



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

32 OLD SLIP, 26th FLOOR
NEW YORK, NY 10005-2500

REGION II
NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

December 26, 2017

Dr. Edwin M. Quezada
Superintendent of Schools
Yonkers Public Schools
One Larkin Center
Yonkers, New York 10701

Re: Case No. 02-17-1418
Yonkers Public Schools

Dear Dr. Quezada:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Yonkers Public Schools (the District). The complainant alleged that the District retaliated against him for XXXXXX XXXXX XXXXXXXXXXXX XXXX XXX XXXXXX XXX XXXXXX alleging retaliation and discrimination based on race, sex and disability, by prohibiting him from (a) attending and (b) XXXXXXXXXXXXXXXX X XXXXXXXX XX XXX XXXXX XXX XXX XXXXXXXXXXXXXXXX XX XXX XXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXXXXX XXXX XXXXXXXX XXXX XXXXXXXX graduation ceremony on June 25, 2017.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 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). In addition, OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. OCR also 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 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, Title IX, Section 504 and the ADA.

The regulations implementing Section 504, at 34 C.F.R. § 104.61 and Title IX, at 34 C.F.R. § 106.71, incorporate 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. Therefore, OCR has jurisdiction to investigate the complainant’s allegations of retaliation.

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.

In its investigation, OCR interviewed the complainant, a witness the complainant identified, and school administrators. OCR also reviewed information that the complainant and the District submitted. OCR made the following determinations.

OCR determined that the complainant engaged in protected activity when he XXXXX XXXXX XXXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXX XXXXXX alleging retaliation and discrimination on the bases of race, sex and disability, in XXXXX XXXX, XXXXXXXXXXX XXXX, XXX XXXXX XXXX. Further, OCR determined that the District was aware of this protected activity.

OCR determined that the complainant was the XXXXXXXXXXX XXXXX XXXXXXXXXXX during school year 2016-2017. For school year 2016-2017, the school’s graduation ceremony was held on June 25, 2017, at an out-of-District venue (the center).

The complainant alleged that the District retaliated against him for filing prior complaints with OCR against the District alleging retaliation and discrimination based on race, sex and disability, by prohibiting him from (a) attending and (b) XXXXXXXXXXXXXXX XXX XX XXX XXXXXXXXXXX XXXX XXXXXXXX at the school graduation ceremony on June 25, 2017. The complainant stated that he was scheduled to XXXXXXXXXXX XXX XXXXXXXXXXX XX XXX XXXXX XXXXXXX XXX XXXXXXXXXXXXX XX XXX XXXXXXXXXXX XXXXXXX XX XXX XXXX XXXXXXX graduation ceremony. The complainant further stated that during a graduation rehearsal, held on June 21, 2017, he informed one of the school’s assistant principals (assistant principal 1),¹ who oversaw the graduation ceremony, that he would need a XXXXX XX XXXXXXXXXXX XX XXXXXXXXXXX XXX XXXXXXX XX XXX XXXXXXXXXXX XXXXXXX. The complainant stated that assistant principal 1 advised him to contact the District’s Principal of Special Assignment (special assignment principal) to make his request. The complainant stated that he immediately sent an electronic mail (email) message to the special assignment principal, inquiring whether he could have XXXXXXX XX X XXXXX XXX XXX XXXXXXXXXXX the graduation was taking place at the center and not on District property. The complainant stated that after not receiving a reply to his email, on the following day, he spoke with the school’s principal (the principal), who confirmed that he could XXXXX XXX XXXXXXXXXXX XX XXX XXXXXXX XX XXXX XX graduation ceremony. The complainant stated that the following morning, assistant principal 1 told him that he had spoken to the XXXXXXXXXXX XXX XXXX XXX XXX XXXXXXXXXXX XXXXXXXXXXX XX XXXXXXX so that the complainant did not need to attend the graduation ceremony.² The complainant stated that, as a result, he did not attend the graduation ceremony XXX XXX XXXXXXX XXXXXXX XXXXXXX XXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXXXXXXXXXX XXX XXXXXXX XXXXXXX

¹ The District advised OCR that assistant principal 1 is now an administrator in the District’s central office.

² The complainant stated that another assistant principal (assistant principal 2) also was present during the conversation.

XXXX XXX XXXXXXXX XXXXXX XX XXX XXXXX. The complainant stated that the XXXXXXXX XXXXXX XXXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXXXXXXXXXXXXXX. The complainant stated that assistant principal 1 had permitted him to XXXXXXXXXXX XXXXXXX XXXXXXX XX XXX XXXXXXXXXXXXXXX XX XXX XXXXXXXXXXX XXXXXXX XX the school's graduation ceremony in 2015, XXXX XXXXXX XXX XXXX XXXXXXX XX X XXX XXXX XXXXXXX XXX XXXXXXXXXXX XXXXXXX.

