

- whether the District intimidated, threatened, coerced, or discriminated against individuals for the purpose of interfering with any right or privilege secured by Section 504 or Title II or because the individuals made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Section 504 or Title II in violation of Section 504’s implementing regulation at 34 C.F.R. § 104.61, and Title II’s implementing regulation at 28 C.F.R. § 35.134.

During its investigation to date, OCR reviewed information provided by the Parent and the District and interviewed the Parent, District administrators involved in the XXXX XXXXXXXXXXXX XXXXXXXX, and District staff involved in the provision of XXXXX XXXXX services. OCR sets forth below a summary of its investigation to date.

Summary of OCR’s Investigation to Date

XXXXX – PARAGRAPH REMOVED XXXXX

XXXXX – PARAGRAPH REMOVED XXXXX

XXXXX – PARAGRAPH REMOVED XXXXX

The District asserted to OCR that it denied the Student’s XXXX XXXXXXXXXXXX application because the District was unable to provide the services listed in the Student’s Individualized Education Program (IEP).

A. The District’s XXXX XXXXXXXXXXXX XXXXXXXX

The District provided OCR with its XXXX XXXXXXXXXXXX procedures and administrative regulations, which set forth the requirements that non-resident students residing in Ohio who wish to apply and enroll in District schools must meet. The District’s XXXX XXXXXXXXXXXX procedures, entitled XXXXX XXXXX XXXXX XXXXX XXXXX (XXXX XXXXXXXXXXXX),” state, in part, that the District may not XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The District’s XXXX XXXXXXXXXXXX administrative regulations, entitled “Admission of Interdistrict Transfer Students (XXXX XXXXXXXXXXXX),” state, in part, that “[s]chool districts are not required to institute any special education programs to serve [XXXX XXXXXXXXXXXX] students.”

The District’s former superintendent (the former superintendent) told OCR that during the time period relevant to this complaint, the District’s XXXX XXXXXXXXXXXX committee, comprised of himself and building principals, reviewed XXXX XXXXXXXXXXXX XXXXXXXXXXXX and determined whether to accept or deny XXXXXXXXXXXX. He stated that each principal only reviewed XXXXXXXXXXXX XXX XXXXXXXXXXXX at the building in which the principal worked. The former superintendent told OCR that the committee typically met with a District coordinator in January to preliminarily determine how many XXXX XXXXXXXXXXXX XXXXXXXXXXXX the District could accept at each grade level. He stated that the preliminary determination was based on student XXXXXXXXXXXX at each grade level and the projected number of students entering and exiting the District at each grade level. The former

superintendent told OCR that the District would then contact existing XXXX XXXXXXXXXXXX students to determine whether they intended to reenroll at the District during the upcoming school year and that based on these responses, the committee would meet again with the EMIS coordinator to make any necessary adjustments to the committee’s preliminary determinations regarding the District’s ability to accept XXXX XXXXXXXXXXXX XXXXXXXXXXXX at each grade level. The former superintendent told OCR that after the XXXX XXXXXXXXXXXX application submission deadline, the committee would meet with the District’s special education supervisor to obtain information related to special education services available at the District. He stated that the committee used this information to determine whether the District could accept special education XXXX XXXXXXXXXXXX XXXXXXXXXXXX. Specifically, the former superintendent told OCR that the District looks at its resources and how it can accommodate XXXXXXXXXXXX without hiring additional staff.

The former special education supervisor described her role in the XXXX XXXXXXXXXXXX XXXXXXXX to OCR as that of a consultant. She stated that she reviewed the IEPs of XXXX XXXXXXXXXXXX XXXXXXXXXXXX and met with the committee to describe the services listed in XXXXXXXXXXXX’ IEPs to advise the committee whether the District had and could provide the services listed in the XXXXXXXXXXXX’ IEPs.

The former superintendent told OCR that the committee ultimately determines which XXXXXXXXXXXX to admit through XXXX XXXXXXXXXXXX. However, the District’s elementary school principal (the principal) told OCR that while the committee provides input into such determinations, the District’s superintendent has ultimate authority over determining which XXXXXXXXXXXX are admitted.

When asked to provide examples of reasons, other than hiring additional staff, an XXXX XXXXXXXXXXXX applicant with or without a disability might not be enrolled in the District, the former superintendent told OCR that XXXXXXXXXXXX have been denied XXXXXXXXXXXX based on classroom capacity and severe discipline problems (i.e., an applicant who has been suspended for ten consecutive days at another school district). When asked if XXXX XXXXXXXXXXXX XXXXXXXXXXXX have been denied for students that might participate in a costly school program such as band, athletics, or a special honors program, for example, the principal told OCR that she could not think of any XXXXXXXXXXXX denied admission to the District because of their participation in costly school programs.

