



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

June 13, 2014

Sara Noguchi, Ed.D.
Interim Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, California 95824

(In reply please refer to case no. 09-13-1262)

Dear Interim Superintendent Noguchi:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Sacramento City Unified School District (District). The Complainant¹ alleged that the District discriminated against her children on the basis of race, national origin and disability and also retaliated against her and her oldest child for previously engaging in a protected activity. The issues OCR investigated were:

1. Whether the District discriminated against one of the Complainant's children (Student A) on the basis of her race by denying her financial assistance so that she was unable to attend an overnight school trip to a recreational park in May of 2013.
2. Whether the District failed to respond appropriately and effectively after the Complainant notified the District that students harassed Student A on the basis of her race by calling her a racially derogatory name at school in April of 2013.
3. Whether the District retaliated against the Complainant for filing an internal complaint in 2007 alleging that her oldest child (Student B) was sexual harassed by her teacher. The Complainant alleges that the District retaliated against her by threatening legal action if she continued to complain about the District's discriminatory acts towards her and her children.
4. Whether the District retaliated against Student B for the 2007 sexual harassment complaint by requiring her to give the District access to her Facebook account in May of 2013.

¹ OCR notified the District of the identity the Complainant and Students when the investigation began. We are withholding their names from this letter to protect their privacy.

5. Whether the District denied Student B a free appropriate public education (FAPE) by failing to implement her Section 504 Plan by not providing home and hospital instruction to her at the beginning of the 2012-13 school year.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, Title IX of the Education amendments of 1972, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. Title IX prohibits discrimination on the basis of gender in programs and activities operated by recipients of Federal financial assistance. The regulations implementing all of the statutes enforced by OCR also prohibit a recipient from retaliating against individuals because they have engaged in a protected activity, such as filing a complaint that alleges discrimination on the basis of sex. The District receives Department funds, is a public education system, and is subject to these laws and regulations.

OCR gathered evidence through interviews with the Complainant and District staff members and by reviewing documents submitted by the parties. After reviewing all of the evidence, OCR concluded that there was insufficient evidence to establish a violation of the laws OCR enforces with respect to allegations 1, 3, 4, and 5. OCR also concluded that the evidence established a violation of Title VI and the implementing regulation with respect to allegation 2. On May 9, 2014 without admitting to any violation of law, the District entered into a Resolution Agreement which will address the areas of non-compliance once it is fully implemented. The applicable legal standards, the facts gathered during the investigation, and the reasons for determination are summarized below.

Allegation 1: *Whether the District discriminated against Student A on the basis of her race by denying her financial assistance so that she was unable to attend an overnight school trip to a recreational park in May of 2013.*

Our investigation showed the following:

- During the 2012 – 13 school year, Student A attended the sixth grade at a District elementary school. At the end of the school year, the sixth grade class took an overnight trip to a recreational park. The Complainant told OCR that that the school provided financial assistance to students who could not pay the entire cost of the trip. According to the Complainant, Student A was unable to go on the trip because members of the school's Parent Teacher Association (PTA) denied her financial assistance for the trip because she is African American.
- The Principal informed OCR that the trip was a school field trip and that the PTA did not sponsor the event. The District also provided OCR with a copy of the notice that was

sent to parents regarding the cost of the trip. The notice stated that the cost of the trip was \$100 per student, but that families unable to pay the whole fee could receive assistance through the school's "Honey Pot" fund. Parents were instructed to contact their student's classroom teacher if they wished to receive assistance.

- The Principal stated to OCR that every student who requested financial assistance for the trip received it. From Student A's class, five students requested and received financial assistance, including African American students². The Principal also stated that Student A did not receive financial assistance for the trip because the Complainant did not request financial assistance for her. The Complainant did not turn in a permission slip for Student A and opted not to send her on the trip. The Complainant informed OCR that she made this decision when she learned that several PTA members, whom she considered hostile to her and her family, would be attending the trip with the class.

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) specifically states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin deny an individual any service, financial aid or other benefits.

To determine whether a student has been discriminated against on the basis of race or national origin under Title VI, OCR looks at whether there is evidence that the Student was treated differently than students of other races in similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race or national origin.

