



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS -- REGION VII

January 10, 2014

XXXXXX XXXXXX, Esq.
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XXXXXX, XXXXXX XXXXXX

Re: OCR Docket # 07131190

Dear Mr. XXXXXX:

On June 28, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Manhattan-Ogden Unified School District #383 (District), Manhattan, Kansas, alleging discrimination against the complainant's son on the bases of race and disability. For the reasons set out below, we have determined there is insufficient evidence to conclude the District discriminated against the complainant's son on the basis of race or disability as alleged.

Specifically, the complainant alleged the District discriminated against her son on the bases of race (XXXXXX) and disability (XXXXXX) when a District staff member cut his hair citing that his hair was a distraction to his learning.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of FFA.

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As a recipient of FFA from the Department and a public entity, the District is subject to Section 504, Title II, and Title VI. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR considered documentation the complainant and the District submitted and reviewed the District's grievance procedure and policies prohibiting discrimination on the bases of race and disability. OCR also toured the complainant's son's XXXXX classroom suite and regular education classroom. OCR interviewed the complainant and District officials, including the complainant's son's XXXXX teacher from February 2013 to present (teacher B), a regular education teacher (who worked with the complainant's son during the 2012-13 school year), a paraprofessional (who worked with the complainant's son between December 2012 and May 2013), the elementary school principal, elementary school assistant principal, autism coordinator, occupational therapist, speech language pathologist, social worker, executive director of special services, executive director of teaching and learning, and office clerk. The complainant's son's XXXXX teacher from August 2012 through January 2013 (teacher A) is no longer employed by the District and was unavailable for an OCR interview. OCR spoke with the complainant's son in an effort to obtain information pertaining to the complaint allegation but he did not provide any specific information. The legal and factual bases for OCR's determination are set forth below.

Allegation

The complainant alleged the District discriminated against her son on the bases of his race and disability when a District staff member cut her son's hair citing that his hair was a distraction to his learning. The complainant stated her son was five years old and in kindergarten at the XXXXX XXXXX XXXXX School when the alleged hair cutting incident occurred in January 2013.¹

Legal Standards

The Title VI regulation at 34 C.F.R. § 100.3(a) states that no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination based on race, color, or national origin under any program or activity that receives Federal

¹ X---paragraph redacted-- X.

funds. The Title VI regulation at 34 § 100.3(b)(1)(i) through (iv) and (vi) specifically provides that a recipient shall not, on the basis of race, color or national origin, deny an individual any services; provide any service to an individual which is different or is provided in a different manner from that provided to others; subject an individual to segregation or separate treatment in any matter related to the receipt of service; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or deny an individual an opportunity to participate in the program or afford an opportunity to do so which is different from that afforded to others under the program.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual 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 FFA. The Title II implementing regulation at 28 C.F.R. § 35.130(a) is interpreted consistent with the Section 504 regulation.

In addition to the general prohibition against discrimination based on race or disability, harassment or the existence of a hostile environment based on race or disability is also a form of discrimination prohibited under Title VI, Section 504, and Title II. The germane issue is whether the harassment rises to such a level that it denies or limits a student's ability to participate in or benefit from the school's program based on disability or sex. A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.²

In investigating a complaint of a hostile environment based on disability or race, OCR determines whether the incident or incidents alleged in the complaint, individually or collectively, created a hostile environment by interfering with or limiting the student's ability to participate in or benefit from a recipient's educational program and activities. In evaluating the seriousness of the conduct, OCR considers all factors or circumstances, including the degree to which the conduct affected the student's educational program; the type, frequency, and duration of the conduct; the identity and relationship between the alleged harasser and the subject of the harassment; the number of individuals involved; and the context in which the alleged incidents of harassment occurred.

To establish a violation of Title VI, Section 504, or Title II under this hostile environment analysis, OCR must find: 1) the student has been subjected to harassing conduct (for example, physical, verbal, graphic, or written) based on race and/or disability; 2) the harassment is sufficiently severe, pervasive, or persistent to create a hostile environment (it interferes with or limits the ability of the student to participate in or receive the benefits,

² See, 34 C.F.R. §§ 104.7(b) and 104.8.

services, or opportunities provided by the District); 3) the District had actual or constructive notice of the harassment; and 4) the District failed to take prompt and effective actions to remedy the harassment (end the harassment, prevent it from recurring and, where appropriate, remedy the effects on the student).

