

April 1, 2016

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

Re: Case No. 02-16-1002
Yonkers Public Schools

Dear Superintendent Quezada:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against Yonkers Public Schools (the District). The complainant alleged that the District's Interim Superintendent (the Superintendent) discriminated on the bases of national origin and sex, by directing staff at the District's Roosevelt High School (the school) to give preferential treatment to Latino male students during a staff meeting on XXXXX XX, 2015 (Allegation 1).¹ The complainant also alleged that District officials retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by interfering with his attempts to publicize XXXXX XXXXXXXXX of his students in local media outlets and invite dignitaries to XXXXX in XXXXX, XXXXX and XXXXX 2015 (Allegation 2); and failing to fulfill requests he made for XXXXX and XXXXXXXXX for his students, from XXXXX XX, 2015, to the present (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 also 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

¹ At the time the complainant filed the complaint, the Superintendent was the District's Deputy Superintendent. Therefore, he was referred to as the Deputy Superintendent in OCR's letters notifying the complainant and the District that OCR was opening these allegations for investigation.

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 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 interviewed the complainant and District staff. OCR also reviewed information that the complainant and the District submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the Superintendent discriminated on the bases of national origin and sex, by directing school staff to give preferential treatment to Latino male students during a staff meeting on XXXXX XX, 2015. Specifically, the complainant alleged that the Superintendent directed staff to “pay special attention to your Latino boys, so that Latina girls will be better.” The complainant further alleged that the Superintendent told staff that “if we took special care of our Latino boys then the girls would become better,” because “the girls would never let the boys be better than them.” The complainant alleged that the Superintendent did not instruct staff to pay special attention to “young Afro-American, Asian or white young males,” or any other group of students.

OCR determined that the Superintendent delivered remarks to approximately 70 staff members at the school on XXXXX XX, XXXX, upon invitation of the school’s principal (the principal). The Superintendent informed OCR that his remarks were unprepared, that he spoke about the need to elevate the school from an underperforming school to a school in good standing, and that he noted that the District was supportive of the staff’s efforts to educate certain groups of students the New York State Education Department (NYSED) identified as underperformers in the area of graduation rates.² The Superintendent stated that he told staff that improving outcomes for these students could result in positive outcomes for other students; and recommended certain strategies to improve outcomes, such as monitoring attendance, calling parents and creating an after-school program. The Superintendent stated that he used Latino

² The Superintendent informed OCR that he did not have access to the NYSED School Report Card at the time of his remarks, and did not know at the time which subgroups were underperforming.

boys as an example of an underperforming group of students, and told staff that “if Latino males are not performing at the school, the school’s graduation rate will be affected”; he stated that he may have also said that Latina students would also benefit from improved performance of Latino students. The Superintendent asserted that he did not say or imply that staff should give Latino students preferential treatment. The principal, who attended the meeting, did not recall the Superintendent making the comments alleged by the complainant, nor any other comment directing or implying that staff should give preferential treatment to Latino students. The principal stated that many staff members complimented the Superintendent’s remarks, and no other staff member complained to him about the remarks.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant’s assertion that the Superintendent directed school staff to give preferential treatment to Latino male students, or implied that they should do so, was supported by a preponderance of the evidence. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the Superintendent discriminated on the bases of national origin and sex, by directing school staff to give preferential treatment to Latino male students during a staff meeting on XXXXX XX, 2015. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that District officials retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by interfering with his attempts to publicize XXXXX XXXXXXXXX of his students in local media outlets and invite dignitaries to XXXXX XXXXXXXXX, in XXXXX, XXXXX and XXXXX 2015. Specifically, the complainant alleged that District officials interfered with his attempts to:

- (a) publicize in local media outlets a XXXXX XXXXXXXXX of his students in XXXXX 2015;
- (b) publicize in local media outlets the XXXXXXXXX of one of his students (student 1) at the XXXXX XXXXXXXXX in XXXXX 2015;
- (c) secure a news article about students in his XXXXX program for XXXXXXXXX students in XXXXX 2015; and
- (d) contact the media generally or invite dignitaries to XXXXXXXXX of his students, during XXXXX and/or XXXXX 2015.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant’s protected activity; (3) whether the complainant/injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient’s learning of the complainant’s involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient

has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity when he filed a complaint with OCR against the District on XXXXX XX, 2015, alleging disability discrimination and retaliation (OCR Case No. 02-11-XXXX). OCR determined that the District was aware of this protected activity.