In this case, OCR did not find any evidence that would suggest that the Student was denied financial assistance to attend the school field trip because of her race, or that she was treated differently from similarly situated students of other races. The Student did not receive assistance because the Complainant did not apply for it. The school provided assistance to all of the students who applied for it, including several African American students. For these reasons, OCR determined that the District is in compliance with Title VI regulations with respect to this allegation.

Allegation 2: Whether the District failed to respond appropriately and effectively after the Complainant notified the District that students harassed Student A on the basis of her race by calling her a racially derogatory name at school in April of 2013.

Our investigation showed the following:

² Student A's sixth grade class had a total of 39 students: 20 White, 12 Hispanic/Latino, 5 African American, 1 American Indian and 1 Filipino student.

- On April 17, 2013, the Complainant sent the Superintendent an e-mail that stating that Student A was harassed and called an offensive racial name by Students 1 and 2. The Complainant also told OCR that she called the school to report the incident but that the District did not respond to her complaint.
- The District provided OCR with an e-mail dated April 17, 2013, from the office manager of the elementary school to Student A's sixth grade teacher. The e-mail states that the Complainant had asked that the teacher be informed that Student A had come home crying due to some issues with the students in her class. Student A had described incidents occurring in both her classroom and at START (an on-site after school program operated by the Sacramento Park and Recreation Department) in which she had been harassed by Students 1, 2, and 3, and called a racially derogatory name by Students 1 and 2.
- The Principal informed OCR that she notified the START Director about the Complainant's allegation and began investigating the incident by talking to Student A. Student A told the Principal that Students 1 and 2 had called her a racial name. The Principal also spoke to Students 1 and 2 separately. According to the Principal, both Student 1 and 2 denied calling Student A the name and were surprised by the allegation. Based on what Students 1 and 2 told her, the Principal concluded that the Complainant's allegation could not be substantiated. The Principal did not keep notes of the student interviews.
- The START Director told OCR that after the Principal notified her that Student A was called the racially derogatory name by students in the after school program, she met with Student A to find out what happened. Student A told the START Director that Students 3 and 4 called her "n***r" and other bad names. The START Director then interviewed Students 3 and 4 separately. Both students denied calling Student A the name and instead told the START Director that Student A was bothering them. The START Director stated to OCR that she did not interview Students 1 and 2 because neither Student A nor the principal had specifically named Students 1 and 2 as the two students who allegedly harassed Student A on the basis of her race.
- The START Director did not keep notes of her interviews but sent an e-mail to the Principal summarizing her findings. The email stated that the Students 3 and 4 had claimed that Student A was "bugging" them and that they had "said things to make her stop" but had not used the specific derogatory term. The Director concluded that the interaction, like most disputes among students in Student A's class, was "a two-way street."
- After she completed her investigation, the Principal informed the Legal Analyst of her findings and also forwarded a copy of the START Director's e-mail summarizing her

conclusion.³ The Legal Analyst told OCR that she orally informed the Complainant that her allegation could not be substantiated.

- The Complainant alleged to OCR that the District did not investigate her complaint and that the Legal Analyst did not provide her with any response to her racial harassment allegation.
- The District's Uniform Complaint Procedure (UCP) is available on the District website at and is also included in the District's Annual Parent and Student Rights Notification and Standards of Behavior. The UCP states that complaints will be resolved within 60 days of receipt and that the compliance officer will prepare and send to the complainant a written report of the District's investigation. The written report will include:
 - The findings and disposition of the complaint, including corrective actions, if any.
 - The rationale for the disposition.
 - Notice of the complainant's right to appeal the decision to CDE, and procedures to be followed for initiating such an appeal.
 - A detailed statement about specific issues that were brought up during the investigation and the extent to which those issues were resolved.

The UCP also states that a complainant not satisfied with the resolution of his or her complaint may also describe the complaint to the District governing board during a regularly scheduled meeting.

- During the investigation of this complaint, the Complainant told OCR that the District provided her with written responses to a number of her other complaints, but that the investigations were not thorough. According to the Complainant, the District reached their conclusions without ever interviewing her or her children as part of the investigation. In addition, the Complainant told OCR that even though she filed complaints against a particular administrator, the District continued to have the same administrator investigate her complaints. The Complainant believes that any investigation done by this administrator is biased. The Complainant further stated that a number of written responses she received from the District did not include information on how she could appeal the District's findings.