Assistant principal 1 stated that it was necessary for staff to provide advance notice of their intention to attend the graduation ceremony. As such, on May 19, 2017, a memorandum was circulated to all school staff announcing the date and time of the school's graduation ceremony at the center, and requesting that any volunteers submit their name to the school's main office by May 27, 2017. A form was provided to staff that requested the name of the volunteer and included a check-off with two choices: "I will attend graduation" and "I will not attend graduation." The form did not request that staff identify the specific task(s) they sought to perform at the ceremony or any special requests. A similar memorandum was issued to all school staff on June 12, 2017, requesting the same responses "ASAP." On or before June 12, 2017, the complainant submitted the form, indicating that he would attend the graduation ceremony. On the form, the complainant did not note the need for a XXXXX XX XXX XXXXXXXXXXX XXXXXXX XX XXXX XX XXXXX XX XXXXXXXXXXXXXXX XXX XXXXXXX; however, as stated above, no such information was requested on the form.

On June 13, 2017, assistant principal 1 issued a memorandum entitled, "Graduation Assignments and General Instructions," in which the names of staff members and their assigned responsibilities were identified. As per the memorandum, at the graduation ceremony, the complainant XXX XXXXXXX XX XXXXXXXXXXX XX XXXX XXXXXXX XX XXX.

Assistant principal 1 acknowledged that on or about XXXX XXX XXXX, a few days before the graduation ceremony, XXX XXXXXXXXXXX XXXXX XXX XXXXX XXXXXXX XXX XXXXX XXX XXX XXXXXXXXXXX XXXXXXX, and that he referred the complainant to the special assignment principal.³ Assistant principal 1 stated that although the complainant XXX XXXX XXXXXXX XX XXXXXXXXXXX X XXXXXXX XX XXX XXXXXXXXXXX XXXXXXX XX XXX XXXXXXX XX XXXX XXXX XX XXXXXXX XXXXXXX XXX XXXXXXX XXX XXXXXXX XXXX XXX XXXXX XXX XXXXXXXXXXX XXX XXXX XXX XXXX XX XXX XXXXXXXXXXX XXXXXXX XX XXXX XXX XXXX, he would have to have given notice of his intention to do so as soon as possible, as enunciated in the June 12, 2017 memorandum. Assistant principal 1 acknowledged, however, that he had not conveyed this new protocol to the complainant. Both assistant principal 1 and the principal stated that the complainant indicated his intention to XXXX XXX XXXXX too late.

By email to the special assignment principal on the morning of XXXX XXX XXXXX the complainant stated, XXXXX XXXXXXXXXXX XX XXXX XX X XXXXXXXXXXX XXXX X XXXX XXXX XX XXX X XXXXXXX XX XXX XXXXXXX XXX XXXX XXXXXXXXXXX XXXX XXXX XX XXX XX. XXX XXXX XXXXX XXXX X XX XXXXXXX XX XXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX XX XXX XXXXXXX XXXXXXX XXX XXXX XXXXXXX. XXX XXXXXXX XXXX XXX XXX XXXXXXXXXXX XXXXX XXX XXXXXXXXXXXXXXX XXX XXXXXXXXXXXXXXX.

³ Assistant principal 1 denied that he told the complainant he could not attend the graduation ceremony XX XXXXXXXXXXX XXX XXXXXXX XX XXXXXXXXXXX XXXXXXX XXXX XXXXXXXXXXXXXXX. Assistant principal 1 stated that he later learned that the complainant was XXX XXXXXXXXXXX XX XXXX XXX XXXXX XX XXX XXXXXXXXXXX XXXXXXX, but did not recall how he learned of this. Assistant principal 2 could not recall any conversation between the complainant or assistant principal 1 around this time.

With respect to the complainant’s allegation that the District retaliated against him by XXX XXXXXXXX
XXX XX XXXXXXXX XXX XXXXXXXX XX XXX XXXXXXXXXXXX XX the graduation ceremony, on
December 22, 2017, the District entered into the enclosed agreement with OCR to resolve this allegation
without further investigation. OCR will monitor the implementation of the resolution agreement.

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
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.

If you have any questions about OCR’s determination, please contact David Krieger, Senior Compliance Team
Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Janet Pfeffer, Senior Equal Opportunity Specialist, at
(646) 428-3833 or janet.pfeffer@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXX, Esq.