

January 9, 2020

Olga Hugelmeyer
Superintendent of Schools
Elizabeth Public Schools
500 North Broad Street
Elizabeth, New Jersey 07208

Re: Case No. 02-15-1233
Elizabeth Public Schools

Dear Superintendent Hugelmeyer:

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 Elizabeth Public Schools (the District). The Complainant alleged that the District discriminated on the basis of national origin, by failing to make available in Spanish, Creole and Portuguese, information regarding Parent Teacher Organizations (PTOs) at the Dr. Albert Einstein Academy School #29 (School 1) and the Ronald Reagan Academy Elementary School #30 (School 2) (Allegation 1). The Complainant further alleged that the District retaliated for her advocacy regarding alleged disability discrimination, by failing to XXXXXXXXXXXX her to the Special Education Parent Advisory Committee for school year XXXX-XXXX (Allegation 2). The Complainant also alleged that the District discriminated on the basis of disability, during school year 2014-2015, by not inviting disabled students in a self-contained class at School 2 to participate in School 2's (a) winter concert program or (b) back-to-school night (Allegation 3).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also 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 and activities receiving financial assistance from the Department. Additionally, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, 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 financial assistance from the Department and is a public elementary and secondary education system.

Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and the ADA.

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, 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 regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR reviewed documentation that the Complainant and the District provided. OCR also interviewed the Complainant and District staff. OCR made the following determinations.

With respect to Allegation 1, the Complainant alleged that the District discriminated on the basis of national origin, by failing to make available in Spanish, Creole and Portuguese, information regarding PTOs at School 1 and School 2.¹ The regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b)(1), provides that a recipient of federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude individuals from participating in its programs; deny them the benefits of its programs; or provide any service or benefit that is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (35 Fed. Reg. 11595). The memorandum (the May 25th memorandum) clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate.

OCR analyzes this issue consistent with the U.S. Department of Justice’s (DOJ) “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (67 Fed. Reg. 41455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient’s obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: (1) the number or proportion of LEP individuals likely to come in contact with the program; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the services provided by the program; and, (4) the resources available to the

¹ School 1 serves pre-kindergarten through eighth grade students and School 2 serves kindergarten through eighth grade students. The Complainant XXX XXXXXXXX XX XXXXXXXX XXXXXX and XXXXXXXXXXXX XXXXXX XXXXXX XXXXXXX XXXX-XXXX.

recipient. Furthermore, the DOJ guidance sets forth the following balancing of interests with respect to an entity's responsibility to provide language assistance: ensuring meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits. DOJ describes the four-factor test as a "flexible and fact-dependent standard," but stated that "the flexibility that recipients have in meeting the needs of the LEP populations should not be used to minimize the obligation that those needs be addressed."

OCR has previously stated that a school district's obligations are as follows, in relevant part: (1) school districts must develop a process for determining the existence of LEP parents in their district, and their language needs; (2) once LEP parents are identified, school districts must notify the LEP parents of the availability of interpretation and translation services, and that these services are free of charge; (3) interpreters and translators must have knowledge of specialized terms or concepts in the relevant languages, and be trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality; (4) school districts must have an approach for adequately notifying LEP parents of information that is called to the attention of other parents; and, (5) school districts must take reasonable steps to ensure that its chosen approach to providing interpretation and translation services is implemented in a manner that gives LEP parents meaningful access to programs and activities.

Identification of LEP Parents

School districts must develop a process for determining the existence of LEP parents in their district, and their language needs. Although schools and districts cannot be expected to know of the existence of every LEP parent, schools and districts can be held to reasonable expectations about their efforts to determine the presence of LEP parents, and to provide assistance to these parents once identified. The process should be designed to identify all LEP parents, including parents/guardians of children proficient in English as well as the parents/guardians whose primary language is not common in the district. Such efforts may include home language surveys and interaction between parents and staff; taking into account that English language learner (ELL) students, whom districts have an obligation to identify, also may have LEP parents.

