

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION III DELAWARE KENTUCKY MARYLAND PENNSYLVANIA WEST VIRGINIA

THE WANAMAKER BUILDING, SUITE 515 100 PENN SQUARE EAST PHILADELPHIA, PA 19107-3323

February 16, 2023

Sent via email only: mfriez@northallegheny.org

Dr. Melissa Friez Superintendent North Allegheny School District 200 Hillvue Lane Pittsburgh, PA 15237-5344

Re: OCR Complaint No. 03-22-1397

Dear Dr. Friez:

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Section 504 and Title II also prohibit retaliation. As a recipient of Federal financial assistance and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM) by taking the steps set out in the enclosed Voluntary Resolution Agreement, which when fully implemented will resolve this complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Voluntary Resolution Agreement.

Legal Standard

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), prohibits retaliation. Section 504 and Title II prohibit retaliation at 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134, respectively. To establish a prima facie case of retaliation, OCR must determine whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the protected activity and the adverse action. If all of these elements are present, a prima facie case of retaliation is established and OCR then considers whether the recipient has a legitimate, non-retaliatory reason for taking the adverse action, and whether or not the recipient's reasons are a pretext for retaliation.

Factual Background

The XXXXXXXXXXXXXXXXXX compensatory education "may take the form of any appropriate developmental, remedial, or enriching educational service, product or device that furthers the Student's educational and related service needs, including training for the Parents." The compensatory education was to be provided by a qualified professional selected by the parents and the cost to the District "may be limited to the average market rate for private providers of those services in the county where the District is located."

Legal analysis

Prior to examining whether the District has a legitimate, non-retaliatory reason for the adverse action, the District requested to resolve this case in accordance with Section 302 of the CPM on December 13, 2022.

Conclusion

The District signed the enclosed Voluntary Resolution Agreement on February 14, 2023, which when fully implemented, will address the evidence obtained and the allegation investigated in this complaint. In accordance with the Agreement, the District will choose to 1) either pay the remaining compensatory hours at the provider rate billed by the Institute or 2) will convene a meeting with the Complainant and her representative to agree on the private provider rate for the county, determine the balance of compensatory educational service hours to be provided to the Student, and determine the remaining payments to be made for the balance of compensatory services and the schedule for these payments. The District will provide documentation to OCR regarding which option it chooses and the District will continue to report to OCR until the balance of compensatory education services are provided to the Student. The provisions of the Agreement are aligned with the information discussed above that was obtained during OCR's investigation and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the 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.

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, we 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.

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.

If you have any questions, please contact Connor Lacy, the OCR attorney assigned to this complaint, at 215-656-6459 or connor.lacy@ed.gov.

Sincerely,

/s/

Melissa M. Corbin Team Leader Philadelphia Office Office for Civil Rights

Enclosure

CC: Christine Lane, Esquire, Maiello Brungo & Maiello, LLP