Findings of Fact

The complainant stated that on or around January 17, 2013,³ she was sick so she sent her son to school with his hair down instead of up in a ponytail or braided, which is how he typically wears his hair. When her son came home from school that day, his hair was up in a ponytail and he was noticeably upset, screaming that he did not want his hair cut. The complainant stated the next day her son was terrified and did not want to go to school so she did not send him. A few days later, the complainant said she noticed his hair had been cut. The complainant stated her son's hair looked as though someone had placed it in a ponytail and cut off six and one-half to seven inches. The complainant also believes her son was wearing a red shirt over his T-shirt on the day she believes his hair was cut but that when he came home from school that day, he was no longer wearing the red shirt.

The complainant told OCR she called teacher A to ask whether the children had been playing with scissors in the classroom. When teacher A said no the complainant asked whether teacher A had cut her son's hair or if she knew what happened to his hair. Teacher A denied cutting the complainant's son's hair but said, "His hair is a distraction to his learning."

The complainant stated she believes teacher A cut her son's hair because she considers African American hair to be a distraction since it is different from Caucasian people's hair. The complainant said teacher A's comment that her son's hair is a distraction is actually a reflection of racial stereotyping about African American people's hair.

After the alleged hair cutting incident, the complainant stated her son started having nightmares and urinating in his pants at school. She stated he continuously refuses to go in public without his hair in a ponytail and becomes visibly anxious when his hair is left down. In addition, since the alleged incident, the complainant states she has witnessed her son repeatedly making statements such as "hair not cute," "unacceptable," or "different" while tugging at his hair with an angry facial expression. The complainant stated she believes her

³ There is some discrepancy with regard to the date the complainant informed OCR she sent her son to school with his hair down and the date provided by the District. The complainant reported she sent him to school with his hair down on January 17, 2013, but data submitted to OCR by the District indicated the complainant reported the alleged hair cutting incident to her son's assistant principal on January 16, 2013.

son is acting out what he has heard at school or is engaging in echolalia,⁴ which the complainant explained is often a symptom of XXXXX. The complainant stated it is typical for her son to repeat words he has heard. The complainant reported that her son also told an independent case manager, who is not an employee of the District, that teacher A cut his hair and later told the complainant he was sorry for keeping a secret and that teacher A told him not to tell.

The complainant believes the hair cutting incident was an act of discrimination based on her son's disability because teacher A most likely would not have cut her son's hair if he was not a child with XXXXX, with below average verbal skills.

The complainant informed OCR she does not believe her son cut his own hair because he was never left alone. She said that at the time of the alleged incident, he spent the majority of his day in the XXXXX classroom suite (with teacher A) and only a few hours in the regular education classroom where he was accompanied by a paraprofessional. The complainant stated that another family member was the first to notice her son's hair had been cut.

The complainant reported the alleged hair cutting incident to the assistant principal. The complainant said the assistant principal defended teacher A's remark by telling her that curly-haired people get teased frequently.

The District denied that the complainant's son was subjected to discrimination based on his race or disability. The District reported that it investigated the alleged hair cutting incident on January 16, 2013, and reported its determination to the complainant the same day. Based on its investigation, the District determined that the complainant's son's hair was not cut or altered by any staff member at the school.

During her interview with OCR, the assistant principal stated the 2012-13 school year was her first year as an administrator with the District. She stated the complainant called the office on January 16, 2013, and asked to speak with the principal but he was in a meeting so she agreed to talk to the complainant. The complainant informed the assistant principal her son's hair had been cut and alleged that teacher A cut his hair even though the complainant said she had not noticed the haircut for about a week.⁵ The complainant informed the assistant principal that teacher A characterized her son's hair as a distraction, which she interpreted as a racist remark. The complainant stated white people have a fascination with black people's hair because it is different from their own. The complainant was upset and

⁴ Merriam Webster Dictionary defines echolalia as the often pathological repetition of what is said by other people as if echoing them. During her interview with OCR, the autism coordinator stated echolalia is common in children with XXXXX and can be either immediate echolalia or delayed.

⁵ The assistant principal clarified for OCR that the individual who the complainant alleged cut her son's hair is not a paraprofessional as the complainant indicated in her complaint, but actually a certified teacher – teacher A.

told the assistant principal she was calling child protective services. The assistant principal informed OCR that she tried to make a connection with the complainant by commenting that she also has curly hair and people always want to touch it. She stated she did not intend to give the complainant the impression that she was minimizing the gravity of her concern.

After the telephone conversation ended, the principal returned to the office and the assistant principal informed him of the situation. Both she and the principal then walked through the XXXXX classroom suite, looking for any trace of hair. The assistant principal stated they also checked the cubicle area where the complainant's son sat and worked one-on-one with a paraprofessional. They spoke with teacher A; she told them she did not cut the complainant's son's hair but had pulled his hair back in a ponytail because he had a habit of pulling on his hair, which distracted him from working, and she has seen him wear it this way before.