OCR determined that the District uses a home language survey to determine the presence of LEP parents in the District. Specifically, the District requires that all parents and guardians complete a home language survey upon the child's registration with the District. According to the results of the District's home language survey in effect for school year 2014-2015, out of 806 parents of students at School 1, 474 parents indicated that their predominant language was Spanish, and 251 parents indicated that their predominant language was English.² Out of 768 parents of students at School 2, 498 parents indicated that their predominant language was Spanish, and 220 parents indicated that their predominant language was English.³

² Additionally, 27 parents/guardians indicated that their dominant language was Portuguese, and 18 parents/guardians indicated that their dominant language was Haitian/Creole. Other languages indicated were Arabic, French, Italian, Filipino, Punjab, Swahili, Twi, Urdu and Yoruba.

³ Additionally, 32 parents/guardians indicated that their dominant language was Portuguese, and 7 parents/guardians indicated that their dominant language was Haitian/Creole. Other languages indicated were Arabic, Bengali, Hindi, and Russian.

Notice to LEP Parents of the Availability of Interpreters and Written Translations

Once a district determines that it needs to provide language assistance to LEP parents, the district must notify the LEP parents of the availability of these services and that these services are free of charge. The notice of the availability of the language assistance services must also be provided in a language that the parents will understand.

Pursuant to District Policy 5125, the District must provide written, annual notification to parents of their rights to request student records “in the dominant language of the parent/student, if possible.” To date, the District has not advised OCR how it provides this written, annual notification. During the course of OCR’s investigation, District staff at Schools 1 and 2 informed OCR that there was no notification to parents of their rights to request that information be translated or interpreted for them into their dominant language; the same staff at Schools 1 and 2 were unaware of the publication of Policy 5125.

On September 17, 2019, the District asserted to OCR that it has policies and procedures regarding translation and interpretation services other than Policies 5124 and 5125. In support of this assertion, on September 27, 2019, the District provided to OCR, for the first time, copies of several additional policies and written procedures regarding District communications with LEP parents. Such documentation included Bulletin No. 56, entitled “Language Service Protocol,” dated September 2019. The District did not provide any documentation to OCR indicating whether the protocol set forth in Bulletin No. 56 has been formally adopted and implemented by the District; whether the protocol is publicly available; and/or, whether the protocol was disseminated to District staff.

Bulletin No. 56 provides that the District advises parents of their rights regarding interpretation and translation services in District and school communications; on the District and school websites; in the parent-student handbook; through the Bilingual Education Parent Advisory Committee (BEPAC); during back-to-school night presentations; in registration documents; and, through PowerSchool (the District’s web-based student information system). To support that the District was following Bulletin 56, in the District’s submission to OCR on September 27, 2019, and in an additional submission on October 22, 2019, the District provided to OCR a printed copy of a District webpage entitled “Interpretation and Translation Services,” which includes links to documents related to parents’ rights to translation and interpretation services, including a fact sheet for LEP parents available in four languages other than English.⁴ The webpage states that interpreters are available by telephone and that requestors should contact the principal or the Director of Bilingual Education for further information; and, provides a phone number for the latter. A link on the website about Interpretation and Translation Services states: “When you talk with teachers or school employees, the school should offer an interpreter if you need one.” The document notes that if parents are in need of assistance in a language such as Arabic, Spanish, Creole, or Portuguese, they should contact their principal. This includes translation services for meetings.

⁴ <https://www.epsnj.org/Domain/3161>. (site last visited December 26, 2019)

Approach for Notifying LEP Parents of Information Called to the Attention of Other Parents

School districts must have an approach for adequately notifying LEP parents of information that is called to the attention of other parents. OCR gives districts discretion regarding how they attempt to ensure that LEP parents are adequately notified of information that is called to the attention of other parents.

Pursuant to District Policy 5124, if “a parent/guardian’s primary language is other than English, translation will be provided whenever possible. When the parent or adult student’s dominant language is not English...the district shall provide interpretation of the record in the dominant language.” Neither Policy 5124 nor 5125 indicates how the District will provide such translated information or interpretation services.

