



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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May 4, 2016

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Shelby County Schools
160 S. Hollywood St.
Memphis, TN 38112

OCR Complaint #04-13-1279

Dear XXXXXXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on April 15, 2013, against the Shelby County Public Schools, alleging discrimination on the basis of disability. The Complainant alleged that her then XXXXXXXXX (Student), who has a disability, was subjected to physical and verbal abuse by her preschool, special education teacher (Teacher) at XXXXXX Elementary (School). The Complainant further alleged that the District failed to appropriately respond to the complaints about abuse.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a recipient of Federal financial assistance from the Department and is a public entity. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the legal issue of whether the District discriminated against the Student by failing to respond appropriately to incidents of harassment on the basis of disability by her teacher during the 2012-2013 school year, thereby violating Section 504 and its implementing regulations at 34 C.F.R. §§ 104.4, 104.7 and 104.8, and Title II and its implementing regulations at 28 C.F.R. §§ 35.130 and 35.107.

During the course of this investigation, OCR reviewed evidence provided by the Complainant and the District, including school records and the District's policies and procedures regarding Section 504 and Title II found on the District's website and those the District provided directly to OCR. OCR also interviewed the Complainant, the Student and members of the District's administrative staff.

OCR evaluates evidence under a preponderance of the evidence standard; in order to establish a violation, the evidence must be sufficient to prove that it is more likely than not that a violation occurred. Based on its investigation, OCR has determined that the Student was subjected to harassment that created a hostile environment, and that the District failed to respond appropriately to repeated incidents of harassment in violation of Section 504 and Title II and their respective implementing regulations.

Legal Standards

Section 504, and its implementing regulation at 34 C.F.R. § 104.4,¹ and Title II, and its implementing regulation at 28 C.F.R. § 35.130, prohibit harassment based on disability.² Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment based on disability creates a hostile environment when the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the services, activities or privileges offered by a school. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. In addition, as with other forms of harassment, it is necessary to take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. The harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability.

If a recipient has actual or constructive notice of harassment, the recipient is required to take appropriate responsive action to investigate or otherwise determine what occurred. A school is deemed to have notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment. The responsibility to respond to such harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed. The District, or recipient, is therefore also responsible for

¹ 34 C.F.R. § 104.4(a): "No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance." 34 C.F.R. § 104.4(b)(1): "A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; or (vii) otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service."

² 28 C.F.R. §§ 35.130(a): "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

remediating any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

The Section 504 implementing regulation at 34 C.F.R. § 104.8(a) requires a recipient that employs 15 or more persons to provide notice that it does not discriminate on the basis of disability in violation of Section 504. The notice must identify the responsible employee designated pursuant to 34 C.F.R. § 104.7(a), which requires the designation of a person to coordinate a recipient's efforts to comply with Section 504. Title II implementing regulation at 28 C.F.R. § 35.107(a) contains a similar requirement.³

Recipients are also required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504, 34 C.F.R. § 104.7(b). The Title II implementing regulation at 28 C.F.R. § 35.107(b) contains a similar provision for public entities. In evaluating whether a recipient's grievance procedures satisfy the foregoing requirements, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are necessary to achieve compliance with Section 504: (1) notice to students and employees of the grievance procedures, including where complaints may be filed; (2) application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other student, or third parties; (3) provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence; (4) designated and reasonably prompt time frames for the major stages of the complaint process; (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint; and (6) assurance that the school will take steps to prevent recurrence of any disability-based harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Background

During the 2012-2013 school year, the Student was a XXXXXX preschooler at the School.⁴ The Student has a XXXXXXXXXXX, which limits the Student's ability to communicate. The Student's special education preschool class consisted of XXXXXXXX students, including peers without disabilities who served as peer models. The XXXXXX students ranged in age from XXXXXXXXXXXX years old. The District assigned a certified teacher and two classroom aides to this class.

³ The Title II implementing regulation at 28 C.F.R. § 35.107(a) requires a public entity that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, including any investigation of any complaint communicated to it alleging its noncompliance with Title II or alleging any actions that would be prohibited by Title II. The public entity shall make available to all interested individuals the name, office address, and telephone number of the designated employee(s).

⁴ XXXXX Elementary School became a part of Bartlett City Schools, which de-merged from Shelby County Schools in May 2014.