The assistant principal stated she called the complainant back after lunch and provided her with the information she obtained from teacher A. She informed the complainant teacher A stated she had pulled her son's hair into a ponytail so that it did not distract him from working because he had a habit of pulling on it. The assistant principal also informed the complainant that she and the principal searched the classroom and found no cut hair. She suggested the complainant keep a headband in her son's backpack in the future so it could be used if his hair needed to be pulled back.

The assistant principal stated the complainant called later about a missing red shirt but she did not speak with the complainant regarding the red shirt. Both she and the principal looked for the red shirt and spoke with teacher A, but they did not find the shirt.

The assistant principal informed OCR that she saw the complainant's son often during the 2012-13 school year because there was a student intern in the XXXXX classroom suite and she visited the classroom often to conduct formal observations of the student intern. She also occasionally walked into the classroom and informally observed classroom activities. She stated she observed the complainant's son's interaction with teacher A both prior to and after the alleged hair cutting incident. She said the complainant's son and teacher A appeared to get along well, and she noticed no change in the complainant's son's behavior or teacher A's behavior subsequent to the alleged hair cutting incident. The assistant principal stated she never witnessed or heard that the complainant's son made any negative comments about his hair ("hair not cute" or "unacceptable") after the alleged incident in the classroom. The assistant principal described teacher A as very caring and stated she planned appropriately for her students. She stated teacher A was a huge advocate for her students and noted that teacher A planned an autism awareness day and other activities during the 2012-13 school year. The assistant principal stated teacher A visited other classrooms and spoke with students about autism so the students could better understand their peers. The

assistant principal stated she never heard teacher A make any derogatory remarks based on race or disability.

The assistant principal provided the OCR staff member investigating the complaint a tour of the XXXXX classroom suite, which she stated was arranged in the same fashion during the 2012-13 school year. The XXXXX classroom suite consisted of a large open area where students participate in group activities with an area containing portable dividers where the paraprofessionals worked individually with students. There were six sections located in this area. The assistant principal also showed the complainant's son's regular education classroom to the OCR staff member.

In his interview with OCR, the principal stated the assistant principal told him about the hair cutting allegation on January 16, 2013. After learning of the allegation, the principal spoke individually with teacher A and the complainant's son's regular education XXXXX teacher. He informed them of the complainant's allegation and asked if either of them knew anything about the alleged incident. Both said no. Teacher A stated the complainant's son frequently came with his hair gathered in a ponytail so she took his hair and tied it up, getting it out of his face because he was distracted by his hair. Teacher A stated the complainant's son was constantly fixated on his hair, pulling at it. The principal also asked the two paraprofessionals who worked with the complainant's son if they knew anything about the complainant's son's hair being cut. They also said no. The principal stated based on the information he and the assistant principal obtained, it did not appear that anyone at the school knew about or was involved in cutting the complainant's son's hair. He stated the assistant principal contacted the complainant to share this information and he considered the issue resolved.

The principal said that on January 18, 2013, the complainant called to say her son's red shirt was missing. The principal stated he believed the autism coordinator was the person the complainant spoke with regarding the missing red shirt. He stated the complainant was convinced that teacher A took the red shirt because it possibly had hair on it. Both the principal and the assistant principal looked for the red shirt the same day it was reported missing. Teacher A was questioned about the shirt and informed them that she remembered putting the red shirt in the complainant's son's backpack a day or two prior and sending it home with him.

The principal reported that on February 12, 2013, he, the social worker, the autism coordinator, the complainant, the complainant's brother, and the complainant's daughter met at the school. The complainant wanted to question teacher A about the hair cutting incident; however, the principal stated he felt teacher A had already been appropriately questioned regarding the incident so he did not ask her to attend the meeting. The principal said staff attempted during the meeting to make clear to the complainant that no one cut her son's hair and there was no evidence that his hair had been cut at school; they could not

even see that it had been cut. The principal said the complainant stated that a half to one-quarter of an inch of hair on the top front of her son's head was missing; she admitted her son may have cut his own hair because he has cut his hair in the past. The principal stated the complainant acknowledged she did not notice her son's hair had been cut and that it was her daughter who first noticed it days later and told her.

The principal stated staff also considered whether the complainant's son's hair had been cut while on the school bus so the principal asked the transportation department for the video from the bus. The principal observed that the complainant's son was so small he disappeared behind the bus seat so he could not see her son when he was seated on the bus. He was unable to see that anything occurred while the complainant's son was on the bus. The principal informed OCR that the complainant's son's absenteeism was also discussed during the meeting. He explained to an OCR staff member that whenever he has a student who misses 10 or more days of school, he sends a letter to the student's parent even though in Kansas, XXXXX is not required so he cannot enforce attendance. All he can do is speak with the parent about the importance of school attendance.