Staff at Schools 1 and 2 informed OCR that they were not aware of Policies 5124 and 5125; and, did not know of any practices or protocols related to the District’s obligations to translate documents and provide information to LEP parents in their primary language. Staff at Schools 1 and 2 stated that there is no District or school policy or standard practice pursuant to which LEP parents may request interpretation or translation services. Rather, staff at both Schools 1 and 2 stated that their practice was to direct parents to staff members who spoke the same language, if available, in the school building. For example, XXXXXXXXXX at School 1 (XXXXXXXXXX 1) stated that XXXX occasionally translated PTO-related documents into Spanish XXXself or served as a XXXXX-speaking interpreter when asked to do so by school staff or parents. XXXXXXXXXX at School 2 (XXXXXXXXXX 2) stated that XXXX served as a XXXXX-speaking interpreter when asked to do so by other staff. Staff at Schools 1 and 2 did not have any plan or practice for providing translation and interpretation services to a LEP parent who spoke a language that was not spoken by school staff.

With respect to translation of documents, Bulletin No. 56, provided to OCR on September 27, 2019, states that the District provides “language access services in the top four languages other than English spoken by parents in the [District]” and that “[s]upport in additional languages is available through contracted vendors.” Bulletin No. 56 notes that according to the District’s school year 2019-2010 home language survey results, 63% of District students speak Spanish, Portuguese, Haitian Creole, or Arabic at home. Bulletin No. 56 further states that important information, including registration and enrollment documents, grades, school rules and school closures, as well as attendance-related documents, parent permission slips, and information about advanced placement and English Language Learner programs are “required to be translated.” Bulletin No. 56 states that a District contractor can translate documents longer than 5 pages in 3-5 days; and, District staff may use a free Microsoft translation application for translation and transcription services across multiple devices. Bulletin 56 further states that “The District’s Language Access Services Procedures for Receiving and Coordinating Requests are coordinated through the Division of Bilingual, ESL & World Language. A memorandum is provided to the building administrator instructing the user on how to access the service together with an online form that serves as the documentation for the translation service utilized.” The District, however, did not provide a copy of this memorandum to OCR; nor any other information to support that it was

provided to building administrators and that building administrators knew how to ensure that the important information referenced above would be translated.

With respect to interpretation services, Bulletin No. 56, provided to OCR on September 27, 2019, states that mass communications are made by the District using robocalls in English and four other languages. Bulletin No. 56 also states that staff should contact the District's Division of Bilingual Education, English-as-a-Second Language & World Language for emergency interpretation services; but does not state who staff should contact for routine interpretation services, other than stating that certified bilingual and ELL teachers are utilized for verbal interpretation at in-person meetings. Further, Bulletin No. 56 states that phone interpretation services are available for interpretation in real-time; although, it does not state how staff or parents can avail themselves of these real-time phone interpretation services.

Trained Interpreters and Translators

OCR has previously stated that Title VI requires that interpreters and translators have knowledge of specialized terms or concepts in the relevant languages; that districts ensure interpreters and translators are "trained on the role of an interpreter and translator, the ethics of interpreting and translating and the need to maintain confidentiality," and, that the service is offered effectively with appropriate and competent staff. The District did not provide any information to OCR to support that interpreters and translators were appropriately trained; and, those who provided services at Schools 1 and 2, such as XXXXXXXXXXXX 1 and 2, were not trained to provide such services.

The District's Interpretation and Translation website notes that "[o]ur schools provide language assistance to limited-English proficient families effectively with appropriate, competent staff-or appropriate and competent outside resources." The District asserted to OCR that it contracts with a third-party vendor with sufficiently qualified interpreters to provide interpretation services. In the District's submissions to OCR on September 27, 2019, and October 22, 2019, the District provided to OCR copies of contracts with vendors for translation and interpretation services, along with invoices for such services; however, the District did not provide any documentation substantiating the credentials of its interpreters.

Ensuring Appropriate Implementation of Interpretation and Translation Services

A district may violate Title VI if it does not take reasonable steps to ensure that its chosen approach is implemented in a manner that gives LEP parents meaningful access to school-related information. In the District's submissions to OCR on September 27, 2019, and October 22, 2019, the District provided to OCR copies of contracts with vendors for translation and interpretation services, along with invoices for such services; and, personnel reports from school year 2014-2015 through the present, which indicate that certain staff members were assigned to provide translation services. In addition, the District provided copies of some translated District documents, including newsletters translated into Spanish; letters to parents translated into Spanish; Bilingual/ESL Parental Advisory Committee (BEPAC) documents, such as meeting invitations and PowerPoint presentations translated into Spanish, Creole and Portuguese; and, a New Jersey Department of Education audit from 2012 regarding the District's compliance with civil rights laws and

regulations in its career and technical education (CTE) programs.⁵ During the course of OCR's investigation, the District acknowledged that it has neither a formal written policy, nor a standard practice for tracking the frequency and effectiveness of interpreter and translation services provided to LEP parents.⁶