With respect to Allegation 2(a), the complainant alleged that that District officials retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by interfering with his attempts to publicize in local media outlets a XXXXX XXXXXXXXX of his students in XXXXX 2015. OCR determined that the complainant was the XXXXXXXXX teacher at the high school during school years XXXX-XXXX and XXXX-XXXX. The complainant asserted that he invited several media outlets to cover the school's XXXXX XXXX XXXXX XXXXXXXXX, but none did so. The complainant alleged that District staff asked the outlets he contacted not to cover the event, in retaliation for his advocacy; however, he provided no evidence in support of this assertion.

OCR determined that pursuant to District practice, staff seeking media coverage of an event are advised to ask their building principal, who then completes and submits a "School News Fact Sheet" (Fact Sheet) to the District's Communications Officer.³ Upon receipt of a Fact Sheet, the Communications Officer drafts a press release or takes other action to try to obtain the requested media coverage; however, the District has no control over whether media outlets provide the requested media coverage.

The principal informed OCR that he typically informs teachers of this practice at the beginning of each school year. He also informs staff that they can submit requests for media coverage to the District's Department Chair of World Languages/Smart Scholars Grant Coordinator (the chairperson), who can also complete and submit a Fact Sheet to the Communications Officer.⁴ The principal stated that he could not recall denying a media coverage request during his three-year tenure as principal, and the Communications Officer stated that she has processed all media requests when she receives a Fact Sheet in advance of an event.

The principal informed OCR that he never received a request from the complainant for media coverage of the XXXXX XXXX XXXXX; therefore, he did not complete a Fact Sheet for the event. The complainant acknowledged that he did not ask District staff to issue a press release for the event, but asserted that they should have known he would want media coverage of the event. The principal denied that he would otherwise have known that the complainant wanted media coverage for the event. The principal and Communications Officer also both denied

³ The Communications Officer informed OCR that staff members are not prohibited from independently contacting the media to request coverage of events; however, the District discourages them from doing so that principals can control what occurs in their buildings and so that the Superintendent and Board of Trustees have advance notice of potential media coverage.

⁴ The chairperson is also the Editor-in-Chief of the school newsletter, *Shark Bytes*. Upon receipt of a request for media coverage of an event, the chairperson also considers whether to include an article about the event in *Shark Bytes*.

interfering with any attempts by the complainant to secure media coverage for the event or contacting media outlets to dissuade them from covering the event, as alleged.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant's assertion that the principal or Communications Officer should otherwise have known that the complainant wanted media coverage for the event, or that they asked the outlets the complainant contacted not to cover the event was supported by a preponderance of the evidence.

With respect to Allegation 2(b), the complainant alleged that District officials retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by interfering with his attempts publicize in local media outlets the XXXXXXXX of student 1 at the XXXXX XXXXX in XXXXX 2015. The complainant alleged that in XXXXX XXXX, he notified the chairperson that student 1 would be XXXXXXXX at the XXXXX XXXXX in XXXXX 2015, and asked her to secure media coverage. The complainant alleged that the chairperson did not secure media coverage of student 1's XXXXXXXX, in retaliation for the complainant's advocacy.

OCR determined that the complainant did not contact the chairperson in XXXXX 2015 about student 1's XXXXXXXX, as he alleged; rather, the complainant notified District staff members, including the principal and chairperson, in an electronic mail message (email) dated XXXXX XX, 2015, that student 1 would be XXXXXXXX at the XXXXX XXXXX on the next day, XXXXX XX, 2015. OCR determined that the complainant did not request that the District secure media coverage of the XXXXXXXX at this time. On XXXXX XX, XXXX, following the event, the complainant sent the chairperson XXXXX photographs of the XXXXXXXX, and the chairperson responded that she would XXXXX XXXXX XXXXX about the XXXXX for the school newsletter and submit a Fact Sheet on the complainant's behalf.⁵ The chairperson submitted the Fact Sheet to the Communications Officer on or about XXXXX XX, 2015, because most District administrators were off for summer break until that time. The Communications Officer informed OCR that she did not receive the Fact Sheet until XXXXX XX, 2015.