The principal informed the complainant during the February 12 meeting that teacher A would not be teaching at the District the following school year. The principal stated that a few days prior to the meeting, the complainant had requested that her son be moved from teacher A's classroom. The principal stated he agreed to the complainant's request to switch her son to teacher B because he believed the trust level between the complainant and teacher A had broken down as a result of the alleged hair cutting incident. The complainant was informed of the principal's decision at the meeting, and teacher B was brought in to the meeting so the complainant could meet her in person. Teacher B is a K-6 resource teacher for the level 2 XXXXX program. Beginning on February 12, 2013, the complainant's son was assigned to teacher B and teacher A had no further contact with him.

The principal stated he thought the meeting went well and that at the conclusion of the meeting the complainant and District staff shook hands. The principal thought the issue had been resolved.

After the meeting the principal received a telephone call from a XXXXX County police detective who said she wanted to come to the school to investigate the complainant's allegation that someone at the District cut her son's hair. The principal stated the detective went to the XXXXX classroom suite to see if she could find hair samples. She interviewed teacher A and the paraprofessionals and also looked at the complainant's son's hair. The police detective could not see that any of his hair was missing or recently cut. She asked about the missing red shirt and the principal told her school staff looked for the shirt when the complainant reported it missing but did not find it. Teacher A told the police detective she recalled putting a red shirt in the complainant's son's backpack. The detective did not find any evidence the complainant's son's hair had been cut by anyone at the school.

The principal stated that his duties as principal include supervising and observing the teachers. He observed teacher A twice in the fall of 2012 and twice in the spring of 2013 and also had additional opportunities to conduct informal observations. He saw that teacher A and the complainant's son were very close. He noted that the complainant's son sometimes would get off track and become fixated on one thing and when this occurred, teacher A would hug or tickle the complainant's son to get him back on track. The principal stated he observed no change in the complainant's son's behavior after the alleged hair cutting incident. He was not told nor did he hear the complainant's son make negative comments about himself or his hair.

The principal stated that teacher A was a dedicated teacher who received strong evaluations while under his supervision. He stated that on one occasion she drove to XXXXX, Kansas to pick up the complainant's son when he missed the bus because she did not want him to miss an entire day of school. The principal stated no disciplinary action was taken against teacher A as a result of the complainant's hair cutting allegation, and the alleged incident was not the reason she is no longer employed by the District; she left the District to move out of state. The principal stated teacher A was responsible for hiring the paraprofessionals who worked with her in the XXXXX classroom suite and hired two African American female paraprofessionals to assist her. He never heard or received a report of teacher A making any derogatory remarks based on race or disability about anyone, including the complainant or her son.

The autism coordinator stated she knows the complainant's son very well and has been involved in addressing his educational needs since he started pre-school in the District. Her duties include participating in the screening process when there is a concern that a student may have autism. She also assists parents with arranging clinical assessments and helps teams decide how to best provide services to students with disabilities. She stated she attempts to provide as much support as possible to parents. She also leads an autism support group to help parents cope with the difficulties of dealing with a child with autism. The autism coordinator provides training once a week after school on various issues concerning autism and organizes an eight-week summer camp for children with autism. She stated she participated in the initial observations of the complainant's son and has been responsible for tracking his progress in school and knows about any concerns that arise. She said she continues to meet with the complainant's son's team of teachers and is involved with decisions such as whether he should attend his home school or the Amanda Arnold Elementary School. She has observed the complainant's son in meetings with the complainant, his peers, and teachers at his school. She described him as doing so well now that his developmental progress is not much of an issue anymore and said the discussions at the meetings are primarily about how much of a joy he is to work with in the classrooms.

The autism coordinator stated that while the complainant's son's language skills have improved since the 2012-13 school year, his ability to describe a situation with the complexity of distinguishing who he is, or past and present is not quite there yet. He has short telegraphic speech, and his ability to restate an event in a different way is not fully developed. She stated as of May 2013, he was not able to answer "w" questions such as who, what, when, or where.

The autism coordinator stated the complainant contacted her in January 2013. The complainant was upset and informed her she just spoke with teacher A. The complainant told her that her son won't go to school and keeps talking about hair. The complainant told her that she had been dealing with this issue since Monday. The autism coordinator stated the complainant reported to her that her son says "cupcakes," "don't tell," "sorry for keeping secrets," or "she told me not to tell" every day. The autism coordinator recalled that when the complainant reported her son's comments to her, she thought the statements were awfully long statements for the complainant's son. She said she told the complainant that it struck her as unlikely that her son would say these things but was willing to look into her concern.