Information Regarding PTOs

OCR determined that PTOs in the District are "school-connected" entities that are operated by parents at individual schools; not all District schools have a functioning PTO. Schools 1 and 2 had PTOs during school year 2014-2015. The PTOs organized school-related events, such as movie nights and holiday shows; raised funds for their schools through t-shirt and snack sales; and, organized workshops designed to help parents and students work together. District Policy 1230, entitled "School-Connected Organizations," governs the relationship between the District and school-connected organizations, including PTOs. Policy 1230 encourages District staff to join school-connected organizations, such as PTOs, and participate in the activities operated by school-connected organizations. Policy 1230 also permits PTOs to hold regular meetings and conduct fundraising activities on District premises.

Staff at Schools 1 and 2 acknowledged that during school year 2014-2015, they generated and disseminated PTO documents to parents of students at Schools 1 and 2, including information printed in academic calendars and flyers; PTO events were held in Schools 1 and 2; and, District staff sometimes managed PTO finances.⁷ Additionally, PTO events were advertised on District property, including on District websites and school bulletin boards.

During the course of the investigation, District staff could not state definitively which PTO-related documents were translated into Spanish, if any, and could not provide any copies of PTO-related documents that were translated from English into other languages. Staff at Schools 1 and 2 also stated that they were not aware of any PTO-related documents that were offered in Portuguese, Creole, or languages other than English and Spanish. The Complainant identified two examples of documents that contained information about the PTO that were not translated from English into in any other languages; namely, the District's calendar and Back to School Packet for school year 2014-2015. District staff confirmed that these documents were provided only in English. The additional documentation that the District provided to OCR on September 27, 2019, and October 22, 2019, did not contain any copies of documents provided in a language other than English that were disseminated by PTOs at Schools 1 and 2.

Based on the foregoing, OCR determined that District has developed a process for determining the existence of LEP parents and their language needs; and, currently notifies parents of the

⁵ The audit did not review the District's obligation to ensure that its PTOs or any other programs comply with Title VI.

⁶ Bulletin No. 56 provided to OCR on September 27, 2019, notes that translation shall be provided in a language other than English for documents "such as parent-teacher invitations, school events and/or PTO events"; however, it does not indicate how the District will ensure that these documents are translated or whether interpretation services are available during PTO events.

⁷ For example, XXXXXXXXXXXX 1 informed OCR that during school year 2014-2015, the PTO held several events at School 1. XXXXXXXXXXXX 1 stated that XXXX actively monitored the PTO's fundraising efforts and frequently typed up flyers and other materials for the PTO.

availability of interpretation and translation services through its website. The District advised OCR that it also notifies LEP parents of the availability of interpretation and translation services through other means, such as an annual written notice; however, the District did not provide any documentation to OCR to support these assertions. The District did not provide any information to OCR to support that the District ensures that interpreters and translators are appropriately trained. The District informed OCR that it has an approach for ensuring that LEP parents are adequately notified of information that is called to the attention of other parents, and lists a number of documents that it stated it translated for LEP parents; however, the District did not otherwise state how the District ensures that important information will be translated. Further, the information that the District provided to OCR does not state who staff should contact for routine interpretation services or how staff or parents can avail themselves of real-time phone interpretation services. Additionally, staff at Schools 1 and 2 that OCR interviewed did not have any plan or practice for providing translation and interpretation services to a LEP parent who spoke a language that was not spoken by school staff. Although the District provided copies of some documents that were translated into different languages, the District acknowledged that it has neither a formal written policy, nor a standard practice for tracking the frequency and effectiveness of interpreter and translation services provided to LEP parents. Further, District staff could not state definitively which PTO-related documents at Schools 1 and 2 were translated into Spanish, if any, and could not provide any copies of PTO-related documents at Schools 1 and 2 that were translated into other languages.