Summary of allegations

The Complainant alleged that the Student was subjected to abuse by her Teacher “throughout the 2012-2013 school year”; the Student was “slammed into her chair, onto the floor [and] pulled and jerked by her classroom teacher.” The Complainant further alleged that in December 2012, two XXXXXXXX reported to the Principal that the Teacher was physically abusing the Student, and other students in her class, but the District failed to take any action. The Complainant alleged that the District received a second report of abuse in early March 2013 and failed to take immediate action. The Complainant further alleged that the XXXXXX left the Student in the classroom with the alleged abuser after the XXXXXX received both reports. According to the Complainant, the District did not contact the Department of Children Services (DCS) or remove the teacher from the classroom until April 2013, a month after the second report of abuse. The Complainant stated that the Student complained of back pain and started wetting the bed after she was placed in the Teacher’s classroom, and that this is reflected in medical documentation the Complainant retained. According to the Complainant, by the time the District notified her of the abuse by the Teacher, DCS, the local police and the District had either commenced or completed their investigations.

Findings of Fact

District’s Policies and Procedures

The District’s Notice of Nondiscrimination, Policy 1009, states that its purpose is to ensure that students, parents employees, applicants for employment and third parties interacting with the District are not subjected to discrimination. The Notice of Nondiscrimination prohibits discrimination against individuals in the foregoing categories on the basis of race, sex, age, and disability, among others. There is an additional Notice of Nondiscrimination on those bases on the District’s website; the notice states that it is applicable to all employment and educational opportunities. Finally, a statement in the Student Handbook provides a Notice of Nondiscrimination under the statutes enforced by OCR with respect to classroom instruction, extracurricular activities and other opportunities. While the provision does not specifically refer to employment opportunities, it references a complaint process for employees as well as students and their parents.

Policy 1009 provides an address and telephone number for the “Federal Rights Coordinator,” who is designated to handle inquiries concerning all of the statutes enforced by OCR. The District’s website has an additional list of the coordinators for rights protected under all statutes enforced by OCR.⁵ Finally, the Student Handbook lists all statutes enforced by OCR and immediately thereafter, provides the name and contact information for the District’s “Federal Rights Coordinator.”

District Policy 6046, the District’s harassment policy, prohibits harassment, intimidation, bullying, or cyberbullying. Policy 6046 states that it applies to students. Specifically, Policy

⁵ This list is followed by a Notice of Nondiscrimination with respect to classroom instruction, extracurricular activities and other opportunities.

6046 states that student harassment, intimidation, bullying or cyberbullying will not be tolerated. It also states the following conduct will not be tolerated: conduct aimed at defining a student in a sexual manner; conduct impugning the character of a student based on allegations of sexual promiscuity; or, conduct motivated by any actual or perceived characteristic, including but not limited to, race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity and expression, a mental, physical or sensory disability, socio-economic or familial status. Policy 6046 contains a reporting provision and an “investigation” provision; it also contains an appeal process and a non-retaliation provision.

The District’s grievance procedures do not clearly indicate whether the procedures apply to complaints of discrimination (including harassment) carried out by employees, students or third parties. The grievance procedures provide some timeframes but not for all of the major stages of the investigation. The grievance procedures also fail to provide for written notification to the complainant. The grievance procedures also do not contain a provision that requires the District to inform the alleged perpetrator of the outcome of the investigation; instead, the procedures require a meeting with the complainant. Lastly, the grievance procedures do not provide any assurances that the District will take steps to prevent the recurrence of any discrimination and harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Harassment/Abuse of Students in Preschool Classroom

Witness Accounts Provided During OCR Interviews

First-hand witness accounts establish that the Student and other students in the preschool class were subjected to physical abuse by the Teacher. XXXXXX Employee #1 informed OCR that she started questioning the Teacher’s actions towards students in the preschool class during the first semester of the 2012-2013 school year. However, she did not start documenting the Teacher’s actions until the beginning of February 2013, or the second semester. Another XXXXXX employee also stated that she initially noticed the abuse near the end of the first semester of the 2012-2013 school year. These two employees reported to OCR seeing the Teacher abuse the Student.

XXXXXX Employee #1 stated that she witnessed the Teacher pick up the Student and shove her face into the flag during the entire pledge of allegiance. The Student started crying. XXXXXX Employee #1 further stated that she witnessed the Teacher squeeze the Student’s face and jerk her head back as far as she could. Another employee also stated that she saw the Teacher grab, jerk and pull the Student and push her to the floor in a “very forceful manner.”

XXXXXX Employee #1 informed OCR that the Teacher also physically abused other students with disabilities in the classroom, but she had not seen the Teacher abuse the students without disabilities. XXXXXX Employee #1 reported that she witnessed the Teacher engage in the following incidents:

- 1) When Student #2 dropped his fork while eating, the Teacher jerked Student #2 out of his chair and slammed him to the floor, causing him to choke on his food. The Teacher ran out of the room and left Student #2 choking.

- 2) The Teacher slammed Student #3 on the changing table, pinched his lip hard enough to make him bleed, and squeezed his arm and legs hard. The Teacher dropped a 5 to 10 pound weighted blanket on Student #3 several times; sometimes she slammed it on him.
- 3) The Teacher took her foot and slammed it down on Student #4's arm. On March 4, 2013, the Teacher picked up Student #4 as high as she could and slam him on the concrete floor so hard that his shoe came off.
- 4) Teacher made Student #5 sit in his urine on a blue pad on the bathroom floor for at least two (2) hours and continue to urinate on himself. She would not allow any of the staff to change him.
- 5) The Teacher would slam Student #6 down on the concrete floor and step on his hand. She would then tell the other students that the student could not feel what she did to him because he had a condition that prevented him from feeling pain.
- 6) The Teacher would squeeze students' faces and jerk their heads back as far as she could. The Teacher also withheld food from the students with disabilities.

Two employees interviewed by OCR corroborated many of the incidents reported by XXXXXX Employee #1. In addition, written statements provided by multiple employees to XXXXXX Administrator #1 in March 2013 also corroborated these incidents. The written statements described incidents occurring as early as February 1, 2013; the descriptions included incidents of physical abuse, verbal abuse, deprivation of food, abandonment, and threats by the Teacher against the students in her class, including the Student.

Reports to District of Harassment or Abuse

OCR's investigation established that the District received actual notice concerning the abuse that the Student and the Student's classmates, ranging in age from XXXXXXXXXXXX old, were being subjected to by their Teacher. XXXXXX Administrator #1 stated that on March 4, 2013, two XXXXXX staff members reported to her that the Teacher had physically abused students in her classroom; one of the staff reported that the abuse was ongoing. XXXXXX Administrator #1 also stated that a total of five (5) employees subsequently reported to her that the Teacher had physically abused her students. The reporting employees provided XXXXXX Administrator #1 with documentation regarding the abuse; XXXXXX Administrator #1 received these documents on March 7, 2013.⁶ According to XXXXXX Administrator #1, the employees informed her that the Teacher "yanked" on students' arms, "jerked them around" and seated them with too much force. The District submitted documents to OCR, which confirmed that multiple XXXXXX employees provided XXXXXX Administrator #1 with written statements that described physical abuse of students by the Teacher in March 2013 (as described above). As for the Student, it was reported that the Teacher grabbed her by the arm, "jerked her" and pushed her to the floor on several occasions.

XXXXXX Employee #1 informed OCR that she immediately reported the March 4, 2013 incident involving Student #4 (see above) to XXXXXX Administrator #2, who then reported the incident to XXXXXX Administrator #1. XXXXXX Administrator #2 instructed XXXXXX Employee #1 to return to the classroom and document the incident. According to XXXXXX

⁶ As noted below, XXXXXX Employee #1 contends that she provided a written statement on March 5, 2013.

Employee #1, XXXXXX Administrator #2 never came to the classroom or checked on Student #4, and none of the XXXXXX administrators questioned the Teacher or took any action. (As noted below, the Teacher was ultimately removed from the classroom.)

District's Response to the Reports of Harassment and Abuse

XXXXXX Administrator #1 informed OCR that she contacted the Assistant Superintendent of Human Resources concerning the witness reports on March 7, 2013, and the Assistant Superintendent advised her to contact the Director of the Department of Exceptional Children (Director). XXXXXX Administrator #1 contacted the Director on March 7, 2013. The Director came to the School March 28, 2013. XXXXXX Administrator #1 conducted an investigation into the allegations and reported her findings to District-level employees on April 1, 2013. She stated that she interviewed the witnesses and Human Resources also interviewed the witnesses who gave statements. XXXXXX Administrator #1 confirmed that the Teacher and all the students remained in the classroom while she conducted the investigation and that she did not contact the parents of the alleged victims until after she completed her investigation and met with DCS on April 3 and 9, 2013.

XXXXXX Administrator #1 informed OCR that in mid-April 2013, the Student was removed from the Teacher's classroom at her parents' request. The parents were concerned about the Student's emotional state, and had expressed concern for her safety due to the abuse. For her stability and based on her disability, the XXXXXX placed the Student in the other classroom. The Student's IEP dated April 12, 2013, indicated all IEP Team members agreed that the best appropriate placement for the Student would be placement in the "other" preschool class at the School.

The District provided OCR with the formal letter of reprimand XXXXXX Administrator #1 issued to the Teacher on April 2, 2013. In the reprimand letter, XXXXXX Administrator #1 indicated that on March 28, 2013, she sent the Teacher an email, forbidding her to put her "hands on students." Further, XXXXXX Administrator #1 instructed the Teacher that "due to the severity of these violations," the teacher could not return to work until she had a meeting with the Assistant Superintendent. In a letter dated April 12, 2013, the Assistant Superintendent informed the Teacher that based on the allegations against her, the Teacher was placed on paid administrative leave until the allegations were thoroughly investigated and the matter was resolved.⁷ The Teacher subsequently resigned from her position. The witnesses interviewed by OCR provided a different version of the events. XXXXXX Employee #1 stated that she reported the Teacher's abuse of the students to the XXXXXX administration over six times. According to XXXXXX Employee #1, on March 4, 2013, she telephoned XXXXXX Administrator #1 at home to report the abuse. The next day, she gave XXXXXX Administrator #1 a written summary of what she witnessed. XXXXXX Employee #1 stated that she and another employee repeatedly reported the Teacher after their initial reports, but the XXXXXX administration never

⁷ XXXXXX Administrator #1 did not inform the Section 504 Coordinator of the allegations. The District's policy was that if the allegations involved an employee, the Assistant Superintendent for HR handled the matter. If the allegations involved student-on-student conduct, the Section 504 Coordinator would be notified.

removed⁸ the Teacher from the classroom. XXXXXX Employee #1 further stated that she went back to XXXXXX Administrator #1 several times and asked her when she was going to report the Teacher to DCS. XXXXXX Administrator #1 kept sending her back to the classroom and telling her to watch over the children, but did not take any action. According to XXXXXX Employee #1, on April 1, 2013, XXXXXX Administrator #1 made both XXXXXX Employee #1 and another XXXXXX employee sit next to the Teacher on a sofa and tell the Teacher all of the things that they reported about her. XXXXXX Administrator #1 then sent all three of them back to the classroom. XXXXXX Employee #1 stated that she felt violated and scared; she was distraught. Another XXXXXX employee confirmed that this meeting took place.

XXXXXX Employee #1 stated that XXXXXX Administrator #1 took no action until other XXXXXX employees reported the Teacher to DCS on April 4, 2013. She also stated that the next day, DCS came to the School and conducted interviews. According to XXXXXX Employee #1, no District employee interviewed the employees who reported the abuse until after DCS interviewed them, and the District did not remove the Teacher from the classroom until after the employees contacted DCS; the removal occurred a month after the employees first reported the abuse. According to XXXXXX Employee #1, District policy requires that after a report of abuse, the teacher should be placed on administrative leave immediately, DCS should be contacted immediately, and the parents should be contacted within 24 hours. XXXXXX Employee #1 informed OCR that none of the above occurred.

Analysis

The Teacher engaged in conduct that subjected the Student and other students in the preschool class to physical abuse because of their disability. Further, the District failed to respond appropriately to the incidents of physical abuse for at least several weeks: instead, the physical abuse was allowed to continue because of the District's failure to provide a prompt and equitable response.

The evidence shows that even when the District received actual notice they failed to respond appropriately to the abuse. During the first week of March 2013, XXXXXX administrators received multiple, written and verbal reports of physical abuse of preschool students by the Teacher. Most of the students reportedly mistreated are preschool students with a disability. Despite the initial reports of physical abuse, the XXXXXX administrators allowed the accused Teacher and her alleged victims to remain in the same classroom for a month. Further, the evidence also shows that XXXXXX administrators forced witnesses to confront the accused Teacher with their allegations of physical abuse, and then forced the witnesses to return to their classrooms and continue to work with the Teacher.

XXXXXX administration continued to receive additional reports of abuse by the Teacher throughout March 2013, but took no action to protect the alleged victims or the witnesses. Also, the evidence shows that the Principal did not contact her superiors until three days after the initial report. The Principal contacted the District's Director of Exceptional Services on March 7, 2013; however, the Director did not come to the school until March 28, 2013. XXXXXX

⁸ As noted below, the District's documentation reflects that the Teacher was ultimately removed from the classroom.

Administrator #1 contacted the Complainant on April 5, 2013, and informed her that DCS was on campus investigating the Teacher. The evidence showed that parents were not notified of the mistreatment of their children for several weeks, despite a District policy requiring that staff immediately contact the parents regarding reports or incidents of abuse. In addition, the District did not remove the Teacher from the classroom until after DCS commenced an investigation; DCS commenced its investigation on April 5, 2013.