The Communications Officer stated that she reviewed the Fact Sheet and decided not to pursue media coverage for the event because: (1) it was not submitted in advance of the event, rather the event had occurred more than two weeks earlier; (2) the XXXXXXXX was XXXXX District-sponsored event; and (3) the event occurred during XXXXX XXXXX. The Communications Officer informed OCR that she generally will not seek media coverage for XXXXX XXXXX events, for events that have XXXXX XXXXX, or for events that occurred during XXXXX XXXXX. The District provided OCR with copies of Fact Sheets submitted to the Communications Officer during school years XXXX-XXXX and XXXX-XXXX where press coverage was sought for an event: that XXXXX XXXXX, that was XXXXX XXXXX or related, and/or that occurred during XXXXX XXXXX. The District provided documentation demonstrating that five Fact Sheets were submitted to the Communications Officer that met

⁵ The principal advised OCR that he was not aware that the complainant sought media coverage of the XXXXXXXX on XXXXX XX, 2015.

With respect to Allegation 2(d), the complainant alleged that District officials retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by interfering with his attempts to contact the media generally or invite dignitaries to XXXXX XXXXX of his students, during XXXXX and/or XXXXX 2015. The complainant alleged that some time following the XXXXX XXXX XXXXX XXXXX,⁶ the principal told him that he had XXXXX XXXXX XXXXX and that the District did not want him reaching out to the media or inviting dignitaries to attend his student's XXXXXXXXX.⁷ The complainant did not identify any witnesses to this alleged conversation.

The principal denied dissuading the complainant from contacting the media or inviting dignitaries to events, and denied that he informed the complainant that he had XXXXX XXXX XXXXX as alleged. The principal acknowledged that he told the complainant that he should provide notice to the District before XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, so that the District could avoid showing favoritism towards any XXXXX XXXXX; however, the principal stated that it did not "upset" him that the complainant invited dignitaries because the publicity was XXXXX XXXXX XXXXX XXXXX.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant's assertions that the principal interfered with his attempts to contact the media generally or invite XXXXX to XXXXXXXXX of his students, during XXXXX and/or XXXXX 2015 was supported by a preponderance of the evidence.

Based on all of the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that District officials retaliated for the complainant's advocacy, by interfering with his attempts to publicize XXXXX XXXXXXXXX of his students in local media outlets and invite dignitaries to XXXXX XXXXXXXXX, in XXXXX, XXXXX and XXXXX 2015. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the District retaliated because he filed a prior complaint with OCR against the District alleging disability discrimination and retaliation, by failing to fulfill requests he made for XXXXX and XXXXX for his students, from XXXXX XX, 2015, to the present. The complainant asserted that on or about XXXXX XX, 2015, he asked the principal for XXXXX and XXXXX for his students. The complainant stated that the principal told him to direct his request to the District's Executive Director for School Improvement (the director). The complainant stated that he therefore requested XXXXX XXXXX from the director by email dated XXXXX XX, 2015, and in several follow-up emails, but the director never responded. The complainant alleged that as a result, he was unable to teach his students XXXXX XXXXX, and had to revise his curriculum to provide a prolonged "general education" XXXXX XXXXX. He further alleged that 40-60 students who were interested in XXXXX XXXXX with XXXXX and XXXXX were unable to do so in the school's XXXXX 2015 XXXXX XXXXX and in the complainant's classes.

⁶ The complainant could not recall when specifically this occurred.

⁷ The complainant acknowledged that he invited numerous XXXXX dignitaries to the XXXXX 2015 XXXXX XXXXX, and that many of them attended.