The autism coordinator then spoke with teacher A regarding the hair cutting allegation. Teacher A stated she did not cut the complainant's son's hair but did pull his hair back into a ponytail because it was a distraction to him. The autism coordinator reported to the complainant what she had learned from teacher A and also stated that any teacher would have pulled back a student's hair if that teacher was working with a child who was acting in the same manner. She tried to explain that nothing occurred other than what teacher A had already told her and suggested that teacher A may have been rushed when she first spoke with the complainant about her concerns. She stated that the teachers, including teacher A, are very busy during the school day. She informed the complainant that teacher A is a very loving and caring teacher, and she would have no concern leaving her own children with teacher A.

The autism coordinator stated that when she spoke to the complainant in January, the complainant requested a different teacher for her son. She said she relayed this information to the principal. The autism coordinator told the complainant that her son already had the best XXXXX teacher because his teacher had unique skills. She also spoke with the complainant about the option of sending her son XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX school. She stated that with these two ideas in mind, District staff met with the complainant on February 12, 2013, to discuss the complainant's concern that teacher A cut her son's hair.

The autism coordinator stated the teachers at the meeting did not think it was likely that the complainant's son's hair was cut at school because someone is with him at all times and scissors are not left lying around for students to pick up. She recalled the complainant

stating during the February 12 meeting that her son may have cut his own hair. The autism coordinator said the complainant stated at the meeting that she could see his hair had been cut several inches, but staff said they could not see where it had been cut. She said at the end of the meeting it was decided that, as the complainant requested, the complainant's son's teacher would be changed to teacher B.

The autism coordinator stated she does not believe the hair cutting incident happened as the complainant alleged because there were so many witnesses around and the complainant's son is not alone during the day. She said there are multiple adults in the XXXXX classroom suite who all very concerned about the children, and staff members constantly communicate with each other throughout the day. The autism coordinator stated she did not look for the complainant's son's missing red shirt herself because she knew the paraprofessionals and teachers looked for it.

The autism coordinator stated the District tries hard to maintain communication with parents and that staff attempted to respond to the complainant's concerns in a prompt and thorough manner. She stated staff at the District want to work closely with parents and support them because it is a tough job to be a parent. She said she hoped there would be a time when the complainant would feel supported by the District again. The autism coordinator stated teacher A was a very safe teacher who had tremendous skills working with children with autism. The autism coordinator informed OCR she never heard teacher A make a derogatory remark about anyone, including the complainant and her son, based on race or disability.

OCR interviewed a paraprofessional who worked with the complainant's son when the alleged hair cutting incident occurred. The paraprofessional started working for the District in December 2012. She worked with the complainant's son during the 2012-13 school year on Monday, Wednesday, and Friday afternoons in the XXXXX classroom suite. Her duties included accompanying the complainant's son to his regular education classroom, walking with him to his bus at the end of the day, providing instruction on XXXXX tasks, providing supervision, ensuring he was safe (not hurting himself) and working well with his peers, and providing general support. She stated there were at least three paraprofessionals in the XXXXX classroom suite at all times, but sometimes there were as many as seven or eight paraprofessionals working with one of the students.

The paraprofessional stated she was still in training and it was her first day working with the complainant's son on her own when teacher A asked her if she had cut the complainant's son's hair. Later in the afternoon after the complainant's son was on the bus, teacher A explained to the paraprofessional that the complainant called stating she thought her son's hair had been cut. She stated she and other staff were instructed not to touch the complainant's son's hair.

The paraprofessional stated teacher A had a very good relationship with the complainant's son and was her role model. She said the complainant's son did not appear anxious or upset when teacher A worked with him. The paraprofessional stated teacher A was very nurturing and she never heard teacher A make any derogatory remarks about anyone, including the complainant or her son.

The paraprofessional stated the complainant's son typically ruffled or messed with his hair when he became frustrated. She stated that at first she did not know if it was a new behavior on his part, so she asked another paraprofessional who worked with him about this behavior and was told he always messed with his hair. She asked the complainant's son on one occasion if his hair was hurting and he said his hair hurt, but she never heard him say that his hair was different, not cute, or unacceptable. The paraprofessional stated she did not observe any changes in the complainant's son's behavior after the alleged hair cutting incident.

The paraprofessional stated she thought the complainant's son may have had one or two accidents during the 2012-13 school year but not any more frequently than any other XXXXX student. She believes the complainant's son's accidents were due to him waiting too long to go to the restroom because he enjoyed using the iPad and often did not want to put it down. She did not believe his accidents at school were because he was experiencing anxiety. She stated every XXXXX student has a change of clothes in his or her backpack because accidents are typical with children that age. The paraprofessional indicated she was not aware of the complainant's allegation regarding her son's missing red shirt.