B. The Student’s XXXX XXXXXXXXXXXX Application

The XXXX XXXXXXXXXXXX application submission deadline for the XXXXX school year was XXXXX XX, XXXX. The application, which stated that “[n]o student shall be denied admission to the [District] . . . or otherwise discriminated against for reasons of . . . [disability] . . . or any other basis of unlawful discrimination”, required the disclosure of whether the applicant: was a special education student; had an IEP; and had a Section 504 plan. Although not stated on the application, the former superintendent told OCR that XXXXXXXXXXXX were further required to submit copies of their IEPs.

Before the application deadline, on XXXXX XX, XXXX, the Parent submitted an XXXX XXXXXXXXXXXX application for the Student to attend XXXXX at the District for the XXXX-

XXXX school year. On the application, the Parent identified the Student as a student with a disability and wrote that the Student had an IEP for XXXXX XXXXX. The Parent also submitted to the District copies of the Student’s XXXXX XXXXX XXXXX, IEP, developed by the Student’s resident district, and XXXXX XXXXX XXXXX, Prior Written Notice to Parents, generated by the Student’s resident district. The Student’s XXXXX XXXXX IEP required the following specially designed services and support for school personnel:

XXXXXX – LIST REMOVED – XXXXX

By letter dated XXXXX XX, XXXX, the District’s denied the Student’s XXXX XXXXXXXXXXXX application for the XXXX-XXXX school year; the letter did not provide a basis for the denial. In a statement provided to OCR, the District asserted that three out of six XXXXXXXXXXXX with disabilities were denied XXXX XXXXXXXXXXXX admission for the XXXXXXXXXXXX school year because of the District’s “inability to provide the necessary special education services required by FAPE” or because grade level capacity limits were already met.

C. The District’s Asserted Reasons for Denying the Student’s XXXX XXXXXXXXXXXX Application

The District asserted to OCR that the Student’s XXXX XXXXXXXXXXXX application was denied “because the services necessary to meet his unique needs, as described in his IEP, [were] not available in the District.” In support of its assertion, the District cited to Section 3313.98(C)(2) of the Ohio Revised Code, which states that school districts’ procedures for admitting XXXX XXXXXXXXXXXX students shall not include “[I]mitations on admitting XXXXXXXXXXXX because of disability, except that a board may refuse to admit a student receiving services under Chapter 3323[] of the Revised Code, if the services described in the student’s IEP are not available in the district’s schools”.

According to the District, the former superintendent and the principal made the decision to deny the Student’s application for XXXX XXXXXXXXXXXX in the District for the XXXX-XXXX school year. Both the former superintendent and the principal told OCR that during the XXXX XXXXXXXXXXXX application review period, they were aware of the Parent’s disability-related advocacy on the Student’s XXXXXXXXXXXX XXXXXXX. However, they stated that the Parent’s advocacy was not the basis of, or a factor in, their decision to deny the Student’s application.

The District asserted that the former superintendent and the principal made their determination regarding the Student’s XXXX XXXXXXXXXXXX application after consulting with the former special education supervisor and the District’s XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The former superintendent and the principal explained to OCR that they consulted with the former special education supervisor to obtain information related to the provisions in the Student’s IEP. The former special education supervisor told OCR that she advised the former superintendent and the principal that the Student required services, in part, XXXXX XXXXX XXXXX. As previously stated, the Student’s XXXXX XXXXX XXXXX required XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. The former

this on the Student’s XXXX XXXXXXXXXXXX application next to “[p]rincipal’s [c]omments,” writing, “XXXXX XXXXX XXXXX does not have XXXXX XXXXX XXXXX XXXXX XXXXX to service the [S]tudent.” The principal did not mention that the District did not have XXXXX XXXXX on the Student’s XXXX XXXXXXXXXXXX application.