The regulations implementing Title VI, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. School districts are responsible under Title VI and the regulation for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

³ The District informed OCR that, because the Complainant continues to e-mail numerous complaints and other correspondence to staff members, the District has designated the Legal Analyst to respond to all of the Complainant's complaints and correspondences. Once a complaint is investigated at the school site level, the result of the investigation is provided to the Legal Analyst so that she can respond to the Complainant.

Under Title VI and the regulations, once a district has notice of possible harassment between students on the basis of race, color or national origin, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

As part of their responsibility to provide students with a nondiscriminatory learning environment, school districts that receive notice of possible racial harassment must conduct an impartial investigation that is adequate to determine whether racial harassment occurred and, if so, what actions are needed to remedy the effects of the harassment and ensure that it does not recur. For this reason, once the Complainant reported the alleged racial comment, the District had a duty to conduct a sufficiently complete investigation to reliably determine what occurred.

In this case, the Principal investigated the allegation by interviewing Students A, 1, and 2. Since Students 1 and 2 denied calling Student A the N-word, the Principal concluded that the allegation could not be substantiated. Similarly, the Director of the START Program interviewed Students A, 3 and 4, and concluded that the all three students were bothering each other.

Since both the Principal and the Director did not keep notes of their interviews it is not clear if questions were asked to determine when or where the alleged comment was made and if other students witnessed the incident. Since Student A alleged that she was called the derogatory racial name at the elementary school and at her after school program, both investigators needed to determine if there were other students present during the incident and, if so, those witnesses should have also been interviewed to determine what occurred.

Under some circumstances, a single comment may not, by itself, rise to the level of a racially hostile environment. However, without thoroughly investigating whether the comment was made, what its context and effect were, and who heard it, the District was unable to determine whether Student A was called racially derogatory names, and, if so, whether the name calling created a racially hostile environment at the school for her or other students. Students in elementary school, who hear racial comments or epithets, may be influenced to behave in a similar manner. Moreover, the use of such language may create a racially hostile environment for a student even when his or her own actions are not appropriate.

The Complainant also alleged that the Principal, who investigated some of her complaints, was biased because the Complainant had filed a number of complaints against her in the past. In order for an investigation into alleged harassment to be adequate under Title VI, it must be impartial, so that the District can reliably determine what occurred. If there is a reasonable concern that the investigator may not be able to conduct in an impartial investigation, then the District will need to designate another administrator to conduct the investigation. In addition, if the allegation raises a discrimination complaint that is covered under the UCP, the District will need to provide the complainant with a written response, including information on how to appeal the decision.

For these reasons, OCR concluded that the District's limited investigation was inadequate to comply with the requirements of Title VI.

In order to address the noncompliance, the District signed the attached Resolution Agreement agreeing to issue a memorandum to all school site administrators and START Directors delineating their obligation to investigate and address any issues of harassment based on race, color, or national origin that comes to their attention. In addition, the District agreed to provide training to their administrators on how to respond to UCP complaints alleging discrimination on the basis of race, color, national origin, sex or disability complaints, including steps that are necessary to ensure an adequate investigation and resolution of the complaints⁴. OCR will monitor the implementation of the Resolution Agreement.

Allegation 3: Whether the District retaliated against the Complainant for filing an internal complaint in 2007 alleging that Student B was sexual harassed by her teacher. The Complainant alleges that the District retaliated against her by threatening legal action if she continued to complain about the District's discriminatory acts towards her and her children.

Our investigation showed the following:

- In October 2007, the Complainant filed a complaint with the District that included an allegation that a teacher sexually abused/harassed Student B. The Complainant told OCR that the teacher sexually harassed Student B by putting his arm around her and making a comment to her that the Complainant considered inappropriate.
- In November of 2007, the District notified the Complainant that based on its investigation, the Complainant's sexual harassment allegation against the teacher could not be substantiated.⁵ The Complainant told OCR that she disagrees with the District's

⁴ OCR did not investigate the underlying discrimination allegation because Student A, and the students who allegedly made the racial comment, graduated from the elementary school at the end of the 2013 spring semester. OCR also did not require the District to reinvestigate this incident since the incident occurred during the last school semester.