Teacher B stated that during the 2012-13 school the complainant's son was at level 1, but he made good progress and is currently at level 2. She is teaching the complainant's son this year. Teacher B explained that children with XXXXX at level 1 require a lot of extra support and spend a majority of their day receiving one-on-one instruction in the XXXXX classroom suite. Children with XXXXX at level 2 require much less extra support and spend less time in the XXXXX classroom suite. The complainant's son is currently at level 2, but he has progressed so well that she anticipates by the end of the 2013-14 school year, he will be ready to attend a regular education classroom without requiring extra support in the XXXXX classroom. She stated that children with XXXXX at level 1 and level 2 are together in the same XXXXX classroom suite, so she regularly had the opportunity to observe teacher A. She noted that teacher A had a good relationship with the complainant's son, and that the complainant's son was excited to see teacher A even after he was switched to teacher B. Teacher B stated she never observed the complainant's son commenting that he was not cute, different or unacceptable, or displaying any other behaviors out of the ordinary after the alleged hair cutting incident. She never heard teacher A make any derogatory remarks based on race or disability about anyone, including the complainant or her son. After the winter break, teacher B observed that the complainant's son did struggle to return to the classroom routine, but this is common of all children. She also could not

remember any instances when the complainant's son had an accident in school. The complainant's son is very self-sufficient. There are restrooms located in the XXXXX classroom suite. If he had an accident, staff would have helped him get his soiled clothes in a bag and put on his new clothes. All of the children in the autism classroom suite have a spare set of clothes in their backpacks.

The complainant's son's regular education teacher for the 2012-13 school year stated she heard from teacher A that the complainant believed teacher A cut her son's hair in January or February 2013. She was not involved in addressing this issue so she did not recall much. She stated teacher A did not say anything else about the allegation, and she has always known teacher A to be very professional, kind, and excellent teacher, and a real advocate for her students. She stated in fall 2012, the complainant missed the planned conference with the teachers and it was teacher A who arranged a conference call for the complainant with her son's teachers. She stated teacher A never said anything negative about the complainant or her son, including anything derogatory based on the complainant's son's race or disability; she was always very positive about the complainant and her son's progress.

The complainant's son's regular education teacher stated that the 2012-13 school year was her first year as the complainant's son's regular education teacher and her first year working with a student with XXXXX in her classroom and working with teacher A. The complainant's son's regular education teacher observed teacher A's interaction with the complainant's son on a daily or weekly basis when she worked with him in the regular education classroom. The complainant's son's regular education teacher stated she never heard the complainant's son make negative remarks about himself or his hair. She did not attend any meetings regarding the hair cutting allegation and did not hear about the complainant's allegation that a red shirt was missing.

In her interview with OCR the social worker stated she did not know the complainant's son very well because she had not worked individually with him. She stated she was approached by teacher A in early February 2013 because the complainant's son had been absent for four days. Teacher A asked the social worker to contact the complainant regarding her son's absences. The social worker contacted the complainant, and during the conversation the complainant informed the social worker of her belief that teacher A had cut her son's hair. The complainant told the social worker her son had a high degree of anxiety about attending school. The complainant said she initially did not understand why he was so anxious about attending school, but after a few days her son finally told her that teacher A cut his hair. The social worker informed the complainant that her son needed to be in school and advised the principal about her conversation with the complainant. The social worker stated she was not involved in any investigation regarding the hair cutting allegation. She did attend the February 12 meeting between the complainant and District staff. The social worker's purpose for attending the meeting was to support the complainant if needed. The social

worker stated she never heard teacher A make a derogatory remark regarding the complainant's son based on his race or disability.

OCR interviewed the complainant's son's 2012-13 occupational therapist (OT), who stated she saw the complainant's son once a week for 30 minutes and worked with him in the XXXXX suite in an area partitioned off from everyone else in the room. She never observed him appearing anxious or uncomfortable with teacher A. The interaction between the complainant's son and teacher A was very positive and constructive. The OT stated she never heard teacher A make a derogatory remark about anyone, including the complainant or her son.

The complainant's son's speech language pathologist (SLP) during the 2012-13 school year stated she saw the complainant's son twice a week for 30 minutes per day and worked with him in a room down the hall from the XXXXX classroom suite. She described his speech as very echolalic. She doubts he could even say that teacher A cut his hair or told him to keep a secret. She said the complainant's son liked working on his expressive language using his iPad to try to structure sentences, answer "w" questions, follow directions, name objects, and build vocabulary. The SLP stated that if the question was fairly basic and a picture was in front of him, the complainant's son did fairly well answering the question but could not answer higher level questions. For example, if she asked what he ate for lunch yesterday, when there was no reference picture or concrete prompt, the complainant's son would not be able to answer the question.