OCR determined that the District does not have a specific written policy governing how teachers can procure supplies for classes and programs.⁸ Teachers may input requests for supplies in an electronic database, Oracle, and the requests are then reviewed by the principal and/or the School secretary. The principal informed OCR that the school is allotted money to order basic, non-content based supplies (e.g., paperclips, paper, staplers, lesson plan books, etc.). Additionally, each department has limited funds to provide content-based supplies to teachers throughout the District, and funds are available through certain grants obtained by the District.

The principal advised OCR that he did not recall that the complainant asked him for XXXXX and XXXXX on or about XXXXX XX, 2015 as alleged. The school XXXXX informed OCR that towards the beginning of school year XXXX-XXXX, the complainant came to the school's main office and asked that the District place the same order for XXXXX and XXXXX that it placed on his behalf the prior school year. The XXXXX advised OCR that she told the complainant that the supplies had been previously obtained through the XXXXX XXXXX grant, and encouraged the complainant to contact the director to request supplies for school year XXXX-XXXX through the grant.

OCR determined that by email to the director dated XXXXX XX, 2015, the complainant asked that the District order XXXXX and XXXXX, as it had done the prior school year. By email to the director dated XXXXX XX, 2015, the complainant asked about the status of his request; and by email to the director dated XXXXX XX, 2015, the complainant complained that the District's lack of response to his request was retaliatory. The complainant also forwarded these emails to a school assistant principal on XXXXX XX, 2015,⁹ complaining that the District was intentionally delaying the delivery of the requested supplies as part of its ongoing retaliation and discrimination against him.¹⁰

The director acknowledged that she did not respond directly to the complainant's emails to her regarding his request; she stated that she had no obligation to do so, because it is not her practice to inform teachers about the status of requests for supplies. The director stated that she never responds directly to teachers. The director acknowledged that the assistant principal called her sometime after the complainant sent the email on XXXXX XX, 2015, and told her to place the order.

The XXXXX informed OCR that the complainant stopped by her office one or two additional times during the XXXXX 2015 semester to inquire about the status of his request. The XXXXX advised the complainant that she was waiting to receive a funding account number from the director to process his request, and told the complainant that she would contact the director. The

⁸ The School's Handbook has a section for "Requisitions," which states that "[r]equisitions must be submitted as per a designated schedule on the appropriate forms. Each vendor's orders are to be listed on separate sheets. Principal must approve all requisitions." However, the District stated that it does not have a policy or practice in place for implementing this provision.

⁹ The assistant principal is XXXXX XXXXX XXXXX XXXXX the District.

¹⁰ The complainant copied the director, Superintendent, Special Assignment Principal and three members of the New York State Board of Regents on his email of XXXXX XX, 2015, and the Special Assignment Principal forwarded the email chain to the principal.

XXXXX stated that she emailed the director about the status of the complainant’s request, but the director never responded.

The principal stated that at some point during the XXXXX 2015 semester, the District informed teachers at the school of the availability of funds for supplies through the Persistently Struggling Schools grant (the PSS grant), and asked them to submit “wish lists.” By email dated XXXXX XX, 2015, the complainant submitted a request for XXXXX and other XXXXX supplies under the PSS grant, but did not request XXXXX and XXXXX.¹¹ The XXXXX submitted the complainant’s request in Oracle for processing on XXXXX XX, 2015. The XXXXX stated that the school began receiving supplies requested under the grant in late XXXXX 2015, at which time it occurred to her that she could try to submit a request for XXXXX and XXXXX for the complainant under the PSS grant. The XXXXX submitted the request via Oracle the week of XXXXX XX, 2015, and the District approved the request. The District informed OCR that as of XXXXX XX, 2015, the complainant’s request for XXXXX and XXXXX was pending NYSED review. To date, the complainant still has not received the XXXXX and XXXXX he requested, nor has he been informed as to the status of his request.

On April 1, 2016, the District entered into the enclosed agreement with OCR to resolve Allegation 3 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 complainant 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, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released could reasonably constitute an unwarranted invasion of personal privacy.

If you have questions about OCR’s determination, please contact David Krieger, 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,

¹¹ The request included, among other things, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX. The complainant stated that he did not request XXXXX and XXXXX because some of the requested XXXXX would include new XXXXX and XXXXX.

Emily Frangos
Compliance Team Leader