⁵ OCR did not investigate the 2007 incident or the District's response to it because they occurred more than 180 days before this complaint was filed. OCR's Case Processing Manual

conclusion and believes that the District is covering up the alleged abuse. Since 2007, the Complainant continues to file numerous complaints against teachers and administrators alleging on-going harassment and retaliation against her family, as well as complaints alleging that her children have been subjected to discrimination on the basis of disability, race and national origin.

- On December 12, 2013, the Complainant protested outside of Student B's former elementary school⁶ with Student B and another male adult. The Complainant and Student B held signs during the protest that stated that District did not investigate their sexual harassment complaint and that the staff members are retaliating against them. The Complainant also stated she held a similar protest in front of the District office sometime around December 3, 2012.
- The Complainant alleged to OCR that as a result of filing the sexual harassment complaint on behalf of Student B and her continued advocacy on behalf of her children, the District retaliated against her by sending her a letter dated December 13, 2012 threatening legal action against her if she continued to file any more complaints on behalf of her children.
- OCR obtained a copy of the December 13, 2012, letter which stated that, during the December 12, protest the Complainant and another individual made defamatory statements regarding staff and administrators at the school and disrupted educational activities. The letter accused the Complainant of making ongoing "defamatory, libelous and/or slanderous statements" which disrupt the orderly operation of several District schools. The letter includes a warning that "Should you continue to make defamatory statements and/or engage in activities which disrupt the educational department of District schools, the District shall have no other recourse but to pursue all legal remedies to prevent your continued defamatory and disruptive conduct that interferes with school site activities and adversely impacts the District's educational mission to educate its students in a safe educational environment free of disruptive and illegal conduct."
- The District informed OCR that the letter was sent to Complainant because of the disruptive nature of the Complainant's December 12, 2012, protest. According to the District, the Complainant and the man, who protested with her, accused District administrators of covering up an incident of sexual abuse of a student by a Teacher during the protest. The District told OCR that the protest took place during the school day and that because the male participant used a hand held voice amplifier, the students and staff could hear what was happening in front of the school. The District provided OCR with the link to a You Tube video clip of the December 12 protest, which corroborated the District's account of the event.

at Section 106 states that OCR will only take action with respect to allegations filed within 180 calendar days of the date of the last act of alleged discrimination, or within 60 days after the conclusion of an internal investigation.

⁶ Student B attended a different elementary school than Student A.

- The District also told OCR that the December 13, 2012, letter was sent to the Complainant to stop her from making defamatory statements against staff members and not to prevent her from filing complaints with the District. According to the District, the Complainant subsequently started a Facebook page where she posts information about her prior complaints, including names and pictures of teachers and administrators against whom she has filed grievances.
- The Complainant contends that the protest outside of the elementary school did not disrupt the educational activities at the school because the students were all in classrooms located at the back of the campus, where they were unable to hear what was happening at the front of the school. The Complainant also denied making any defamatory statements about District staff members during the two protests. The Complainant further stated that she did not begin publicly naming District staff members on her Facebook page until April of 2013, after she received the December 13, 2012, letter.
- During the investigation of this case, the Complainant also alleged to OCR that the District continued to retaliate against her by not allowing her to volunteer at her youngest child's school for the 2013-14 school year. The Complainant's youngest child (Student C) currently attends the elementary that Student A previously attended.
- On September 13, 2013, the District sent the Complainant a letter stating that "After a comprehensive review of the history of your interactions with District teachers and administrators, the District has determined that it would be inappropriate and disruptive to the educational environment to permit you to volunteer at [the elementary school]. Your ability to participate in parent activities remains unaltered."
- The District informed OCR that the Principal of the elementary school initially withdrew consent to allow the Complainant on campus for 14 days on May 23, 2011 because of her disruptive behavior, which it detailed in its letter. After the 14 days period, the Principal informed the Complainant on June 7, 2011, that she was allowed back on campus but could no longer volunteer for school activities. For the 2012-13 and the 2013-14 school year, the District decided not to allow the Complainant to volunteer at the school because of her history of being disruptive towards staff members. OCR reviewed evidence of this behavior and concluded that it could reasonably be considered to be disruptive.
- The Complainant denies being disruptive at the elementary school or towards any of the District staff members.