Accordingly, OCR determined that the District has not provided sufficient evidence to substantiate that it satisfied its obligations under Title VI to ensure that LEP parents had meaningful access to information provided to other parents, including regarding information provided by the PTOs at Schools 1 and 2. On November 19, 2019, the District signed the enclosed resolution agreement, which addresses the compliance issues identified regarding Allegation 1. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the Complainant alleged that the District retaliated for her advocacy regarding alleged disability discrimination, by failing to XXXXXXXXXXXX XXX to the Special Education Parent Advisory Committee (SEPAC) for school year XXXX-XXXX. The Complainant stated that during school year XXXX-XXXX, District parents nominated individuals to serve on the SEPAC pursuant to District policy; and, that XXX XXX XXXXXXXXXXXX XXX XXX XXXXXXXXXXXX XX XXX XXXXX. The Complainant alleged that in retaliation for her disability-related advocacy, the District revised its policy in March XXXX, so that District staff and PTO members would recommend and appoint SEPAC members, in order to preclude XXXXXXXXXXXXXXXXXXXX from XXXXXX on the SEPAC during school year XXXX-XXXX. The Complainant stated that XXX XXX XXX XXXXXXXXXXXX XX the SEPAC for school year XXXX-XXXX under this new policy.

In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a prima facie case of retaliation has been established,

OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

OCR determined that the Complainant engaged in protected activity by advocating on behalf of students with disabilities, including XXX XX XXX XXXX (the Student), during school year XXXX-XXXX. OCR determined that the District was aware of this protected activity.

Pursuant to New Jersey state law, districts are required to create SEPACs for parents to provide input on issues regarding students with disabilities. The District advised OCR that non-voting membership in its SEPAC is open to all parents of District students who receive special education. The SEPAC also has a committee that acts as a liaison between the full SEPAC and the District's Board of Education; this committee also helps to set SEPAC meeting agendas. The committee is made up of parents, who are voting members, and school representatives, who are non-voting members.

The District advised OCR that, prior to March XXXX, the District did not have a role in SEPAC committee formation process; and, that the SEPAC was not an officially endorsed District group. Rather, parents selected SEPAC committee members without District input. The District informed OCR that this practice resulted in an "informal organization" and may not have been fully compliant with the requirements of New Jersey state law regarding formation of a SEPAC, which states that the District should be involved in ensuring that the SEPAC is in place.⁸ The District informed OCR that in March XXXX, the District approved Policy 1221 and its accompanying Regulation 1221, in order to ensure District involvement in the formation of a SEPAC committee.⁹ Pursuant to Policy 1221, the SEPAC committee would consist of: (a) two parents with a child in an elementary school (one of whom is recommended by a principal and one of whom is recommended by the Parent Teacher Association/Parent Teacher Organization ((PTA/PTO)); (b) two parents with a child in a middle school (one of whom is recommended by a principal and one of whom is recommended by the PTA/PTO); (c) two parents with a child in a high school (one of whom is recommended by a principal and one of whom is recommended by the PTA/PTO); and, (d) at least two parents with students in out-of-district placements (one of whom is recommended by the Director of Special Education and one of whom is recommended by the PTA/PTO).¹⁰

On April X, XXXX, the Director of Special Education (the Director) sent a memorandum to all District principals informing them of the new Policy 1221; and requesting that by April XX, XXXX, each principal recommend one parent to serve on the SEPAC committee for school year XXXX-XXXX. Upon receipt of these recommendations, the Director would select parents from the list and submit their names to the Superintendent. The Director did not provide any guidance or criteria to the principals for determining which parents to nominate.¹¹

⁸ See N.J.A.C. 6A:14-1.2(h), which states, "Each district board of education shall ensure that a special education parent advisory group is in place in the district to provide input to the district on issues concerning students with disabilities."

⁹ See

https://www.epsnj.org/site/handlers/filedownload.ashx?moduleinstanceid=7161&dataid=238&FileName=1000_update.pdf (site last visited July 10, 2019).

¹⁰ Policy 1221 also provides that the SEPAC will include, as non-voting members, the Supervisor of Special Education, the Director of Special Education, and a District representative.

¹¹ The memorandum asked for parents believed to be "most appropriate to sit on the SEPAC committee."