The SLP stated she never heard the complainant's son refer to himself as different, not cute, or unacceptable. She did not see a change in his demeanor or behavior during the 2012-13 school year. She described him as a happy child and said he had a good relationship with teacher A. The SLP described teacher A as very supportive and friendly toward the complainant's son and said teacher A worked hard with the complainant's son on skills he needed to learn. The SLP never heard teacher A make a derogatory remark about anyone, including the complainant or her son, based on race or disability. She was not aware of the hair cutting allegation until she was informed that OCR requested to interview her. She was aware that the complainant's son's XXXXX teacher changed from teacher A to teacher B during the 2012-13 school year but she did not know the reason for the change.

The District provided OCR a copy of a status update letter received from the XXXXX County Police Department. The letter dated August 16, 2013, from an official of the XXXXX County Police Department, stated the following:

*RE: Case XXXXX
Reported on 1/21/2013
Occurred on 1/14/2013
Crime: Battery*

Dear [principal's name]

Unfortunately, we cannot release any portion of the above listed report since it is involving a Juvenile. However I can inform you of the case status. Currently the case is inactivated, meaning there is no further investigation into this matter unless further evidence becomes available. Detective [name of officer] investigated the case and it was found that there was not enough evidence to prove that the victim's hair was cut by a school employee. Due to the lack of evidence, this case was never forwarded to the County Attorney's Office for prosecution.

On October 29, 2013, an OCR staff member met with the complainant to discuss the information obtained during interviews with District staff and provide the complainant an opportunity to supply additional information relating to her complaint allegation. The complainant was informed that each of the District staff members OCR interviewed on October 29, 2013, informed OCR they observed no change in her son's behavior after the alleged hair cutting incident and doubted her son had the verbal skills to say that teacher A cut his hair. The complainant explained that she and her son had attended psychological counseling due to issues relating to her son's father. The complainant said her son has been taught certain vocabulary, including the meaning of the words safe and secret. When her son told her that teacher A cut his hair and told him to keep a secret, the complainant believed him because he has been taught the meaning of these words.

The complainant stated her son never wears his hair in a ponytail; he usually has it braided. The complainant also stated he had seen his therapist and repeated in front of the therapist that teacher A cut his hair and told him not to tell. The OCR staff member asked the complainant to tell her son's therapist that she would like to interview her and provide OCR with the therapist's telephone number. The complainant stated she would contact her son's therapist regarding this request. As of the date of this letter, the complainant has not provided OCR with the contact information or a release to speak with her son's therapist.

The OCR staff member requested the complainant ask her son to tell her and the OCR staff member who cut his hair. The complainant turned to her son and asked him twice "Who cut your hair?" He responded by saying, "It cut....because...perfect...I got to go."

The complainant also stated that during the meeting on February 12 with the principal, assistant, principal, social worker, and autism coordinator, the principal acted very disinterested in the meeting discussion and spent the majority of the time looking out the window. The complainant stated the reason District staff could not see where her son's hair had been cut was because it was a razor-type cut. The cut hair was underneath the longer top layer of hair.

The complainant stated that she told District staff, after the hair cutting incident, occurred to not touch her son's hair again. The complainant then tested whether anyone was touching his hair on several occasions by putting weave thread into his braids. The complainant said when he came home from school the thread was broken in pieces. The complainant then contacted the District in March 2013 to again request that no one touch her son's hair.

Legal Analysis and Conclusion

OCR investigated whether the District created or allowed a hostile environment based on race and/or disability when a District staff member allegedly cut the complainant's son's hair citing that his hair was a distraction to his learning. As stated in this letter, to establish a violation of Section 504, Title II, or Title VI under the hostile environment analysis, OCR must find: 1) the student has been subjected to harassing conduct (for example, physical, verbal, graphic, or written conduct) based on disability and/race; 2) the harassment is sufficiently severe, pervasive, or persistent to create a hostile environment (it interferes with or limits the ability of the student to participate in or receive the benefits, services, or opportunities provided by the District); 3) the District had actual or constructive notice of the harassment; and 4) the District failed to take prompt and effective actions to remedy the harassment (end the harassment, prevent it from recurring, and, where appropriate, remedy the effects on the student).

Based on the facts obtained during its investigation, OCR concluded there is insufficient evidence to support the complainant's allegation of a hostile environment based on disability and/or race. The complainant reported to the District that teacher A cut her son's hair on or about January 16, 2013. The evidence showed the principal and assistant principal promptly investigated the complainant's allegation on January 16, 2013. They went to the XXXXX suite and searched for hair but did not find any hair or other evidence that the complainant's son's hair had been cut. The principal and assistant principal spoke with teacher A and the paraprofessionals who worked primarily with the complainant's son. They each said they did not cut the complainant's son's hair; however, teacher A stated she did pull his hair back into a ponytail because she had seen him wear his hair in a ponytail before. She stated she pulled his hair away from his face because he was pulling at it and it was distracting him from learning. The principal and assistant principal found no evidence to indicate that someone at the school had cut the complainant's son's hair, and the assistant principal informed the complainant during the afternoon of January 16, 2013, of the outcome of their investigation.