The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school district, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary

connection is found, OCR asks whether the school district can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

The Complainant engaged in a protected activity by filing a complaint on Student B's behalf in 2007 alleging discrimination based on sex and by continuing to file complaints on behalf of her children, some which alleged discrimination on a protected basis such as race and disability. OCR also determined that letter of December 13, 2012, since it warned the complainant of legal action if she continued her current actions, could be considered to be an adverse action. OCR assumed that there was a connection between the Complainant's protected activities and the adverse action, and therefore next considered if the District had a legitimate nondiscriminatory reason for sending the letter to the Complainant.

The District told OCR that the letter was given to the Complainant because she disrupted the educational environment of the elementary school by holding a protest outside of the school. OCR reviewed the video clip of the protest and determined that the protest was disruptive. The video clip showed the male participant using a hand held amplifier while verbally making allegations that the District was covering up an incident of sexual abuse of a student by a teacher. The sensitive nature of the allegations, and their amplification in front of an elementary school, made it likely that the protest would be disruptive for students at the school, even if their classrooms were located in another part of the campus. Based on what occurred outside of the school, and its potential for disrupting the education of elementary school students, OCR determined that the District had a legitimate nondiscriminatory reason for sending the Complainant the letter.

The Complainant contended that she did not name individual District employees during her December 2012 protests, and that the allegation that she had engaged in defamation was therefore false and pretextual. Without determining whether the Complainant's actions met the legal definition of defamation, OCR concluded that, under the circumstances of this case, the District's warning, that it would "pursue all legal remedies to prevent your continued defamatory and disruptive conduct," was a direct response to the Complainant's unprotected activities in front of the elementary school. OCR therefore concluded that the District's stated reason for sending the letter was not a pretext for discrimination. OCR concluded that the preponderance of the evidence did not show that the District retaliated against the Complainant in this instance.

OCR also did not find any evidence showing that the District's decision to prevent the Complainant from volunteering at Student C's elementary school was connected to her protected activity. The reason the District did not allow the Complainant to volunteer at the school was because of her history of being disruptive on campus. In addition, OCR learned that the District did not block the Complainant's e-mails to its staff members. For these reasons, OCR determined that the District was in compliance with regards to allegation 3.⁷

⁷ The Complainant also alleged that the District retaliated against her by blocking her e-mails to District staff members during the 2013-14 and 2012-13 school year. The District denied blocking the Complainant's emails, but explained that, during the 2012-13 school year, the District had addressed

Allegation 4: Whether the District retaliated against Student B for the 2007 sexual harassment complaint by requiring her to give the District access to her Facebook account in May of 2013.

Our investigation showed the following:

- Student B is currently enrolled at a District high school. The Complainant alleged that on May 23, 2013, the Healthy Start Coordinator and the School Resource Officer (SRO) required the Student to give them access to her Facebook account. The Complainant alleged that this is an example of continuing acts of retaliation by the District against Student B because of the October 2007 sexual abuse/harassment complaint.
- On May 28, 2013, the Complainant sent the Legal Analyst an e-mail alleging that the Healthy Start Coordinator and the Officer conducted an “illegal search” of Student B. The e-mail also included a written statement from Student B describing the incident. Student B wrote that the SRO escorted her to the Healthy Start office, where she was informed that “someone said that I was suicidal in a Facebook post.” Student B denied feeling suicidal, but was ordered to log onto her Facebook account. She stated that the Healthy Start Coordinator and the SRO forced her to give them the password and security code to her Facebook account, and subsequently examined her entire account. She stated that the interaction made her uncomfortable.⁸
- The Healthy Start Coordinator stated to OCR that a student had reported to one of the school counselors that she was concerned about Student B because she had posted something on her Facebook page saying that she tried to kill herself. Since the counselor did not know Student B, the counselor asked the Healthy Start Coordinator and the Officer to meet with her.
- Both the Officer and the Healthy Start Coordinator told OCR that they informed Student B that someone reported seeing a posting on her Facebook page that mentioned suicide. Student B responded that she was not suicidal. The Healthy Start Coordinator told Student B that she would feel better if she could see the posting. Student B pulled up the posting, which showed a picture of Student B holding a sign that stated that she had tried to kill herself. Student B told the Healthy Start Coordinator that the Complainant was aware of the posting. Since Student B stated that she was not suicidal

the large volume of the Complainant’s e-mail complaints and correspondence by directing the Complainant’s e-mails to the Legal Services Department so that the Legal Analyst would be aware of the Complainant’s concerns. The intended recipient of the e-mail received an automated notice stating that an e-mail was sent from the Complainant, and could retrieve the Complainant’s e-mail. According to the District, all of the Complainant’s e-mails go directly to the intended recipient for this school year. OCR concluded that the Complainant had not been subjected to an adverse action in connection with this allegation.