Upon receipt of the memorandum, the principal of School 2 asked teachers to provide her with the names of parents that she should suggest for consideration for the SEPAC committee for school year XXXX-XXXX. The principal received XXXXXXXXXXXX in response to her request, XXXXXXXXXXXX XXX XXXXXXXXXXXXXXXX, which she forwarded to the Director on May X, XXXX. Staff in the Director's office subsequently reminded the principal that she could recommend only one parent, in accordance with Policy 1221. The principal informed OCR that, in response, she selected a parent (Parent 1) from the XXXX XXXXXXXX. The principal stated that she selected Parent 1 because she was already familiar with her, as she had XXXXX XXXXX XXXXX XXXXXXXX XXXXXXXX. The principal informed OCR that Parent 1 engaged in protected activity during XXXX-XXXX by advocating for special education related aids and services for XXX XXXXXXXX XXXX.¹²

The acting principal of School 1 during April XXXX was not aware of the Director's directive of April 7, XXXX, to recommend parents to serve on the SEPAC committee. Accordingly, the acting principal of School 1 did not seek recommendations from School 1 staff or recommend any parent to the Director.

On June 5, XXXX, the Director sent the Superintendent a memorandum containing a list of three individuals she was recommending to serve as SEPAC committee members for school year XXXX-XXXX; the memorandum listed one parent selected from the names provided by the principals, one parent who had been recommended by a PTO, and one out-of-district parent.¹³ The Director did not consider XXXXXXXXXXXXXXXX for the SEPAC committee in accordance with Policy 1221, because neither a principal nor a PTO recommended XXXXXXXXXXXXXXXX. Accordingly, XXXXXXXXXXXXXXXX XXX XXX XXXXXXXXXXXXXXXX the SEPAC committee for school year XXXX-XXXX. Parent 1 was likewise not appointed to the SEPAC committee for school year XXXX-XXXX.

Based on the foregoing, OCR determined that the District proffered a legitimate, nonretaliatory reason for not XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX to the SEPAC committee for school year XXXX-XXXX; namely, neither a principal nor a PTO recommended XXXXXXXXXXXXXXXX XXX the SEPAC committee. OCR also determined that the principal proffered a legitimate, nonretaliatory reason for recommending Parent 1 and XXX XXXXXXXXXXXXXXXX to the Director for consideration for the SEPAC committee; namely, the principal was familiar with Parent 1 because she taught her son in the past. OCR found no evidence that the proffered reasons were a pretext for retaliation. OCR also found no evidence to substantiate that the District revised Policy 1221 in order to preclude XXXXXXXXXXXXXXXX from serving on the SEPAC committee, as alleged; rather, OCR determined that the District revised Policy 1221 in order to ensure that the SEPAC committee was formed in accordance with New Jersey state law requirements. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the District retaliated for her advocacy regarding alleged disability discrimination, by failing to XXXXXXXXXXXXXXXX to the SEPAC

¹² The principal did not know whether the other XXXXXXXXXXXXXXXX suggested for her consideration for the SEPAC had engaged in any protected activity; however, the District asserted that they did.

¹³ The Director received only one recommendation from a PTO. Accordingly, three seats on the XXXX-XXXX SEPAC committee were unfilled.

committee for school year XXXX-XXXX. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the Complainant alleged that the District discriminated on the basis of disability, during school year 2014-2015, by not inviting students in a self-contained class at School 2 (the Class) to participate in School 2's (a) winter concert program, or (b) back-to-school night. During school year 2014-2015, the Class was a self-contained class of XXXXXX XXXXXX XXX XXXXXX XXXXXX XXX XXXXXX. The Student was XX XXXXX XXXXXX XXXX XXX XXXXX XX XX XXXXXXXX.

With respect to Allegation 3(a), the Complainant alleged that the District discriminated on the basis of disability, by not inviting students in the Class to participate in School 2's winter concert program during school year 2014-2015.¹⁴ The Complainant asserted that XXXX XXXX was not given an opportunity to perform, but acknowledged that she did not know whether other students in the Class performed in the concert or were given the opportunity to perform in the concert.