The District’s assertion that the XXXXX XXXXX XXXXX did not have enough time to provide services to the Student was based on the number of hours the District contracted for the services of the XXXXX XXXXX XXXXX and the number of students on XXX XXXXXXXXXXX. The District contracted for XXXXX XXXXX XXXXX XXXXX XXXXX services. The former superintendent told OCR that, during his employment with the District, the District increased the number of contractual hours of a different service provider in order to accommodate the number of resident students with IEPs. The District claimed that pursuant to a contract for part-time services, the XXXXX XXXXX XXXXX worked XXXXX hours per week during the XXXX-XXXX school year. However, the XXXXX XXXXX XXXXX told OCR that the contract for her services required that she work XXXXX XXXXX at the District. She stated that during a typical week, she worked XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.¹ During a typical workday, the XXXXX XXXXX XXXXX stated that she spent approximately XXXXX XXXXX XXXXX XXXXX delivering services to District students on an XXXXX XXXXX XXXXX XXXXX XXXXX; she stated that she spent her remaining time completing paperwork related to the services she delivered. As previously stated, the Student’s XXXXX IEP required XXXXX. Thus, the Student required a total of XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX - SENTENCE REMOVED – XXXXX.

In deciding whether to accept or deny the Student’s XXXX XXXXXXXXXXXX application, the former superintendent told OCR that he reviewed the number of students on the XXXXX XXXXX XXXXX XXXXX at that time and the number of students who would exit XXXXX XXXXX. However, he stated that he did not review XXXXX XXXXX XXXXX XXXXX required by the students on the XXXXX XXXXX XXXXX caseload. The District provided OCR with a copy of the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX school year. XXXXX - SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX.

However, OCR noted that of the XXXXX XXXXX listed in the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, the District:

- asserted that it did not have a copy of one student’s IEP in effect as of XXXXX XXXXX XXXXX;

¹ The XXXXX XXXXX XXXXX told OCR that some weeks, she did not provide services to District students for one or more days because: District students did not have to attend school (e.g., winter break); because she was training District staff members; because she was attending workshops; and/or because she was working on maintaining her professional license. She explained that this resulted in her working extra day(s) during some work weeks to meet her XXXXX XXXXX XXXXX by the end of her contractual term with the District.

- asserted that three students did not have IEPs in effect as of XXXXX XXXXX XXXXX; and
- did not provide IEPs in effect as of XXXXX XXXXX XXXXX for four students.

Despite the District's assertion that the XXXXX XXXXX XXXXX did not have the capacity to provide services to the Student as of XXXXX the three students who did not have IEPs in effect as of XXXXX (i.e., the date the District denied the Student's XXXX XXXXXXXXXXXX application) were subsequently identified as students with disabilities. All three students' IEPs, developed during the XXXXX school year, after XXXXX, required XXXXX XXXXX XXXXX services. Combined, the three students required XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. Based on the information the District provided, the XXXXX XXXXX XXXXX was able to provide these students with services without the need to XXXXX XXXXX XXXXX in her contract.

The District provided OCR with copies of the IEPs in effect for the remaining 26 students identified in the XXXXX XXXXX as of XXXXX (i.e., the Student's XXXX XXXXXXXXXXXX denial date). OCR's review of the IEPs in effect for these 26 students as of XXXXX, revealed that the XXXXX XXXXX XXXXX provided XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX.

The former special education supervisor told OCR that prior to meeting with the former superintendent and the principal, she discussed the provisions in the Student's IEP with the XXXXX XXXXX XXXXX. According to the former special education supervisor, the XXXXX XXXXX XXXXX had concerns regarding whether she could fully implement the Student's IEP based on XXXXX XXXXX XXXXX XXXXX XXXXX. Further, the XXXXX XXXXX XXXXX purportedly stated that implementation would require amending the contract for her services to increase her hours at the District. Thus, the former special education supervisor stated that she told the former superintendent and the principal that, in her opinion, implementation of the Student's IEP would require the District to contract for additional service hours from the XXXXX XXXXX XXXXX. When asked whether, in her opinion, the XXXXX XXXXX XXXXX had time to provide services to the Student, the former special education supervisor told OCR staff that she did not believe so. She stated that her opinion was based on her conversation with the XXXXX XXXXX XXXXX and that she had no reason to question the information she received. The former special education supervisor told OCR that although she was aware of the XXXXX XXXXX XXXXXXXXXXX XXXXXXXXXXX, she did not oversee the XXXXX XXXXX XXXXX's schedule. The XXXXX XXXXX XXXXX denied making any statements to District staff regarding whether XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX to provide services to the Student.

The former superintendent told OCR that the XXXXX XXXXX XXXXX informed him that the District would have a difficult time providing the Student with the amount of XXXXX XXXXX needed. He stated that the XXXXX XXXXX XXXXX further told him that, based on the

by reference in the Section 504 regulation at 34 C.F.R. § 104.61. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

In analyzing retaliation claims, OCR examines whether: 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.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR's regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. 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. Under some factual circumstances, the promise of a benefit can be just as coercive as the threat of harm.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient's written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient's treatment of the individual compared to others; or the recipient's deviation from established policies or practices.