⁸ OCR did not interview Student B because the Complainant informed OCR that Student B had nothing to add to her written statement.

and the Complainant knew about the posting, the Healthy Start Coordinator and the Officer had Student B return to class.

- The Facebook posting, which is dated May, 15, 2013, shows a picture of Student B holding a sign that states, “I was sexually abused by a teacher in the ... District. When my mother reported it-the [District] ‘covered-up’ for the teacher. Other teachers and students [started] ... bullying and harassing me because of it. ... I tried to kill myself to get away from the abuse....”

Since the Complainant alleged to OCR that the District’s act of requiring Student B to provide access to her Facebook account was retaliatory, OCR analyzed this allegation using the retaliation standard that is described under allegation 3. The Complainant engaged in a protected activity by filing the sex based complaint on behalf of Student B in October of 2007. OCR assumed, for the sake of analysis, that the District’s act of requiring Student B to provide access to her Facebook account was an adverse action that was connected to the protected activity. OCR therefore looked to see if there was a nondiscriminatory reason for the adverse action. The District explained its actions as a response to a report that a post on Student B’s Facebook page mentioned a suicide attempt. Although Student B told the Healthy Start Coordinator and the Officer that she was not suicidal, it was reasonable for the Healthy Start Coordinator to ask to see the actual posting to determine if she was in need of immediate assistance. OCR did not find any evidence that showed that the District’s reason was a pretext for retaliation. For this reason, OCR concluded that the preponderance of the evidence did not establish that the District retaliated against Student B.

Allegation 5: Whether the District denied Student B a FAPE by failing to implement her Section 504 Plan by not providing her with home and hospital instruction during the beginning 2012-13 school year.

Our investigation showed the following:

- The Complainant told OCR that Student B was diagnosed with a disability that prevented her from attending school at the beginning of the 2012-13 school year. She stated that, a Section 504 Plan was developed placing Student B on home hospital instruction (HHI) in October of 2012. On January 8, 2013, the Complainant sent an e-mail to the Superintendent, stating that she had not heard from Student B’s home hospital teacher in over a month and that Student B had received only three hours of instruction since the Section 504 Plan was initiated.
- The District informed OCR the Student’s Section 504 Plan did not include a provision for HHI.⁹ Instead, the Complainant submitted a “Request for Home and Hospital Teaching” on October 11, 2012, based on Student B’s inability to attend school for approximately

⁹ OCR reviewed Student B’s Section 504 Plan dated October 24, 2012 and noted that it does not include a provision for HHI. The District informed OCR that the Section 504 Plan was to be implemented when Student B returned to school after being on HHI.

14 to 16 weeks due to XXXX. That same day, the District approved the HHI request and assigned a teacher to meet with Student B at her home.

- The HHI Teacher assigned to Student B told OCR that she went to Student B's home from October 12, 2012 to January 25, 2013 to provide instruction to her twice a week for 2.5 hours per session.¹⁰ The only time the Teacher did not go to Student B's home was a week before and after winter break when the Teacher was not able to contact the Complainant to schedule a time for the next session. The Teacher told OCR that she generally provided home instruction to the Student on Tuesday and Thursday of each week, but that time of each session varied. As a result, the Teacher called the Complainant prior to each session to arrange the time of the session.
- The Teacher provided OCR with a copy of her handwritten notes documenting her efforts to reach the Complainant. The notes state that on December 16, 18, and 20, 2012, the Teacher called the Complainant at her home but that there was no answer. The Teacher told OCR that she called the phone number the Complainant gave her. On January 5, 2013, the Teacher mailed a letter to the Complainant asking her to contact her. According to the Teacher, the Complainant had her cellphone number but did not respond to letter. On January 7 and 8, 2013, the Teacher called the Complainant at her home and on her cellphone but there was no answer. On January 9, 2013, the Teacher placed a note in the Complainant's mailbox asking the Complainant to call her. Later that day, the Teacher learned that the Complainant had a new phone number and left a message at that number. On January 10, 2013, the Teacher spoke to the Complainant and resumed home instruction on January 15, 2013.
- The Teacher also told OCR that after each session, the Complainant signed a form called "Month-End Enrollment and Attendance Report for Home and Hospital Teachers" (Attendance Report) to verify that the session took place. The Attendance Report includes a column for the date of instruction, hours/minutes taught, and a line for the parent's signature. OCR reviewed all of Student B's Attendance Reports and found that the Complainant signed the forms verifying that the Teacher provided 2.5 hours of instruction to Student B twice a week from October 12, 2012 through January 25, 2013, except for the week before and after winter break.¹¹ This Attendance Report is submitted to the Coordinator for Health Services and the principal at the end of each month.
- The Coordinator for Health Service told OCR that Student B received 2.5 hours of instruction twice a week. The Coordinator also stated that the Complainant did not inform the District at any time during the months of October through December that her daughter was not receiving the proper amount of instruction and that she did not raise this allegation until January 8, 2013 after the Teacher made numerous attempts to contact the Complainant. The Coordinator also denied to OCR that the District only provided Student B with three sessions of instruction at her home.

¹⁰ Student B returned to school on January 28, 2013.

¹¹ Winter break was from December 23, 2012 to January 7, 2013.

- The Complainant told OCR that she did not receive any telephone calls or letters from the Teacher during the months of December or January. The Complainant also stated that the District had her current contact information and that the District could have reached her by telephone or e-mail if they attempted to do so. The Complainant further told OCR that she did not sign the Attendance Reports and believes the District forged her signatures on the documents. The District denied forging the Complainant's signature on the Reports.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Since OCR obtained conflicting testimony from the parties as to the dates and hours Student B received instruction while she was on HHI, OCR relied on documentary evidence to reach its conclusion. In reviewing Student B's monthly Attendance Reports, OCR found that the Complainant's signature appears on all of the Reports confirming that the Teacher went to the Complainant's home twice a week for 2.5 hours from October 12, 2012 through January 25, 2013, except for the week before and after winter break. Although the Complainant alleged to OCR that her signatures on the documents were forged, OCR was unable to find credible evidence to substantiate her allegation. The District denied forging the Complainant's signatures on the Attendance Reports and OCR found the Teacher and the Health Services Coordinator to be credible witnesses. Therefore, OCR determined that the District provided Student B with instruction as listed on her Attendance Reports.

The District also acknowledged to OCR that Student B did not receive instruction a week before and after winter break. However, the evidence indicated that these sessions did not take place because the Teacher was unable to reach the Complainant by telephone before winter break to schedule a time for the home instruction. Although OCR could not make a determination as to whether the phone numbers the Teacher called to reach the Complainant were correct, the Teacher also mailed and left a note at the Complainant's home asking her to contact the Teacher. Once the Complainant contacted the District, the Teacher resumed providing Student B with home instruction until she returned to school on January 28, 2013. After reviewing all of the evidence, OCR concluded that the preponderance of the evidence did not show that Student B was denied instruction during the time she was on HHI.

During the investigation of this case, the Complainant raised a number of new allegations. The Complainant alleged that: 1) family members of other students made derogatory comments to the Complainant; 2) a District employee posted an inappropriate message on his personal Facebook page; 3) after the Complainant notified the District about the inappropriate message, the Complainant saw a man resembling the District employee drive by her youngest daughter (Student C's) elementary school; and 4) Student C's elementary school did not have enough staff supervising the students in the school yard during the fall 2013 semester. On December 2, 2013, OCR staff members called the Complainant and informed her that OCR will not investigate allegations 1 and 2 because OCR does not have jurisdiction to investigate an allegation against family members of other students or what a District employee has posted on their personal Facebook account. In addition, OCR informed that the Complainant that allegations 3 and 4 did not state a claim for which OCR has subject matter jurisdiction because the allegations did not allege discrimination based on race, color, national origin, sex, disability or age.

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. OCR will monitor the implementation of the agreement, and is informing the Complainant of its decision by concurrent letter.

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

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks Susan Pointer and Raoul Bozio for assisting our office during the resolution of this case. If you have any questions about this letter, please contact me at (415) 486-5566.

Sincerely,

/s/

James M. Wood
Team Leader

Enclosure

cc: Raoul Bozio, Legal Services