OCR determined that no students in the Class performed in the winter concert. District staff informed OCR that only students who play an instrument or are members of School 2's Elementary Choir or Select Choir perform in the winter concert. School 2 does not begin offering musical instrument instruction to students until fourth grade. Therefore, no member of the Class, and no student in third grade or below at School 2, played an instrument during the 2014-2015 concert. All third, fourth and fifth grade students at School 2, including XXXXXXXXXXXX students in the Class were invited to try out for Elementary Choir during school year 2014-2015.¹⁵ The XXXXX teacher of XXX XXXXX, who XXXXXXXXXXXX the Elementary Choir, informed OCR that XXXX announced auditions during music class for the Class; however, no students in the Class auditioned.¹⁶

Based on the foregoing, OCR determined that the District proffered legitimate, nondiscriminatory reasons for not having students in the Class sing or play an instrument in the concert; namely, no students in the Class were eligible to play a musical instrument, and no students in the Class who were eligible to join Elementary Choir (namely, XXXXXXXXXXXX students) auditioned. OCR determined that the proffered reasons were not a pretext for discrimination, because School 2 acted in accordance with its stated practices regarding the winter concert and eligibility for choir and musical instrument instruction; and all students, regardless of disability status, were treated the same in these respects. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the District discriminated on the basis of disability, by not inviting students in the class to participate in the School 2's winter concert program in

¹⁴ During the course of OCR's investigation, the Complainant specified that her concern was not that the students in the class were not invited to attend the winter concert; rather, she was concerned that none of the students in the class were given an opportunity to perform at the concert. OCR determined that all students in School 2, including students in the Class, were scheduled to attend School 2's 2014-2015 winter concert, which was held on December 15, 2015; students in pre-k through fourth grade attended the concert at 9:00 a.m., and students in fifth through eighth grades attended the concert at 1:15 p.m. The teacher of the Class confirmed that all students in the Class, XXXXXX XXXXXX XXXXXXXX, attended the 9:00 a.m. concert.

¹⁵ All sixth, seventh and eighth grade students at School 2 were invited to try out for the Select Choir.

¹⁶ The School 2 principal informed OCR that students have received special education related aids and services if necessary to allow the student to play an instrument or sing in choir.

school year 2014-2015. Accordingly, OCR will take no further action with respect to Allegation 3(a).

With respect to Allegation 3(b), the Complainant alleged that the District discriminated on the basis of disability, by not inviting students in the Class to participate in School 2's back-to-school night during school year 2014-2015. OCR determined that back-to-school night was a school-wide event held during two evenings in September 2014. The School 2 principal stated that, in keeping with her usual practice, during back-to-school night, she spoke to all attendees about School 2, and then classroom teachers delivered presentations to parents in their respective classrooms. Pursuant to School 2 practice, at least one school-wide invitation is sent to all parents; classroom teachers may send additional invitations, although they are not required to do so.

The teacher of the Class informed OCR that the school-wide invitation was sent home to all parents of students in the Class by placement in the students' folders; the teacher stated that the event was also listed on the District's calendar. In addition to the school-wide invitations, some teachers elected to send an additional reminder to parents, but the teacher of the Class did not send out any additional invitations. The teacher stated that none of the parents of her XXXXX students attended back-to-school night, in part because XXXX XX XXX students were in the Class during school year 2013-2014 and the teacher surmised that their parents did not attend back-to-school night since they were already familiar with the teacher and her classroom.¹⁷ The teacher stated that shortly after back-to-school night took place, the Complainant apologized to her for not attending. The Complainant did not recall apologizing to the teacher for not attending the back-to-school night, but informed OCR that she subsequently contacted the teacher to discuss the student's progress in the Class.

OCR must often weigh conflicting testimony in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates an assertion. Here, OCR did not find that the preponderance of the evidence substantiated the Complainant's assertion that parents of students in the Class were not invited to participate in School 2's back-to-school night during school year 2014-2015. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the District discriminated on the basis of disability, by not inviting students in the Class to participate in School 2's back-to-school night during school year 2014-2015. Accordingly, OCR will take no further action with respect to Allegation 3(b).

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.

¹⁷ The teacher stated that she also conducts parent-teacher conferences twice a year, and frequently reminds parents that they can schedule a time to meet with her about their child at any time.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant has a right to appeal OCR's determination regarding Allegations 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions regarding OCR's determination, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or bernard.dufresne@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXX XXXXXXXXX, Esq.