



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

**REGION XV  
MICHIGAN  
OHIO**

February 10, 2020

Gregory Mair, Esq.  
O'Neill, Wallace & Doyle, P.C.  
300 St. Andrews Road, Suite 302  
Saginaw, Michigan 48638

Re: OCR Docket #15-16-1508

Dear Mr. Mair:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Kenowa Hills Public Schools (the District), on July 28, 2016. [X---paragraph redacted ---X]

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance from the Department. OCR also enforces 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, which prohibit discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation against individuals who assert rights protected by these statutes. As a recipient of federal financial assistance from the Department and as a public entity the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following issue: whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 because she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61. As the Title II regulation offers no greater protections than the Section 504 regulation with respect to the complaint allegation, OCR applied Section 504 standards when analyzing this complaint.

During the course of the investigation, OCR reviewed documentation provided by the Complainant and the District and conducted interviews with District school board members. Due to ethical considerations, OCR discontinued contact with the Complainant prior to the initiation of the investigation because of her position on the District's board, which during OCR's investigation was represented by outside counsel. After carefully reviewing the information provided, OCR has determined that the evidence is sufficient to support a conclusion that the District retaliated against the Complainant for engaging in a protected activity, in violation of Section 504. The basis for OCR's determination is discussed below.

## **Background**

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

## **Summary of OCR's Investigation**

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

## **Applicable Legal Standards**

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R § 100.7(e), prohibits recipients of Federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation. This requirement is incorporated by reference in the regulation implementing Section 504 at 34 C.F.R. § 104.61.

The following three elements must be satisfied to establish a prima facie case of retaliation: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions.

If these elements of a prima facie case of retaliation are established, OCR examines whether the recipient has articulated a legitimate, non-retaliatory justification for its actions. If the recipient has proffered a legitimate, non-retaliatory reason for the adverse action, OCR next analyzes whether the recipient's stated reason is pretext for retaliation. OCR can establish pretext in several ways: directly, by establishing that a retaliatory reason more likely motivated the recipient; or indirectly, by, for example, establishing that the stated reason has no basis in fact, the stated reason was not the true reason, or the stated reason was insufficient to explain the recipient's action. Evidence of pretext may involve factual scenarios in which the complainant was treated differently from how he or she was treated prior to the protected activity or was treated differently from similarly situated individuals. If a preponderance of the evidence establishes that the recipient had both a legitimate and a retaliatory motivation at the time of the decision, OCR must determine if the recipient would have made the same decision even without taking into account the retaliatory motive, i.e., if the same decision would have been made "but for" the retaliatory motivation.

### **Analysis and Conclusion**

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

[X---paragraph redacted ---X]

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 another complaint alleging such treatment.

This concludes OCR's investigation of the complaint and 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.

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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate your cooperation and that of District staff throughout the investigation of this complaint. You may contact me by telephone at (216) XXX-XXXX if you have any questions or concerns.

Sincerely,

/s/

Brenda Redmond

Supervisory Attorney/Team Leader

Enclosure