As to the District's disability policies and procedures, the District has numerous policies and procedures on harassment, discrimination, and filing grievances under various laws; however, none of the policies or procedures alone satisfies OCR's requirements to adequately investigate and respond to grievances on the bases of any law enforced by OCR. Based on OCR's review, the District's grievance procedures do not clearly indicate whether the procedures apply to complaints of discrimination (including harassment) carried out by employees, students or third parties. The grievance procedures provide some timeframes but not for all of the major stages of the investigation. The grievance procedures do not provide for written notification to the complainant and subject of the complaint of the outcome of the investigation; instead, the procedures require a meeting with the complainant. Also, the grievance procedures do not provide any assurances that the District will take steps to prevent the recurrence of any discrimination and harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Last, the Student Handbook does not list the name and title of the Section 504/Title II Coordinators. Therefore, OCR finds that the District does not have an adequate grievance procedure in place to address harassment under any statute enforced by OCR.

Unalleged Compliance Issue: Retaliation

Although not an issue raised in the Complaint, OCR has concerns that the District failed to implement appropriate interim steps during and after the investigation to prevent retaliation against the primary staff person who reported the harassment. XXXXXX Employee #1 informed OCR that the other teachers and staff lashed out at her because XXXXXXXXXXXX failed to follow procedures and properly handle the reports of abuse.⁹ XXXXXX Employee #1 stated that XXXXXXXXXXXX released her name to the parents of the victims. She also stated that XXXXXXXXXXXX gave her written documentation to the parents and left her name on the documents. Further, according to XXXXXX Employee #1, XXXXXXXXXXXX maintained the confidentiality of the Teacher, but freely released information about her. XXXXXX Employee #1 stated that after she reported the Teacher, the XXXXXXXXXXXX started acted differently towards her because XXXXXXXXXXXX disclosed to them that she and others reported the Teacher. Further, XXXXXX Employee #1 stated that she believes XXXXXXXXXXXX initially told the Teacher that she reported her and that XXXXXXXXXXXX had not spoken to her since she reported the abuse.

XXXXXX Employee #1 informed OCR that XXXXXXXXXXXX allowed rumors to be discussed freely among teachers and staff without addressing what actually occurred. For instance, the first week

⁹ This interview took place at the beginning of the 2013-2014 school year. XXXXXX Employee #1 stated during the interview that the retaliation was ongoing at the time; the retaliation continued from the end of the 2012-2013 school year into the 2013-2014 school year.

of the 2013-2014 school year, XXXXXXXX told XXXXXXXX that someone informed her that XXXXXXXXXXXX reported the Teacher to DCS. According to XXXXXXXX Employee #1, the XXXXXXXX told her that she did not want to be precluded XXXXXXXX because XXXXXXXX Employee #1 was XXXXXXXX. XXXXXXXX Employee #1 stated that she reported this incident to XXXXXXXXXXXX, and XXXXXXXXXXXX told her there was nothing she could do.

The evidence shows that XXXXXXXXXXXX appears to have unnecessarily released the names of witnesses to parents, staff and other teachers at the School, leading to a hostile environment for the witnesses. Based on a preponderance of the evidence, OCR finds that the District has also violated Section 504 and Title II by engaging in retaliation.

Conclusion

OCR has determined that the Student and her preschool classmates were subjected to abuse by the Teacher and that the District failed to promptly respond to the reported harassment and abuse by the Teacher for at least several weeks. Therefore, the District violated Section 504 and Title II and their respective implementing regulations.

The noncompliance issues with the disability policies and procedures, designation of Section 504/Title II Coordinator(s), and Notice of Nondiscrimination are being addressed by the District through the resolution agreement the District entered to resolve OCR Complaint #04-13-1220. To resolve the other compliance issues, the District voluntarily entered into the enclosed Resolution Agreement (Agreement), which requires the District to (1) provide counseling services for the students in the affected preschool class for up to six months; (2) issue a statement to the District's students, parents and staff, stating that the District does not tolerate harassment on the basis of disability; (3) initiate annual, mandatory training for all District administrators and staff responsible for conducting investigations of incidents and complaints alleging disability discrimination or harassment; (4) initiate annual training on its revised grievance procedures and policies for complaints of disability discrimination or harassment; and (5) maintain accurate records on all reports of disability harassment, including physical abuse. OCR will closely monitor the implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

The District is reminded that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive 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.

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.

OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104 and Title II, at 28 C.F.R. Part 35, which were at issue in this case.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact XXXXXXXXXXXX, at XXXXXXXXXXXXXXXX.

Sincerely,

Melanie Velez
Regional Director

Enclosure: Resolution Agreement