When investigating retaliation by interference, OCR considers whether the recipient's adverse action was intended to deter, discourage, prevent, slow, or stop the individual from engaging in a protected activity.

If the above elements of a prima facie case of retaliation are established, OCR examines whether the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. If the recipient identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation. The evidentiary factors for causal connection discussed above are equally applicable for determining pretext.

If OCR determines that a recipient took an adverse action for an illegitimate retaliatory reason and a legitimate non-retaliatory reason, OCR analyzes, based on the evidence, if the recipient would have made the same decision but for the retaliatory motivation.

II. Analysis

XXXXXXXXXX application was denied, three District students were determined newly eligible for IEPs and their IEPs required XXXXX XXXXX XXXXX XXXXX that exceeded the amount the Student required. Based on the information the District provided, it did not XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX's contract to accommodate these students.

Although the Student's IEP did contain a provision that required services by an XXXXX XXXXX XXXXX XXXXX XXXXX and the District did not have a XXXXX, the District did have an XXXXX XXXXX. A review of District students' IEPs revealed that District students received a similar service (i.e., XXXXX XXXXX XXXXX) that was implemented by an XXXXX XXXXX.

Further, the District did not ask the Parent or the Student's resident district how the provision was implemented and the Parent informed OCR that it was implemented by one person. Nor did the District explore other options to implement that particular provision of the Student's IEP. As noted above, a review of the XXXXX XXXXX XXXXX's schedule suggests she had the capacity to provide all of the XXXXX XXXXX XXXXX services the Student required.

In light of the foregoing, OCR has cause for concern that the District's basis for denying the Student's XXXX XXXXXXXXXXXX application, while granting those of other students, was not legitimate or non-discriminatory under Section 504 and Title II. OCR further has cause for concern that the District, on the basis of disability, excluded the Student from participation in its programs and activities based on the Student's disability. Thus, OCR has cause for concern that the District's denial of the Student's XXXX XXXXXXXXXXXX application constituted disability discrimination in violation of Section 504 and Title II.

To complete the investigation of this allegation, OCR would need to issue a supplemental data request and conduct follow-up interviews with witnesses, including the former superintendent and the principal.

B. Retaliation

It is undisputed that the Parent engaged in disability-related advocacy on XXXXX XXXXX XXXXX behalf during the XXXXX school year. Thus, the Parent engaged in a protected activity. OCR also concludes that the District subjected the Student to an adverse action when it denied his XXXX XXXXXXXXXXXX application on XXXXX. Further, OCR finds that the evidence supports a causal connection between the adverse action and the protected activity. The Parent engaged in a protected activity throughout the XXXXX school year. The Student's application was denied during that same school year by the former superintendent and the principal, both of whom had knowledge of the Parent's protected activity. Thus, OCR concludes that a causal connection can be inferred due to the proximity in time between the Parent's protected activity and the adverse action.

Next, OCR examined whether the District articulated a legitimate, non-retaliatory reason for the adverse action and, if so, whether the weight of the evidence supported that the articulated reason was a pretext for retaliation. The District asserted that it denied the Student's XXXX XXXXXXXXXXXX application because it could not meet his XXXXX XXXXX XXXXX needs

without hiring and contracting for additional staff. As fully explained above, OCR’s review of the information to date raises concern that the District’s basis for denying the Student’s XXXX XXXXXXXXXXXX application was not a legitimate, nondiscriminatory reason. As such, OCR has cause for concern that the District may have retaliated against the Student in violation of Section 504 and Title II by denying his XXXX XXXXXXXXXXXX application after the Parent engaged in disability-related advocacy on the Student’s XXXXXXXXXXXX XXXXXX.

To complete the investigation of this allegation, OCR would need to issue a supplemental data request and conduct follow-up interviews with witnesses, including the former superintendent and the principal.

Voluntary Resolution and Conclusion

Under Section 302 of OCR’s *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. On September 10, 2021, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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.

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.

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, OCR 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.

OCR looks forward to receiving the District’s first monitoring report by October 15, 2021. For questions about implementation of the Agreement, please contact XXXXX XXXXX XXXXX. XXXXX XXXXX will be overseeing the monitoring of the Agreement and can be reached by

Page 13 – Ms. Christina Henagen Peer

telephone at XXXXX or by e-mail at XXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure