



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
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TEXAS

April 25, 2016

Dr. John M. Craft
Superintendent
Killeen Independent School District
200 N. WS Young Dr.
Killeen, TX. 76543

RE: OCR Case No. 06161006
Killeen Independent School District

Dear Dr. Craft:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received on October 2, 2015, and filed against the Killeen Independent School District (KISD or District), in Killeen, Texas. The complainant alleged that the KISD discriminated and retaliated against your client's daughter (Student) based on disability (XXXXXXXXXX and XXXX). Specifically, the complainant alleged that the KISD failed to reevaluate the Student before removing various services/accommodations during a Section 504 meeting, in XXXXXXXXXXXX 2015. The complainant also alleged that the KISD did so in retaliation because your client previously requested due process hearings and filed an OCR complaint in the 2014-2015 school year. Lastly, the complainant alleged that the KISD website is not accessible to the visually impaired.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35, which prohibit public entities from discriminating on the basis of disability. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the provision against retaliation in the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI) 42 U.S.C. § 2000d, 34 C.F.R. Part 100.7(e). Title II also has a provision against retaliation at 28 C.F.R. § 35.134. The KISD is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to investigate allegations of discrimination filed against the KISD under Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

By letters dated January 20, 2016, OCR notified the complainant and the KISD that it was opening the complaint for investigation. In order to reach a determination with regard to the issues in this complaint, OCR gathered and analyzed information and documentation provided by the complainant and the KISD. This information included the Student's educational records, recording of the Section 504 meeting held on XXXXXXXXXXXX xxx 2015, transcript of the Section 504 meeting held on XXXXXXXXXXXX xxx 2015, correspondence between the KISD and the complainant, and correspondence between KISD personnel. Additionally, OCR obtained information during interviews with the complainant, the complainant's clients, and KISD officials and staff.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. With respect to issues 1 and 2, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 or Title II. With respect to issue 3, early on the KISD requested to voluntarily resolve this matter after OCR spoke with the KISD's representative and notified the District of OCR's compliance concerns as related to the regulatory subsections at issue. After negotiating the details of the Resolution Agreement (RA), on April 8, 2016, the KISD agreed to submit a signed RA, which was received on April 12, 2016. Provided below is an explanation of how OCR reached the determinations for issues 1-3.

Issue 1:

The Student's parents (Parents) alleged that at the beginning of the 2015 fall semester, the Student attended XXXXXXXX XXXX XXXXXXXX XXXXXXXX (XXXX), and she was XXXXXXX years old and in the XXX grade. The Parents allege that the KISD discriminated against the Student on the basis of her disabilities (severe XXXXX and XXXXXXXXXXXX) when the KISD failed to reevaluate the Student before removing various services and accommodations during a Section 504 meeting held in XXXXXXXXXXXX 2015. The accommodations that were removed were originally put in place at the end of the Student's XXX grade year (XXXXXX 2015) at a XXXXXXXXX school, XXXXXXXX XXXX XXXXXXXXXXXX XXXXXXX. The Parents went on to state that the basis for their belief that the Student was discriminated against was because the meeting that occurred in XXXXXXXXXXXX 2015, resulted in substantial changes in the Student's plan. Prior to making such substantial changes, the District was required to evaluate the Student and consider information from the Student's teachers who had known her for much longer than the XXXX teacher's. They went on to assert that with respect to a complete data assessment, there was no basis for why the Student's services and accommodations were removed.

Accordingly, OCR opened the allegation for investigation, and sought to determine whether the KISD discriminated against the Student on the basis of disability by failing to

reevaluate the Student's need for regular or special education and related aids and services before taking action that resulted in a significant change in placement (i.e. terminating or significantly reducing Section 504 services) in September 2015, and thereby denied the Student a free appropriate public education, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations' evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a "reasonableness" standard to determinations regarding the timeliness of evaluations. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is "disabled," and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

OCR reviewed the Student's "Section 504 Initial Evaluation & Periodic Re-Evaluation" from XXXXXXXX XXXX XXXXXXXXXXXX XXXXXX (XXXX), dated XXXXXX, 2015, and XXXX, dated XXXXXXXXXXXXX 2015. During the Xxx xxxx Section 504 annual review, the Student was determined to have a physical or mental impairment that substantially affected the major life activities of XXXXXXXX and XXXXXXXXXXXXX with respect to her diagnosis of XXXX. At XXXX the Student was enrolled in the following academic courses: Reading Language Arts, Math, Social Studies, and Science. The Student's

xxxxxxxxxx school plan included the following accommodations:

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In all of the Student's courses at XXXX, the following accommodations were also included in the plan:

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xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

OCR reviewed the KISD's established policies and procedures related to the evaluation and re-evaluation of students pursuant to Section 504, entitled "Section 504 Procedures (for Assessment, Identification, and Placement)." As part of the Operating Guidelines, the procedures state that "...appropriate procedures at the campus level for the assessment, identification and placement of Identified Students as defined in these Guidelines and for the provision of a Free, Appropriate Public Education to Identified Students" are to be provided. The policy goes on to provide a Notice of Nondiscrimination; and details the requirements for the assessment, identification and placement of students pursuant to Section 504, to include the following: Eligibility and Identification, District 504 Coordinator, Accommodations through Section 504, Placement Decisions, Review of 504 Plans, Section 504 Procedural Safeguards, Section 504 Committee Members, Parent Complaints and Due Process Hearings. With respect to the development of the Section 504 plan, the policy states that "[n]ot all Identified Students will need a plan to be implemented on a daily or regular basis." The policy also provides that regarding the review of an established Section 504 plan, parents may also request such meetings. With respect to placement decisions, the policy states "[i]n interpreting the evaluation data and making placement decisions, the District will consider evaluation data from a variety of sources and document on the Section 504 Eligibility determination Form the specific evaluation data that was considered. A Section 504 Committee that collectively has knowledge about the child, the meaning of evaluation data, and the placement options will make decisions regarding placement under Section 504..." Lastly, the policy states that "[t]he Section 504 committee must consist of at least two members, who together have requisite knowledge of the child, the placement options, and the evaluation data. The members of a Section 504 Committee will be determined by each campus, and particular members may vary from meeting to meeting. The District is not required to make particular staff members available for the Section 504 Committee meeting at parent request."

OCR determined that the Xxxxxxxxxx xxxx Section 504 meeting was held at the Parent's request. OCR's review of the Xxxxxxxxxx xxxx "Section 504 Initial Evaluation & Periodic Re-Evaluation" (Section 504 Plan), as well as confirmed through KISD staff interviews with OCR, it was determined that the following individuals who were either knowledgeable about the child, the meaning of the evaluation data, and the placement options, participated in that meeting: District 504 Coordinator (knowledgeable about the evaluation data and placement options); Xxxxxxxxxx Xxxxxxxxxxxxxx Xxxxxxxxxx Section 504 Coordinator (knowledgeable about the child, evaluation data and placement

options); Parent (knowledgeable about the child); Parent Advocate; Principal (knowledgeable about the evaluation data and placement options); Assistant Principal (knowledgeable about the child, evaluation data and placement options); KISD Attorney (knowledgeable about the evaluation data and placement options), and the XXX Teacher (knowledgeable about the child, evaluation data and placement options). OCR reviewed a recording of that meeting, the Section 504 Plan, and interviewed KISD staff (both 504 Coordinators, the Assistant Principal and Principal), and confirmed that the KISD's established Section 504 procedures were followed to ensure that information obtained from a variety of sources was documented and carefully considered.

During OCR's interviews with the District 504 Coordinator, the Assistant Principal and Principal, they indicated that each Section 504 meeting follows established procedures, and this particular meeting was no different. The District 504 Coordinator and the Assistant Principal reiterated that the established procedures were followed as outlined by the policy and as outlined in the Section 504 Plan.

In her interview with OCR, the Assistant Principal explained that she xxx the meeting. In the recording, OCR could hear the Assistant Principal explaining each phase of the Section 504 process to the committee. OCR heard the Assistant Principal offer the Parent a copy of the Notice of Parental Rights under 504. The Assistant Principal went on to explain that the group would be assessing a variety of data to include the previous Section 504 accommodations, discipline records, grades, attendance records, teacher and parental input. Throughout the meeting, the group (including the Parent) was also heard discussing testing data, and school xxxxxxxx schedules. In an interview with OCR, the District's 504 Coordinator, the 504 Coordinator presiding over the meeting, the Principal, the Assistant Principal and the XXX Teacher stated that the committee reviewed the previous Section 504 accommodations (established Xxxxxxx 2015), and considered a variety of information to include parental input, teacher input from all core teachers, attendance records, the Student's schedule, disciplinary records, medical evaluations, testing data and grades.

In particular, OCR found that at the time of the re-evaluation, the Student was receiving the following grades in her courses: xx in English/Language Arts, xx in Math (xxxxxxxxxxxxxxxxxxxx), xx in History, xxx in XXXXX, xx in Physical Education, xx in Reading and xx xx in Science. The Assistant Principal, Principal and both 504 Coordinators explained that the committee reviewed all teacher input to get a sense of what the teachers were noticing with respect to the Student's performance and behavior throughout the day. OCR's review of the XXXXXXXX xxxx recording of the meeting found that the Assistant Principal discussed the input from the teachers with the group. OCR's interview with the Assistant Principal confirmed this. Further, in reviewing the Student's discipline record they found that the Student was well behaved throughout the school day, and had not received any disciplinary infractions. In reviewing the Student's xxxxxxxxx, the Assistant Principal noted that the Student had excellent xxxxxxxxx.

OCR inquired as to whether the Parent participated in the meeting. Each KISD staff member interviewed regarding this issue recalled that the Parent fully participated in the meeting. The District 504 Coordinator, 504 Coordinator, Assistant Principal and the Principal indicated that the meeting went well as all members of the group collaborated to ensure that the Student was successful in her courses. The Principal stated that he was surprised that the Parent was displeased with the XXXXXXXX xxxx plan, as the Parent gave lots of input in the meeting and was working with the group to review each accommodation for each of the Student's classes to determine what was necessary and what might need to be changed. The Principal went on to state that this method ensured that the group developed a Section 504 plan that was individualized to the Student's needs. OCR inquired whether the Parent objected to the accommodations that were determined by the group, and the KISD staff members all stated that the Parent agreed with the accommodations.

In OCR's review of the recording of the XXXXXXXX xxxx meeting, the Parent could be heard providing input throughout the meeting. The Parent provided input on a variety of matters including an update on the Student's medical evaluation; his concern about the effects of the XXXXXXXX that the Student was XXXXXXXX XXXXXX on her performance in class as compared to what he has observed when the Student was at home; his desire for the Student to receive note-taking assistance in English, after she has attempted to write the notes herself; the effect of the Student's perceptions about whether her teachers like her or not; the Student's failure to remember to complete tasks (i.e., turning in homework without prompting); concerns about the Student receiving homework assignments in every class, and use of an agenda. OCR noted that throughout the meeting, the Student's XXXXXX is heard participating in the process, giving input, asking questions regarding recommended accommodations, and agreeing to the accommodations.

OCR's review of the recording revealed, that the Parent also inquired as to the provision of the accommodation of XXXXXXXX XXXX in XXXX and the XXX XX XXXXXXXXX. In response, the principal reviewed the XXXX teacher's input with the group again, and found that the Student was doing very well and was timely in completing her work. The principal went on to state that if the Parent had significant concerns, the group could revisit the issue, but they should allow time for the plan to work. The principal expressed confidence in the relevant teaching staff's understanding of what the average XXX grader should be doing, and if those teachers notice that the Student is struggling after the implementation of the accommodations, they will make appropriate recommendations. The principal stated that they don't want to over accommodate the Student, if she is demonstrating that she is capable. Regarding the use of XXXXXXXXX, the Parent inquired as to whether use of the XXXXXXXXX would be part of the 504 plan, as he noticed that the Student struggles with writing and her writing was more thorough when she XXXXX her answers. The Assistant Principal indicated that particular accommodation was not part of the plan, as none of the Student's teachers thought that it was necessary for her success. The Student's XXXXXX teacher confirmed that she had not noticed the Student having any problems with her XXXXXX. Likewise, the Student's XXXXXX teachers indicated that the Student does not struggle with XXXXXX. After some discussion, the group

decided that it was acceptable for the Student to submit xxxxxxxxxxxx assignments for those classes with x days of extended time.

OCR's review of the Student's XXXX Section 504 plan reflected that she was determined to remain eligible to receive accommodations and services pursuant to Section 504, as she was found to have a physical or mental impairment that substantially affected the major life activity of xxxxxxxxxxxx with respect to her diagnosis of XXXX. The following accommodations were determined to be appropriate:

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On Xxxxxxx 2016, subsequent to the filing of this complaint, the KISD had another Section 504 meeting to share the results of the Students recent xxxxxxxx evaluation, and review her current Section 504 Plan. A review of the Section 504 Plan and notes reveals that a group of persons who were knowledgeable about the Student, the meaning of the evaluation data, and the placement options met, including both of the Parents. The notes reflect that the parents were provided with a copy of the Section 504 Notice of Rights. The group determined that the Student was still eligible to receive services due to the disability of XXXX. During the meeting the group considered the following information:

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xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

OCR offered the complainant and the Parents an opportunity to provide rebuttal information. The complainant asserted that issue 1, is a procedural issue. The complainant inquired as to what data was considered. OCR stated that through interviews, review of the documents related to the Xxxxxxxxxxx, 2015 meeting, and listening to the recording of that meeting, it was established that the committee reviewed the previous Section 504 accommodations (established Xxxxxx, 2015), and considered a variety of information to include parental input, teacher input from all core teachers, attendance records, the Student's schedule, disciplinary records, medical evaluations,

testing data and grades. The complainant indicated that data that relates to each accommodation that was removed (in the XXXXXXXXXXXX, 2015 meeting) should have been reviewed. The complainant asserted that pursuant to Section 504, the group of knowledgeable persons are required to review a variety of information in making its placement decisions. That information, that data, should have some level of quantification.

The complainant stated that the District's evaluation and assessment process is inconsistent, and he and his clients are just asking for the evaluative and assessment processes to be consistent. The complainant further asserted that instead of consistency, it seems as though every time a due process is filed, or OCR is involved, the KISD then wants to add accommodations. The issue should be reviewed in the context of over a period of time, in responding to the complainant's and Parent's advocacy, the KISD has been adding and subtracting accommodations. The complainant stated that he has compared KISD to other districts; and at other Districts there is a built in protocol for the evaluative metrics that includes an "assessment on some level of quantifiable data." The complainant went on to state that evaluative data must have nuanced metrics that are quantifiable. This is absolutely necessary. To be consistent with guidelines, means you assess and evaluate.

Based on a thorough review of all of the information obtained during this investigation, OCR determined that there is insufficient evidence to establish that the KISD discriminated against the Student on the basis of disability by failing to reevaluate the Student's need for regular or special education and related aids and services before taking action that resulted in a significant change in placement (i.e. terminating or significantly reducing Section 504 services) in XXXXXXXX 2015, and thereby denying the Student a free appropriate public education. As previously discussed, OCR determined that at the request of the Parents, a meeting was held on XXXXXXXXXXXX, 2015 to re-evaluate accommodations and services provided in the Student's Section 504 Plan that was developed on XXXXXX, 2015. The Student was determined to remain eligible to receive accommodations and services under Section 504 due to her diagnosis of XXXX, which was considered to be a physical or mental impairment that substantially affected the major life activity of XXXXXXXXXXXX. Prior to changing the Student's XXXXXXXX Section 504 Plan, a group of XXXXX individuals who were knowledgeable about the Student, the meaning of the evaluation data, and the placement options, met and considered information from a variety of sources, including the previous Section 504 Plan, to determine the accommodations and services necessary for the Student to meet her individual educational needs in the xxx grade. OCR also determined that the KISD has established procedures to ensure that information obtained from the variety of sources is documented and carefully considered, and that those established policies were followed, as evidenced by the KISD's policies and procedures related to the evaluation and re-evaluation of students pursuant to Section 504, and the Section 504 Plan and meeting notes captured on the Section 504 Initial Evaluation & Periodic Re-Evaluation form. Therefore, OCR determined that there is insufficient evidence to establish that the KISD discriminated against the Student in violation of Section 504 or Title II as alleged.

Issue 2:

The Parents allege that when the KISD discriminated against the Student on the basis of her disabilities by failing to reevaluate the Student before removing various services and accommodations during a Section 504 meeting held in XXXXXXXXX 2015, which resulted in a significant change in placement, the KISD did so in retaliation for the Parent's advocacy on her behalf to secure disability services for the Student. Section 504 and Title II prohibit retaliation against an individual because that person complained about discrimination or otherwise asserted rights under the statute. When investigating a complaint of retaliation. Accordingly, OCR opened the allegation for investigation, and sought to determine whether the KISD retaliated against the Student by terminating or significantly reducing her Section 504 services in XXXXXXXXX 2015, because the complainant requested due process hearings and filed an OCR complaint in the 2014-2015 school year, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) The complainant or other alleged injured party engaged in a protected activity;
- (2) The recipient had notice of the protected activity;
- (3) The recipient took an adverse action against the complainant or other alleged injured party contemporaneously with or subsequent to the protected activity; and
- (4) There was a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

OCR first considers whether the Parents engaged in a protected activity. A "protected activity" is one in which a person either opposes an act or policy that is unlawful under any of the laws that OCR enforces; files a complaint, testifies, assists or participates in an investigation, proceeding or hearing conducted under the laws that OCR enforces; or otherwise asserts rights protected by the laws enforced by OCR.

The Parent's advocacy to ensure the Student's rights as a disabled student is well documented. On XXXXXXXXX, 2015, the Parents have filed a complaint with OCR which alleged that the KISD discriminated against the Student on the basis of her disability (OCR Docket #XXXXXXXX). The Parents also filed a XXXXXXXX against the KISD styled as XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXX.

Based on the evidence reviewed by OCR, we have determined that the complainant did engage in a protected activity.

OCR next considers whether KISD had notice of Parent's protected activity. A recipient must have notice of any protected activity for OCR to conclude that it retaliated because of the protected activity. OCR reviewed documentation indicating that the KISD had knowledge of the protected activity. Specifically, OCR reviewed a document entitled Xxxxxxxxxx Xxxxxxxxxx Xxxxxxxxx (Agreement), which was signed by the KISD Superintendent on Xxxxxxxxxxx 2015. The Agreement resolved the above-mentioned xxxxxxx against the KISD. Likewise, on Xxxxxxxxx, 2015, the KISD responded to OCR's notification letter for OCR Docket #xxxxxxxx, dated Xxxxxxx, 2015. Within that response, the KISD noted other due process hearings that the Parents filed on behalf of the Student.¹ Accordingly, OCR has determined that the KISD had notice of the Parent's protected activities.

The third step in OCR's analysis involves determining whether the Student was subjected to an adverse action. To be an "adverse action," the recipient's action must significantly disadvantage the complainant or other alleged injured party as a student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's employment or educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claim(s). To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

Regarding the fourth step in OCR's analysis, an adverse action can be considered retaliatory only if it was motivated by a protected activity. Absent direct evidence of a retaliatory motive, a causal connection is inferred in cases where the adverse action occurs in close proximity in time to the protected activity. Other indicia of a causal connection can include, but are not limited to, inconsistent treatment of the alleged victim of retaliation before and after the protected activity, inconsistent or harsher treatment of the alleged victim as compared to individuals who did not engage in protected activity, and evidence that the recipient's actions would not have been the same absent the protected activity.

¹ In its XXXX XXXX written response submitted to OCR, the District stated that prior to the start of the 2014-2015 school year, the Parents filed a Request for a Section 504 Due Process Hearing against the District. On Xxxxxxxxxx, 2015, the Parents filed a Special Education Due Process hearing against the District. Further, OCR reviewed a document dated XXXXX, 2015, entitled "Full and Individual Evaluation, Determination of Disability and Educational Need, Initial Evaluation." A review of the document reveals the Parents disagreed with a determination made at xx xxxxxxx ARD meeting held on Xxxxxxxxxxx, 2014. As a result, the Parents requested an independent educational evaluation (IEE).

With respect to the third and fourth step in the retaliation analysis, the evidence showed that the identified advocacy on behalf of the Student occurred throughout the 2014-2015 school year. According to the Parent, a request was made for the XXXX to follow the Student's established Section 504 Plan. In response, a meeting was called (on XXXXXXXXXXXX, 2015), in which the District's 504 Coordinator and Attorney were present, and a number of the Student's previously approved accommodations were ultimately removed. The Parent asserts that in order for the Student to be successful in school, she needs accommodations, which are supported by outside evaluations. As discussed in issue 1, the evidence has established that the meeting of XXXXXXXXXXXXX, did result in a change in the number and type of accommodations deemed necessary. OCR finds there is a causal connection between the protected activity and the alleged adverse action.

Having established a *prima facie* case of retaliation, OCR next considers whether the KISD had one or more legitimate, non-retaliatory, non-pretextual reasons for taking the adverse action in question. If OCR finds that the recipient has offered a reason for the adverse action that appears to be legitimate and non-discriminatory, OCR further investigates to determine if the reason provided is pretextual. Pretext may be shown by evidence that the explanation for the adverse action is not credible or believable or that treatment of the complainant was inconsistent with treatment of similarly situated individuals or established policy or practice.

OCR determined the evidence showed the KISD provided a legitimate non-retaliatory reason for its actions. In its written response submitted to OCR, the District denied retaliating against the Student by terminating or significantly reducing her Section 504 services as alleged. In support of its denial, the KISD went on to state that it revised the Student's Section 504 Plan based on evaluation data, including full input and agreement by the Parent. The evidence confirms that prior to changing the Student's XXXXXXXXX Section 504 Plan, a group of individuals who were knowledgeable about the Student, the meaning of the evaluation data, and the placement options, met and considered information from a variety of sources, including the previous Section 504 Plan, to determine the appropriate accommodations and services necessary for the Student to meet her individual educational needs in the xxx grade.

During OCR's interviews with the XXX Section 504 Coordinator, XXX Teacher and Assistant Principal, they each denied having any prior knowledge of the Parent's previous advocacy on behalf of the Student. The Principal stated that he did not specifically remember whether he knew of the Parent's advocacy at the time of the meeting. He went on to state that at some other point he may have learned something about it from the Parents. Both the District's Section 504 Coordinator and Attorney had knowledge of the Parents advocacy prior to the XXXXXXXXXXXX Section 504 meeting. OCR inquired as to whether the issue of the Parent's prior advocacy was discussed at any time during the meeting. Each interviewee denied that it was ever discussed. Likewise, in listening to the recording of the meeting, OCR did not hear any discussion of the Parent's prior advocacy. OCR inquired as to what the interviewees based the Student's

accommodations on. Each interviewee stated that the group made the determination based solely upon the abovementioned sources of information. The interviewees each stated that they believed the Parent was pleased with the meeting, and agreed with the group's determination.

The KISD further asserted that it prohibits retaliation against individuals on the basis of prior complaints against the District, and identified Board Policies FFH(LEGAL) and FFH(LOCAL) as being the policies relevant to this matter. The KISD stated that while it had not received a complaint from the Parents regarding retaliation prior to notice of the present OCR investigation, the District would treat the present OCR complaint as written notice of an allegation of retaliation and would investigate the claim in accordance with the identified policies.

A review of the identified policies revealed that FFH(LEGAL) is entitled "Student Welfare, Freedom from Discrimination, Harassment, and Retaliation," and FFH(LOCAL) is also entitled "Student Welfare, Freedom from Discrimination, Harassment, and Retaliation." OCR determined that FFH(LEGAL) was not particularly relevant to this issue, as it addresses procedures to deal with allegations of sexual harassment. However, OCR found that FFH (LOCAL) is applicable, as it declares that the District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination who, in good faith, makes a report of discrimination, serves as a witness, or participates in an investigation.

The policy goes on to state the following in relevant part:

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, counselor, principal, other District employee, or the appropriate District official listed in this policy.

Any District employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.

For the purposes of this policy, District officials are the Title IX coordinator, the Section 504 coordinator, the Title II coordinator, and the Superintendent.

A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator, the Section 504 coordinator, or the Title II coordinator may be directed to the Superintendent.

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult.

The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately undertake an investigation...

If the District official determines that the allegations, if proven, would not constitute prohibited conduct as defined by this policy, the District official shall refer the complaint for consideration under FFI.

The investigation may be conducted by the District official or a designee, such as the principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

The investigator shall prepare a written report of the investigation. The report shall include a determination of whether prohibited conduct or bullying occurred. The report shall be filed with the District official overseeing the investigation.

Notification of the outcome of the investigation shall be provided to both parties in compliance with the Family Educational Rights and Privacy Act (FERPA).

OCR interviewed the KISD staff person, Title II Coordinator, xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. OCR inquired as to the policies and procedures that were followed during the investigation, and the Title II Coordinator stated that the investigation was conducted in accordance with FFH(LOCAL). OCR asked xxx xx xxx xxxxxxxxx xx xxxxxxxx the investigation, and the Title II Coordinator stated that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. The Title II Coordinator explained that he interviewed all of the KISD's staff who participated in the Xxxxxxxxxxxxx meeting, and they all denied having retaliated

against the Parent or the Student as alleged. During OCR's interviews with the same individuals, they confirmed that they were questioned regarding the allegation of retaliation by the Title II Coordinator. Upon completion of the investigation, the Title II Coordinator stated that he drafted a letter notifying the Parents of the KISD's determination; as well as a final written investigative report.

OCR reviewed a letter from the Title II Coordinator to the Parents, dated XXXXXXXXXX, 2016. The letter states that the KISD received notification of the retaliation allegation on XXXXXXXXXX, 2016, and an investigation was conducted pursuant to District Policy FFH(LOCAL). The letter goes on to explain that the investigation was conducted because, if the allegation was proven true, it would constitute prohibited conduct as defined by the identified policy. The letter states that “[b]ased on interviews conducted and documents reviewed, the allegation of retaliation as stated in the OCR complaint is not substantiated.” The letter notifies the Parents of their appeal rights, and right to file a separate complaint with OCR. The Title II Coordinator stated, to date, he had no knowledge of the Parents filing an appeal of the investigative determination.

OCR's review of the investigative report finds that it details the following information: identification of the complainants as the Parents, names of persons against whom a complaint was made, date the initial report was received (XXXXXXXXX, 2016), nature of the complaint, and date of the alleged conduct (XXXXXXXXXX, 2015). The report states that the “[i]nvestigation and response by the District included multiple witness interviews between XXXXXXXXXX, 2016 and XXXXXXXXXX, 2016, as well as a review of relevant documentation.” The report states that the Title II Coordinator was unable to substantiate the allegation, and that no action is required. Lastly, the report states that “[s]hould additional information become available pertinent to the concerns raised by the parents, further investigation may be conducted as appropriate.”

OCR offered the complainant and the Parents an opportunity to provide rebuttal information. The complainant accepted the offer and asserted that issue 1 and 2 are related as the District's evaluation and assessment process is inconsistent, and he and his clients are just asking for the evaluative and assessment processes to be consistent with respect to the Student. The complainant further asserted that instead of consistency, it seems as though every time a due process is filed, or OCR is involved, the KISD then wants to add accommodations. The issue should be reviewed in the context of over a period of time, in responding to the complainant's and Parent's advocacy, the KISD has been adding and subtracting accommodations. The complainant stated that he has compared KISD to other districts; and at other Districts there is a built in protocol for the evaluative metrics that includes an “assessment on some level of quantifiable data.” The complainant went on to state that evaluative data must have nuanced metrics that are quantifiable. This is absolutely necessary. To be consistent with guidelines, means you assess and evaluate.

Based on a thorough review of all of the information obtained during this investigation, OCR determined that there the KISD had a legitimate, non-retaliatory, non-pretextual

reason for taking the adverse action in question. Accordingly, OCR finds that there is insufficient evidence to establish that the KISD retaliated against the Student by terminating or significantly reducing her Section 504 services in XXXXXXXX 2015, because the complainant requested due process hearings and filed an OCR complaint in the 2014-2015 school year, in violation of Section 504 or Title II.

Issue 3:

The complainant alleged that the KISD’s website is not accessible to the visually impaired. In support of the allegation, the complainant submitted the results of an evaluation conducted on web pages on the District’s website supporting the allegation that the website is inaccessible to individuals with disabilities. The results of the complainant’s review of those identified pages were by a web-based program (*AChecker and FAE 2.0*), and suggested that the problems identified on those three pages could be representative of more widespread inaccessibility of the District’s website. The three pages are as follow:

1. the District’s Main Page;
2. the District’s Special Education Home Page; and
3. the District’s Board Page

Accordingly, OCR sought to determine whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the KISD because the KISD website is inaccessible to or unusable by persons with visual disabilities, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively. Pursuant to the regulations implementing Section 504 and Title II, recipients and public entities must ensure that qualified individuals with disabilities shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the entity’s programs, services, and activities.² The general non-discrimination requirements imposed by Section 504 and Title II include an obligation to make sure that individuals with disabilities are afforded an equal opportunity to participate in a school division’s online programs, services, and activities. This included programs, services, or activities delivered online or through websites.

Section 504 pre-dated the Internet and, therefore, does not contain specific standards for web accessibility. To determine if a program, service, or activity delivered online or through a website provides equal access to individuals with disabilities, OCR considers such factors as whether individuals with disabilities have the same ease of use, completeness of information, functionality, and timeliness of response.³ A school district

² See 34 C.F.R. §§ 104.4(a) and (b)(1)(iii) & (iv) and 28 C.F.R. §§35.130(a) & (b)(1). See also 28 C.F.R. § 35.160(a)(1) specifically addressing communications.

³ This approach is consistent with the standard set forth in OCR’s June 29, 2010 Dear Colleague Letter (June 2010 DCL), jointly issued by OCR and the U.S. Department of Justice, advising college and university presidents that requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities—e.g., individuals with visual disabilities—is discrimination prohibited by Title II and Section 504 unless those individuals are

with an inaccessible website could satisfy its obligations under Section 504 by providing the same information and services through other accessible means.

OCR's review of the evaluation revealed that there may be compliance concerns with the District's website with respect to the KISD's main page, board page, and special education page. OCR reviewed and evaluated the identified web pages for accessibility using Section 508 standards as guidelines.⁴ OCR identified a number of accessibility concerns on the three web pages identified in the complaint. For example, website accessibility software (*AChecker*) identified 40 compliance concerns on the District's home page such as: images missing alternative text; a failure to make it easier for users to see and hear content including separating foreground from background; a failure to provide alternate ways to help users to navigate, find content, and determine where they are; a failure to make text content readable and understandable; and use of invalid language codes. With respect to the District's Special Education Home Page, OCR's analysis of the website accessibility software's results revealed 35 compliance concerns on the District's home page such as: images missing alternative text; a failure to make it easier for users to see and hear content including separating foreground from background; and a failure to provide alternate ways to help users to navigate, find content, and determine where they are. Likewise, OCR found that the District's Board Page had 23 compliance concerns regarding the same issues such as: images missing alternative text; a failure to make it easier for users to see and hear content including separating foreground from background; a failure to provide alternate ways to help users to navigate, find content, and determine where they are.

The lack of alternative text may deny persons with visual impairments equal access to the information and services available through the web pages. The lack of sufficient contrast between text and background on the District's web pages could impede its readability by individuals with moderately low vision (who don't use contrast-enhancing assistive technology). Additionally, the failure to make it easier for users to hear content that does

provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. Specifically, the June 2010 DCL explains that the educational institution must ensure that students with disabilities can access the educational opportunity and benefit with "substantially equivalent ease of use" as students without disabilities. On May 26, 2011, OCR issued a Frequently Asked Questions (FAQ) document confirming the use of a functional definition of accessibility for students who are blind or low vision and the applicability of those principles to elementary and secondary schools under the general nondiscrimination principles of Section 504 and the ADA.

⁴ Section 508 of the Rehabilitation Act of 1973, as amended in 1998, requires that when Federal agencies develop, procure, maintain or use electronic and information technology that individuals with disabilities have access to and use of the information and data that is comparable to individuals without disabilities unless doing so would result in an undue burden to the particular agency. Section 508 Standards and Web Content Accessibility Guidelines (WCAG 2.0) provide guidance and technical specifications and serve as the primary guidelines for web accessibility. Although as a non-Federal agency the School Division is not required to strictly comply with the requirements of either Section 508 or WCAG 2.0, the requirements of both serve as resources in considering how the School Division can satisfy its obligation to ensure that individuals with disabilities are provided an equal opportunity to participate.

not meet this success criterion can interfere with a user's ability to use the whole web page. Finally, the failure to provide alternate ways to help users to navigate, find content, and determine where they are, obstructs a user's ability to access the content they need and allow them to keep track of their location. According to W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, these tasks are often more difficult for people with disabilities. For finding, navigation, and orientation, it is important that the user can find out what the current location is. For navigation, information about the possible destinations needs to be available.

OCR did not review each of the District's web pages to determine the usability or completeness of the information on the web page. Rather as part of the Agreement, the District has agreed to audit all content and functionality on its website, including, but not limited to, the home page, all subordinate pages, and intranet pages and sites, to identify any online content or functionality that is inaccessible to persons with disabilities, including online content and functionality developed by, maintained by, or offered through a third party vendor or an open source.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns with the web pages identified in the complaint. OCR discussed its concerns with the KISD, and the District voluntarily expressed an interest in ensuring that its website is fully accessible to individuals with visual impairments and in working with OCR to resolve any compliance concerns. Accordingly, OCR and the KISD entered into voluntary negotiations to resolve the issue, and OCR received the signed resolution agreement on April 12, 2016. The Agreement entered into by the KISD is designed to voluntarily resolve the issues of concern with respect to the District's website accessibility. Under Section 302 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the KISD deemed compliant if the KISD enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR acknowledges and appreciates the District's willingness to quickly and comprehensively resolve the identified compliance concerns so as to expedite the process of ensuring equal access as regards to this issue.

OCR will monitor closely the KISD's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the KISD has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the KISD, if the KISD fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the KISD written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the KISD'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 KISD must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have questions or concerns about this letter, please contact Adriane Martin, the Supervisory Attorney assigned to this matter, at (214) 661-9678. You may also contact me at (214) 661-9600.

Sincerely,

Taylor D. August
Regional Director
Office for Civil Rights
Region VI, Dallas Office

Enclosures