The District's autism coordinator also investigated the complainant's allegation separately from the principal and assistant principal; she also spoke with teacher A who denied cutting the complainant's son's hair but stated she did pull back his hair because it was a distraction to him. The autism coordinator concluded that teacher A did not cut the complainant's son's hair and communicated this information to the complainant.

The District cooperated with the XXXXX County Police Department detective who investigated the complainant's complaint. According to the principal, the detective looked around the XXXXX classroom suite for signs of any cut hair. She also interviewed teacher A and the paraprofessionals and looked at the complainant's son's hair for evidence that it had been cut. On August 16, 2013, the XXXXX County Police Department sent the District a letter stating the detective had investigated the case and "there was not enough evidence to prove the victim's hair had been cut by a school employee."

District staff members immediately questioned teacher A and other staff members who worked with the complainant's son and were in his classroom. No one reported that teacher A or any other staff member cut the complainant's son's hair, and no other evidence showing that his hair had been cut was found. The complainant reported to OCR that six and one-half to seven inches of her son's hair had been cut but told staff at the District she believed that less than one half of an inch was cut. The complainant stated she did not even notice his hair was cut and that another family member noticed the difference in his hair. The complainant also stated to District staff members that it was possible her son may have cut his own hair as he had done this in the past. Neither the District's investigation nor the investigation conducted by the police detective noted any evidence that teacher A or any other staff member at the District cut the complainant's son's hair. Based on a preponderance of the evidence, OCR found there was insufficient evidence to support the complainant's allegation that teacher A, or anyone else at the school cut her son's hair as alleged in her complaint.

Even if OCR determined there was sufficient evidence to conclude the hair cutting incident (or harassing conduct) occurred, OCR found no evidence to demonstrate the hair cutting incident was sufficiently severe, pervasive, or persistent to interfere with the complainant's son's ability to participate in or benefit from the District's services or programs, or was based on the complainant's son's race or disability. The only evidence that teacher A cut the complainant's son's hair based on his race or disability is the complainant's belief that the teacher did this to her son. Staff at the District reported that teacher A and the complainant's son appeared to have a very good relationship, and that teacher A was a strong advocate for students with disabilities. The complainant did not provide OCR with any information other than her characterization of the teacher's motivation that would allow OCR to infer race or disability discrimination.

The District granted the complainant's request on February 12, 2013, to switch her son from teacher A to teacher B. Teacher B and the autism coordinator both stated the complainant's son continued to receive the benefits, services, and opportunities provided by the District by making substantial academic progress, moving up from XXXXX level 1 to XXXXX level 2, during the 2012-13 school year. The complainant's son missed a few days of school after the alleged incident occurred but completed the school year without incident. Based on the

preponderance of the evidence, the incident, even if it occurred, was not sufficiently severe, pervasive, or persistent to create a hostile environment. It did not interfere with or limit the complainant's son's ability to participate in or receive the benefits, services, or opportunities provided by the District. Further, the District promptly investigated the complainant's allegation and agreed to her request to not have teacher A work with her son. The complainant did not report any additional harassing conduct after her son began working with teacher B. In conclusion, there is insufficient evidence to establish that the complainant's son's hair was cut by teacher A, or that he was subjected to a hostile environment based on race or disability as the complainant alleged her complaint. Accordingly, OCR is closing this complaint allegation as of the date of this letter.

Although OCR considers this individual allegation closed as of the date of this letter, during its investigation, OCR identified compliance concerns regarding the District's notice of nondiscrimination and grievance procedure. The District voluntarily agreed to resolve OCR's compliance concerns and submitted a signed Agreement (copy enclosed) on January 8, 2014, that, when fully implemented, will resolve the compliance concerns identified by OCR during the course of investigating the complaint. The Agreement requires the District to: 1) modify and publish its notice of nondiscrimination to include the name or title, address, and telephone number of the District's employee(s) designated to coordinate efforts to comply with and carry out responsibilities under Title VI, Section 504, and Title II; 2) modify and publish the grievance procedure to address racial and disability discrimination or harassment of students and ensure persons filing complaints are afforded a prompt and equitable resolution; and 3) provide training for staff with responsibilities under the District's grievance procedure. Please refer to the Agreement for further details.

OCR considers the complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. 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, 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.

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX.XXXXX@ed.gov.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure