



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 30, 2016

Dr. Kelly Pew
Superintendent
Rock Hill #3 County School District
660 North Anderson Road
Rock Hill, SC 29730

Re: OCR Complaint No. 11-16-1065
Letter of Findings

Dear Dr. Pew:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on November 13, 2015 against Rock Hill #3 County School District (the District). The Complainant alleges that the District discriminated against her daughter (the Student) on the basis of disability and retaliated against the Student. Specifically, the complaint alleges that:

1. The District discriminated against the Student based on disability by failing to provide her a free appropriate public education (FAPE) during the 2015-2016 school year by:
 - a. Failing to provide all reading materials and tests in the correct font size (14 to 16) in accordance with her individualized education program (IEP);
 - b. Failing to provide the Student 150 minutes per week of instruction in English/Language Arts in accordance with her IEP;
 - c. Beginning in November 2015, failing to provide access to the Student's iPad, a disability accommodation, since the iPad required a password;
 - d. Failing to allow the Student to use the restroom in accordance with her IEP and, on one occasion, threatening to give the Student a referral if she did not return to class after 2 minutes during her restroom break; and,
 - e. In September 2015, requiring the Complainant to pay fees and insurance for the laptop used to provide her disability accommodations.
2. The District discriminated against the Student based on disability when it subjected her to a hostile environment when:
 - a. During the week of September 14, 2015, the Student's teacher dragged the Student's desk to the front of the classroom after the Student informed the teacher that she could not see the board; and,

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

- b. A teacher required the Student to report to her class about her disabilities, including how her disability affects her education and her life.
3. The District retaliated against the Student because of the Complainant’s disability-based advocacy on behalf of the Student, by issuing the Student a dress code violation on January 7, 2016.
4. The District discriminated against the Student based on disability when her IEP team told her that she could not be enrolled in special education classes if she wanted to take XXXX classes.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District faculty/staff; and listened to audio recordings of the Complainant’s conversations with District staff.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns regarding Allegation 1(b), which the District agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support Allegations 1(a), (c)-(e), and 2-4.

Background

The Student was enrolled in the XXXX grade during the 2015-2016 school year. She received special education services from the District through an IEP that was completed while she was enrolled in the XXXX grade, dated March 27, 2015. This IEP included, among other things, the following: 450 minutes weekly of direct English/Language Arts (ELA) in the Special Education Support Room, worksheets in size 14 to 16 font, access to the restroom as needed in class, and “iPad or Assistive Technology to access Vision apps and textbooks as available.” That IEP was scheduled to expire on August 14, 2015. No IEP meeting was held prior to the Student entering 9th grade,¹ and her first IEP meeting as a high school student was held on XXXX. It included, among other things, the following: “Font should be 14/16 font;” “Student will go to locker 5

¹ The fact that no IEP meeting was held prior to the start of the Student’s XXXX grade year was the subject of a complaint filed on November 3, 2015 with the South Carolina Department of Education (SCDE). SCDE issued a Letter of Resolution (Letter) on January 8, 2016, finding that, due to difficulties in scheduling all of the necessary participants, including the Complainant and a doctor that conducted an individual evaluation, the District convened the Student’s IEP meeting in a timely manner.

minutes before 1st block, 5 minutes before the end of the school day to access locker;” access to the restroom as needed in class; and, “iPad or Assistive Technology to access Vision apps and text books as available and appropriate.” It also included 150 minutes weekly of ELA services in the Special Education Support Room. A third IEP meeting was held on XXXX. The XXXX IEP included the same accommodations with respect to font size and ELA instruction; however, the restroom accommodation was changed to “Student will go to restroom 5 minutes before the end of classes,” and “Should have iPad or Assistive Technology to access Vision apps or text books.”

Allegation 1

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

Analysis

Allegation 1(a): The District discriminated against the Student based on disability by failing to provide her a FAPE during the 2015-2016 school year by failing to provide all reading materials and tests in the correct font size (14 to 16) in accordance with her IEP.

The Complainant alleged that District teachers failed to consistently give the Student reading materials and tests in the correct font size (14 to 16) in accordance with her IEP. She alleged that the Student would complain to the Complainant “every day she gets work she can’t see.” The Complainant also sent OCR documents she reported that the Student had received during the school year, some dated during the Fall XXXX semester, and others undated, and many including handwriting on them. The font in some of the documents appears to be smaller than size 14 or 16. The Complainant also alleged that a sheet magnifier that the Student was provided by the District “only magnified two degrees from a 8 to a 10 or 10 to 12.” OCR additionally reviewed a letter written by an independent educational evaluator who attended the September 10, 2015 IEP meeting at the request of the Complainant. The letter states that the Student spoke during the IEP meeting and said that she had received three zeros in ~~World Geography~~ because she could not see the assignments.

OCR reviewed a variety of documents provided by the District, the South Carolina Department of Education (SCDE) Letter of Resolution (Letter), and interviewed District staff.

OCR first reviewed the Letter. The Letter refers to documentary examples provided by the Complainant, and describes that “[t]he majority of these materials were not in a 14 or 16 font.” It also references that “[t]he District did not submit any assignments in its response.” The SCDE made a finding of a “technical violation” regarding the font size allegation, but that there was “no denial of a FAPE based upon the fact that the Student was able, at all times, to access the general education curriculum through the use of magnification devices and computer access supplied by the District.” Specifically, during the time period when the Student was using the sheet magnifiers and prior to when the Student received her iPad, the SCDE found that the Student had another device, namely the magnification sheet, “that will allow her to enlarge any font to a larger size.” The SCDE did not address the Complainant’s concerns that the magnification sheets were only able to increase the font size two degrees.

OCR additionally reviewed documents provided by the District, including statements written by the Student’s teachers, all indicating that they had provided the IEP accommodations to the Student; however, none specifically addressed the font size accommodation. The District did not, however, provide OCR with any examples of documents with large font size that teachers provided to the Student.

OCR reviewed documents provided by both the Complainant and the District reflecting the Student’s grades throughout the Fall 2015 semester, summarized below.

Course	9/29/2015²	10/7/2015³	10/26/2015⁴	2nd Quarter⁵
English	79	83	84	80
Algebra	98	98	96	97
South Pointe 101	94	94	94	91
World Geography	59	80	89	61
Academic Support	94	94	94	91

OCR also reviewed “Teacher Comments” written on September 10, 2015 for the Student’s IEP meeting held that date. The Student’s World Geography teacher wrote: “Those zero’s are work she hasn’t done. She is behind because of the 10 minutes a day she misses. It took several weeks, but it caught up with her. She failed a map test. The re-test is tomorrow for her class.” In addition, OCR reviewed assignment grades for the Student’s World Geography and Algebra classes. She received grades of zero (“0”) for World Geography assignments due October 20, 2015, October 22, 2015, October 28, 2015, and November 4, 2015. The Student received between a 94 and a 100 on Algebra assignments due between October 20, 2015 and November 8, 2015.

OCR also interviewed the Student’s teachers from the Fall ~~XXXX~~ semester.⁶ The Student’s South Pointe 101 teacher told OCR that, because he does not see well himself, he provides all

² September 29, 2015 Letter to the Complainant reporting on the Student’s progress.

³ October 6, 2015 IEP.

⁴ October 26, 2015 Report Card reflecting 1st 9 week (1st quarter) grades.

⁵ Quarter 2 grades, reflected in PowerSchool.

⁶ The District additionally provided OCR with updated teacher statements, two dated August 22, 2016.

students with documents in at least size 18 font. He also told OCR that he did not recall seeing the Student use any magnification device in class, although she did have access to those devices.

The Student's World Geography teacher told OCR that the only paper documents in his class were blank maps that Students filled out during class time to use as study aids, and everything else is done online. He reported that during the beginning of the school year, students were shown how to increase the font size of the online textbook, as well. He reported that the only time he saw the Student struggle to see things were a couple of days when she reported to him that she had forgotten her glasses at home. He also reported that he never saw the Student use the magnification sheet.

The Student's English teacher told OCR that the majority of the materials provided to the Student were online, that the Student had access to desktop computers in the class or her iPad, and the font was very large. She told OCR that the class's textbook text was at least a size 14 font. She also reported creating her own documents, in typically size 18 font or larger, that she would circulate to the class electronically. She reported that the majority of paper materials provided to the Student were in large font, and that she could only recall the Student using the magnification sheet once. She reported rarely seeing the Student magnify documents or enlarge text on her iPad, and that she never saw the Student struggle with reading or seeing documents. She also told OCR that for independent reading, there were many novels available in large print for the Student to choose from, and that she would make sure the Student knew how to enlarge the pages using her iPad. She told OCR that with one particular novel, where she was concerned the font was too small, she ordered the audio version of the book for the Student. The teacher also informed OCR that the Student made tremendous gains in her class over the course of the school year and was extremely proud of how well the Student did.

The Student's Algebra teacher told OCR that large print was available and provided to the Student. She stated that she also told the Student at the beginning of the year to mention if there was something that she could not see, but that the Student did not seem to struggle or have trouble seeing the regular font in her class. She reported that if there was something the Student could not see, that she would try to enlarge it for the Student or put it on the promethean board. She also reported never seeing the Student use the magnification sheet, despite worries that the symbols on the Student's graphing calculator were small. OCR additionally reviewed with the teacher some of the documents the Complainant had provided OCR that appeared to be from that class. The teacher recognized the worksheets, and repeated to OCR that the Student never asked for help to enlarge the font, and that the Student earned an A in the class.

The Student's Special Education Teacher additionally told OCR that, to his knowledge, the Student's teachers provided her with the correct font size, and that he provided the Student with two magnification sheets at the beginning of the school year. He reported observing the Student receiving large print in paper or electronic form in her classes, and that he never saw her use the magnification sheets. He further reported that she used the iPad for magnification once she received it. He told OCR that once she received the iPad, he continued to provide her with large print documents. He further stated that he did not recall ever observing the Student struggle to read anything, but did observe her remove her glasses to access material. OCR reviewed with

the teacher the worksheets the Complainant had provided OCR. He recognized some of them as assignments he had given to her.

Finally, OCR interviewed one of the District's teachers of the visually impaired who worked with the Student during the 2015-2016 school year. She reported observing the Student nearly once a month for the duration of the 2015-2016 school year. With respect to the period prior to when the Student received her iPad, the teacher reported observing the Student in her World Geography class and during class transitions. She reported also seeing the Student use a graphing calculator with no assistive or magnification device. She reported speaking to the Student, and the Student reporting that she did not have much trouble seeing things and that she rarely used her iPad to enlarge text. She also reported learning from the Student that she felt that she did not need the magnification sheets. She additionally reported observing the Special Education Teacher providing the Student with large print as well later on in the school year. Finally, she reported not observing the Student struggle to see anything.

OCR gave the Complainant the opportunity to rebut the District's response. She asserted that the District is not being truthful with respect to the Student's ability to see. She stated that the Student had three zeros in her World Geography class because she could not see all of the materials, and that the Student has a good memory and therefore can remember the keys on a calculator. She also asserted that the Student did not have a school-issued calculator during the 2015-2016 school year, but only her own calculator with large bold numerals on it. She also informed OCR that she believes that the Student went backwards in English.

OCR found there were instances when the Student was not provided with documents in size 14 to 16 font, specifically when reviewing the documents the Complainant provided and the SCDE's Letter of Review. However, OCR found that despite these few instances, the Student was consistently able to access the school materials and content, as reflected in her grades and academic records from the 2015-2016 school year, and reported by her teachers. Her grades were consistently high, with the exception of World Geography. In World Geography, however, the Student had low scores both before and after she received her iPad, which appear to be due to her failure to submit a number of assignments. Finally, the teacher reported that World Geography was an online course, with the exception of working on blank maps, and the Student had the ability to enlarge the text on the online course. All online assignments were available in text sizes that were adjustable. For these reasons, OCR found insufficient evidence that the Student was denied a FAPE regarding this allegation.

Allegation 1(b): The District discriminated against the Student based on disability by failing to provide her a FAPE during the 2015-2016 school year by failing to provide the Student 150 minutes per week of instruction in English/Language Arts in accordance with her IEP.

The District expressed a willingness to enter into an agreement concerning Allegation 1(b). Prior to that, OCR obtained and reviewed documents from the Complainant and the District, and subsequently conducted interviews of four District staff members: the student's special education teacher and case manager; an assistant principal; the Director of Exceptional Student Education; and a general education teacher.

OCR interviewed the Student’s Special Education Teacher, who was responsible for providing the 150 minutes of weekly ELA instruction to the Student in accordance with her IEP, and working with the Student’s teachers to implement her IEP. He told OCR that, while the Student received ELA in his academic support classroom, he was unable to confirm that the Student received the exact 150 minutes weekly of instruction. He reported to OCR that he would typically break up the ninety minute-a-day academic support class into thirty minute sections, to allow for thirty minutes a day of ELA. However, he also told OCR that if the Student needed help to finish an assignment from another class, that she was given the opportunity to do so during this same time period. He also told OCR that he did not track minutes daily or take notes on how long was spent on ELA instruction and that he tried to use his memory to ensure that her IEP was implemented. When questioned by OCR, he was unable to provide any information on how he assured that the Student received the minutes required by her IEP. Ultimately, he told OCR that the Student may not have received 150 minutes of ELA in a particular week if she needed assistance in another area. As discussed above, subsequent to the interviews described above, The District expressed willingness to, and agreed to resolve this allegation.

Allegation 1(c): The District discriminated against the Student based on disability by failing to provide her a FAPE during the 2015-2016 school year by, beginning in November 2015, failing to provide access to the Student’s iPad, a disability accommodation, since the iPad required a password.

The Complainant alleged that once the Student received her iPad, that she was unable to access it because it required a password. The October 6, 2015 IEP includes as an accommodation that the Student “[s]hould have iPad or Assistive Technology to access Vision apps or text books.” The Complainant specifically alleged that the Student was provided the requisite iPad but it was unusable because it required a teacher to enter the password and, if the teacher with the password was absent, the Student was denied access to the iPad until the teacher returned.

OCR interviewed all of the Student’s teachers during the fall XXXX semester. Each teacher, with the exception of one,⁷ reported that the Student had an iPad, was consistently able to access it, and used it frequently. Additionally, the Student’s World Geography teacher reported to OCR that the class was entirely online, and the Student used her iPad frequently. Each teacher reported that the Student never complained that she could not access her iPad. The only time she had a problem, as reported by the Special Education Teacher, was if there was an instance when the Student needed to download an application (discussed below).

The Assistant Principal told OCR that the Student’s iPad was set up with school-level restrictions that blocked access to certain applications and other online content, as required by the District’s technology policies and procedures. These restrictions were standard for all students. For example, in order to download applications, a password needed to be entered into the iPad. The Assistant Principal reported that the Student had two points of contact within the school who had the password and would help the Student download applications, if they were in compliance with District policies. The Assistant Principal told OCR that at no point was the iPad ever password protected. The Assistant Principal further reported that the Student could always access the home

⁷ The Student’s South Pointe 101 teacher reported that he could not recall if the Student had an iPad.

screen, which included a search browser, the camera, and certain applications. He told OCR that once a particular application was downloaded onto her iPad, that the Student would have access to it on her own, and therefore was able to access her vision applications and textbooks, even if she needed a password to download other applications.

OCR additionally interviewed one of the teachers who had access to the password required to download applications. She reported to OCR that when she initially met with the Student to download applications, the iPad was already unlocked, such that the Student had already navigated to the home screen. The teacher ensured that all of the restrictions were as they should be in accordance with the policy, and demonstrated how to use the iPad for the Student. She told OCR that she made the Student aware that if she needed to download an application, that she could approach the teacher at any time. She reported that the Student approached her at least three, but no more than six times during the school year. She reported that there was one incident where the camera feature wasn't working, but she could not recall if it was the basic camera feature on the iPad or a camera feature through one of the applications. She also told OCR that she allowed the Student to interrupt her when she was teaching so that she could assist the Student with her iPad. She reiterated to OCR that the Student knew how to access the iPad to use a web browser, her textbooks, or any applications she needed for class.

OCR reviewed documents provided by the District. OCR reviewed email correspondence between District Staff regarding the iPad, including an October 29, 2016 email from the teacher with access to the password to the Assistant Principal, asking if she should continue to monitor the Student's application downloads. The Assistant Principal responded that they would continue with the same process to ensure that there is someone in the building who has the password. Additionally, OCR reviewed various District technology policies, including the District's "Personal Mobile Computing Guide", which states: "Students will be permitted to load additional applications on their personal mobile computing devices as long as they do so in accordance with the District's 'Acceptable Use Policy.'"

Finally, OCR reviewed the SCDE Letter.⁸ The Letter refers to a January 7, 2015 email from the District that states: "the Student only needs a separate password if she is adding or deleting apps on her iPad . . . [she] has her own 4-digit password that she uses every time she accesses her iPad." The SCDE found that "the accommodation does not specify which apps or what content will be available on the iPad, *if* one is issued. The fact that the iPad did not come equipped with apps, as was the case in eighth grade, is not a violation of the accommodation."

OCR provided the Complainant with an opportunity to rebut the District's evidence. She clarified for OCR that the Student *did* have the passcode to open the iPad, but that the Student needed a password each time she wanted to open an application. The Complainant told OCR that the Student was missing too much class time due to needing to frequently get the password. She also told OCR that only *one* teacher knew the password, not two.

⁸ The Complainant had alleged that the "iPad issued to the Student contains only flash cards and does not contain a magnification application or digital textbooks, worksheets, or programs and the Student is required to leave class to obtain a password to access the iPad each time she wants to download an application or to take a photograph to enlarge text."

Based on all the above, OCR found that the Student had access to her iPad on a daily basis consistent with the requirements of her IEP. OCR found that the Student requested assistance with her iPad only infrequently, and used it often. For these reasons, OCR found there to be insufficient evidence that the District failed to provide access to the Student's iPad because it required a password.⁹

Allegation 1(d): The District discriminated against the Student based on disability by failing to provide her a FAPE during the 2015-2016 school year by failing to allow the Student to use the restroom in accordance with her IEP and, on one occasion, threatening to give the Student a referral if she did not return to class after 2 minutes during her restroom break.

The Complainant alleged that District staff failed to allow the Student to use the restroom in accordance with her IEP, and that one teacher threatened the Student with a referral if she did not return to class quickly after using the restroom. All the Student's IEPs for the 2015-2016 school year included provisions that the "Student can access bathroom as needed in class."¹⁰ The Complainant alleged that these actions by District staff denied her a FAPE when she was not permitted to use the restroom as outlined in her IEP. The Complainant also reported to OCR that the Student's Special Education Teacher threatened to give the Student a referral if she did not return to class from a restroom break after two minutes. OCR notes that in her complaint with the SCDE, the Complainant alleged, that "the District is allowing the Student to leave class early for a bathroom break as required by the IEP but is failing to provide any instruction missed during these breaks."

OCR spoke with many of the Student's teachers from the 2015-2016 school year, including all of her teachers from the Fall ~~XXXX~~ semester. Each teacher reported to OCR that the Student was permitted to leave class each day five minutes before the end of the class. Each teacher also told OCR that the Student was never denied permission to use the restroom at any other point during the class period. In addition, one teacher told OCR that the Special Education Teacher and Assistant Principal would send out reminders to the teachers to let the Student leave class early.

The Special Education Teacher also told OCR that the Student was never denied the opportunity to use the restroom in his class, except when another student was in the bathroom, and in those instances, the Student was sent to the restroom in the timeliest manner possible. He also reported to OCR that he never threatened to give the Student a referral. Rather, he reported to OCR that he made this comment to a male student who was habitually in the hallway in the presence of the Student, but was not speaking to the Student. He told the male student that he had two minutes to go to the restroom and return, or he would receive a referral. The Student was in the classroom when this was said, and around that time had requested to use the restroom. The

⁹ The Complainant asserted that the Student was able to download her own applications in middle school, and that the Director of Exceptional Student Education wrote that the Student could be given the password, but that the school would not allow this. OCR, however, did not investigate if the Student was treated differently than other students with regards to how password restrictions were set on iPads. Rather, OCR investigated and made an insufficient evidence determination with regards to whether the District discriminated against the Student based on disability by failing to provide her a FAPE by failing to provide her with access to her iPad.

¹⁰ The Student's October 6, 2015 IEP also included that the "Student will go to restroom 5 minutes before the end of classes. (Will not leave early for her split 3rd block class to go to lunch)."

Special Education Teacher told the Student that she needed to wait until the male student returned from the restroom before going.

Finally, OCR reviewed the SCDE complaint submitted by the Complainant.¹¹ OCR observed that the Complainant admitted, in her SCDE complaint, that the Student was provided with restroom breaks in accordance with her IEP.

Based on the information above,¹² OCR finds insufficient evidence that the Student was denied access to the restroom or threatened with a disciplinary referral, as alleged. The Complainant admitted that the Student received restroom breaks in accordance with her IEP and the Student's teachers additionally corroborated that the Student was allowed to use the restroom, in accordance with her IEP in addition to whenever needed. Finally, OCR finds that there is insufficient evidence that the Special Education Teacher threatened to give the Student a referral for use of the restroom.

Allegation 1(e): The District discriminated against the Student based on disability by failing to provide her a FAPE during the 2015-2016 school year by, in September 2015, requiring the Complainant to pay fees and insurance for the laptop used to provide her disability accommodations.

The Complainant alleged that District staff required her to pay fees and insurance for the laptop used to provide the Student's disability accommodations. The Complainant reported to OCR that she turned the laptop down and that she wouldn't pay insurance or fees when her "IEP gives her assistant [sic] technology for free."

OCR first reviewed the Student's IEPs. None of her IEPs include a laptop as an accommodation; rather, they include "iPad or Assistive Technology." OCR additionally reviewed an October 21, 2015 email sent by the Special Education Director to the a SCDE Deputy General Counsel, indicating that, during the October 6, 2015 IEP meeting, the Assistant Principal explained to the Complainant the laptop policies and forms, but that the Complainant "refused, did not want her daughter to have this laptop and only wanted her to have the iPad because it would be part of the IEP. Although the team felt strongly that the purpose of using a laptop (for her and all students) will help as they transition to adulthood and in their adult work place . . . this was what the parent felt strongly about, so we went with it."

OCR interviewed District staff with respect to this allegation, in addition to reviewing documents the District provided. District staff confirmed that the Student did not have a laptop as an accommodation in any of her IEPs. Based on this, OCR finds that, even if the District did require the Complainant to pay a fee for use of a school-issued laptop, this would not amount to a denial of FAPE, since the laptop was not a disability-related accommodation.

¹¹The SCDE reviewed an allegation that "the District is allowing the Student to leave class early for a bathroom break as required by the IEP but is failing to provide any instruction missed during these breaks." The Complainant did not allege to OCR that the School failed to provide instruction during bathroom breaks.

¹² OCR provided the Complainant with an opportunity to rebut, and she told OCR that she had emailed the Special Education Teacher, and he never responded to her.

Despite this, OCR inquired about this allegation to District staff to determine if the Student was treated differently than other non-disabled students regarding the issuance of the laptop. The Assistant Principal, in addition to the Student's Special Education Teacher, reported to OCR that for the 2015-2016 school year, the District was working to deploy laptops to all students. The Assistant Principal reported that, in order for a student to receive a laptop, each parent was required to go through an orientation and fill out forms. This information was included in the Personal Mobile Computing Guide that was distributed to all students and parents on Freshman Registration Day, and throughout the semester via different communications. There was also a small fee associated with the provision of a laptop, but that fee could be waived in a number of ways. The Assistant Principal reported to OCR that he explained this process to the Complainant, and also that they would waive the fee for the Student. The Complainant reportedly responded that she would not sign any paperwork.¹³

OCR provided the Complainant an opportunity to rebut the District's evidence. She alleged that she asked about the laptop for the Student, and it was never offered to her with the fees waived, but had it been offered without fees, she would have accepted it. She also alleged that because the IEP states that the Student is to receive assistive technology, the Student should receive the laptop for free.

Based on its investigation, OCR found insufficient evidence that the District required the Complainant to pay fees or insurance for an accommodation. First and foremost, a laptop was never included in the Student's IEP, and as a matter of policy, OCR generally does not second-guess educational decisions as long as the District follows the procedures required by Section 504. The Complainant did not allege, nor did OCR investigate, whether the District failed to follow the procedures required by Section 504. Therefore, the District's Section 504 obligations were not implicated. In addition, OCR found insufficient evidence of disability discrimination in the offer of a laptop to the Complainant and the Student as laptops were offered to all students, all students were required to pay insurance and fees, and all students had various opportunities and options for waiving the payment of insurance and fees, including the complainant. For these reasons, OCR finds that there is insufficient evidence to find a violation of Section 504 with respect to this allegation.

As described above, with the exception of Allegation 1(b), which the District requested to resolve, OCR found insufficient evidence that the District discriminated against the Student on the basis of disability by failing to provide her a FAPE.

Allegation 2

Legal Standard

A District's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A District may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and

¹³ The Complainant subsequently confirmed to OCR that she would not sign this paperwork.

services, regardless of whether the District had notice of the employee’s behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student’s ability to participate in or benefit from the District’s programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a District must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a District must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Analysis

Allegation 2: The District discriminated against the Student based on disability when it subjected her to a hostile environment when: (a) during the week of September 14, 2015, the Student’s teacher dragged the Student’s desk to the front of the classroom after the Student informed the teacher that she could not see the board; and, (b)- teacher required the Student to report to her class about her disabilities, including how her disability affects her education and her life.

The Complainant alleged that the Student was subject to harassment when a teacher dragged the Student’s desk after she said that she could not see the board well, and when a different teacher required the Student to report to her class about her disabilities.

Dragging Desk Incident: The Complainant alleged that on September 14, 2016, the Student reported to her teacher that she could not see the board, a manifestation of her disability. According to the Complainant, the teacher then dragged the Student’s desk to the front of the class, embarrassing the Student. The Complainant alleged that “the whole class was laughing at her.” She also reported to OCR that she felt “he did this aggressively, I think he thought she was lying and my daughter didn’t like it at all.” She sent an email to OCR on December 9, 2016 stating that when she reported this to the school, “they told me to speak with the teacher.” She indicated that she was never able to reach the teacher, and that “[n]othing was done to this teacher.”

OCR received a statement written by the teacher, and also interviewed him. He communicated to OCR that the Student brought to his attention that she could not see a video being projected on the screen. The Student sat in the front row of the class, three rows from the center. The teacher told OCR that he pulled her desk in a way that he considered to be light and playful, a distance of about five or six feet. The teacher recalled that the Student smiled or giggled when this happened. He also communicated that he has done the same thing with other students over the years.

The teacher reported to OCR that the next day, the Assistant Principal asked him to explain what had happened, and informed him that the Student was embarrassed. He also told OCR that the other students in the class did not “whoop[] or holler[]” nor was anyone mocking her. He reported that when the Student left the class, he did not have the impression that she was upset. The teacher explained that there was “no mal intent and that I would be more cognizant of situations like this involving a student needing to be moved for vision issues.” He told OCR that he was not formally disciplined in any way, and that he told the Assistant Principal that he would not touch the Student’s desk again. He informed OCR that he and the Student remained cordial the remainder of the semester.

OCR also spoke with the Assistant Principal, who told OCR that he learned of this incident through the Complainant. He reported that he confronted the teacher about the incident, heard the teacher’s side of the story, and expressed that the Student shared a concern with the Complainant. The Assistant Principal told the teacher to ensure that he refrain from doing it again in the future. There was no further investigation.

Class Report: On June 17, 2016, the Complainant alleged to OCR that a teacher required the Student’s entire class, which was a class of students with disabilities, to orally report their disabilities to the classroom and how they affect their lives. The Complainant also sent OCR a copy of the PowerPoint presentation that the Student created for this assignment.

OCR interviewed District staff with respect to this incident. The District reported to OCR that the presentation was part of an assignment called the “Student Led IEP Project.” The Special Education Teacher informed OCR that “no student, including [the Student], presented their respective projects to anyone,” and that they were only required to submit the project or presentation to the teacher. He told OCR that the students were originally required to do presentations; however, after speaking with the Director of Exceptional Student Education, it was decided that students did not have to present.¹⁴ He also told OCR that the Student did not give a presentation. The Director of Exceptional Student Education told OCR that it is up to a student if they want to present their Student Led IEP Project, and students had the option to present to a teacher alone or in a small group setting. She reiterated that students were required to develop a presentation, which could be in the form of, for example, a poster or a PowerPoint presentation. The Director of Exceptional Student Education reported that she expected the Student to present at an IEP team meeting, but at the meeting, the Complainant refused to allow the presentation.

¹⁴ The Complainant informed OCR, when given an opportunity to provide rebuttal information, that it was only after she complained did they remove the presentation aspect of the project.

Based on all the above, OCR found insufficient evidence of disability-based harassment, as alleged. As previously stated, OCR considered the totality of the circumstances, including the context, nature, scope, frequency, duration, and location of both incidents, as well as the identity and relationships of the persons involved. As described above, harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

Regarding the desk pulling incident, OCR confirmed that the allegation did occur as alleged. However, OCR did not find that this single, isolated incident was sufficient to rise to the level of disability-based harassment. This incident consisted of one occasion in which a teacher arguably responded inappropriately to the Student. Isolated incidents often are not sufficient to create a hostile environment. Of note, once the Complainant reported the Student's reaction to the incident, the matter was immediately addressed by School staff and no further incidents occurred with that teacher. While OCR understands that the Student was embarrassed by the incident, these facts do not rise to the level of a hostile environment. However, OCR strongly cautions the District to ensure that its staff members do not jokingly or intentionally harass or otherwise mock students because of manifestations of their disabilities, as such behavior can result in disability-harassment of the student.

Regarding the presentation, based on the facts, OCR also finds that this incident does not rise to the level of a hostile environment. Of note, the Student was assigned a project about her own disability and did not present this project, or any other information about her disability, to her peers or anyone else. While the initial assignment did involve a presentation of some kind, which is what the Complainant objected to, ultimately this was not required of the Student or any other member of the class. Typically, OCR does not second-guess educational decisions, including the appropriateness of classroom assignments. Instead, OCR reviews the facts as a whole and determines whether there is sufficient evidence of disability-based harassment. OCR found insufficient evidence that either of these incidents, independently or combined, were sufficiently severe to interfere with the Student's ability to participate in or benefit from the District's programs, activities, or services.

Allegation 3

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the District took a materially adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the District has a legitimate, non-retaliatory reason for its

action. Finally, OCR examines whether the District’s reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

Allegation 3: The District retaliated against the Student because of the Complainant’s disability-based advocacy on behalf of the Student, by issuing the Student a dress code violation on January 7, 2016.

OCR first examined whether the Complainant engaged in a protected activity. An individual engages in a protected activity if he/she opposes an act or policy that he/she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing. On November 3, 2015, the Complainant filed a complaint against the District with the SCDE. The Complainant also sent a copy of the complaint to the District. On November 10, 2015, the Complainant sent the remaining portion of her complaint to both the SCDE and the District. The Complainant alleged that the District failed to implement the Student’s IEP, therefore affecting the Student’s right to a FAPE. Because the Complainant filed a complaint with the SCDE alleging a violation of FAPE, OCR finds that the Complainant engaged in a protected activity.

OCR next examined whether the District took a materially adverse action against the Complainant and/or the Student. An adverse action is something that could deter a reasonable person from engaging in further protected activity. The Complainant asserts the adverse action was that the Student was issued a dress code violation on January 7, 2016. The issuance of a dress code violation or any form of discipline could deter a reasonable Student or their parent/guardian from engaging in further protected activity. Discipline singles a student out and can affect future educational opportunities. OCR finds that the District took a materially adverse action against the Complainant when it issued her a dress code violation.

Next, OCR examined whether there is a causal connection between the protected activity and the materially adverse action. The Complainant filed her complaint in November 2015, the dress code violation was issued on January 7, 2016, and the SCDE Letter was issued on January 8, 2016.¹⁵ The District asserts that there is no causal link between the protected conduct and adverse action because the District was following the dress code policy. OCR finds that, because the protected activity and likely subsequent SCDE investigation took place within a window of two months prior to the adverse action, a causal relationship exists between the protected activity and the adverse action.

Because all of the above elements are present, establishing an initial, or prima facie, case of retaliation, OCR then determined whether the District has a legitimate, non-retaliatory reason for its action. School staff denied that they retaliated against the Student as alleged and instead stated that staff members were simply enforcing the dress code. According to the School’s Assistant Principal, a teacher (who does not teach the Student, but works across the hallway from where she saw the Student) saw that the Student was out of dress code, and sent her to the office

¹⁵ When OCR provided the Complainant an opportunity to rebut the District’s evidence, she alleged that the District knew the SCDE found against the District on January 7, 2016 rather than January 8, 2016.

to get her shirt¹⁶ checked. The female Administrative Assistant, who conducts dress code measurements, measured the Student's shirt, and determined that the shirt was more than four inches above the Student's knees, and issued the Student a warning. The Administrative Assistant asked the Student if she had a change of clothes, to which the Student responded that she did not. Two Administrative Assistants attempted to call the Complainant to bring a change of clothes. The Complainant refused to bring a change of clothes, and complained that her daughter was being targeted due to the SCDE complaint. The male Administrative Assistant informed her that he was following the same procedures that he follows for all students. After being informed that the Student would be placed in in-school suspension until the Student received a change of clothes, the Complainant called the School Resource Officer to transport the Student home. OCR finds that the District has proffered a legitimate, non-discriminatory reason for its action regarding the dress code policy.

Because OCR determined that the District had a legitimate, non-retaliatory reason for its action, OCR investigated whether there is evidence that this reason is merely a pretext for unlawful retaliation. First, the District provided OCR a copy of the Dress Code Policy, which states: "Yoga pants, leggings, and jeggings must be worn with a shirt or dress that is no more than four inches above the knee." OCR also reviewed the discipline policy for dress code violations. According to that policy, for a 1st offence, the discipline imposed is: "Warning and removed from class until appropriately dressed Inappropriate dress that cannot be remedied will result in removal from class and paced in ISS until proper attire can be obtained."

Next, OCR reviewed a photograph of the Student provided by the Complainant and emailed to OCR on the day of the incident. Based on OCR's assessment of the photo, the Student's shirt or dress appears to be inconsistent with the Dress Code Policy, as it appears to be more than four inches above the knee, as school staff concluded.

OCR also reviewed emails from the Complainant in which she appeared to concede the Student was not in compliance with the Dress Code Policy. In an email sent on January 12, 2016, she wrote that the District policy "states leggings, jeggings, and yoga pants can be worn with a long shirt (or) a dress 4 inches from knee." The Complainant continued: "She had on fleece leggings with high top boots and long shirt everything was covered." The Complainant also wrote that the District "went as far as measuring her cloths [sic]." In an email to OCR, the Complainant also wrote that "[h]alf the school wears leggings with long shirts." As stated above, OCR reviewed the photograph provided by the Complainant and notes that while the Student was wearing what appear to be fleece leggings, her shirt does not appear to comply with the dress code.

Finally, OCR interviewed School staff regarding this allegation, including the timing of the enforcement of the dress code. The Assistant Principal explained to OCR that the warning occurred shortly after students returned from winter holidays. He explained that, prior to the start of the second semester, there are faculty and staff meetings which include "re-teaching" regarding enforcement of policies, procedures, and expectations.¹⁷

¹⁶ The Assistant Principal referred to the Student's clothing as a skirt, but it was rather, a long shirt.

¹⁷ OCR also requested comparator data from the District. While the District provided a list of students, both with and without disabilities, who received various forms of discipline, the Student was not on the list. The District

Based on all the above, OCR finds insufficient evidence to support a finding that the District’s explanation for issuing a dress code warning was a pretext for retaliation. Therefore, OCR found that there is insufficient evidence that the District retaliated against the Student as alleged.

Allegation 4

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District’s programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Analysis

Allegation 4: The District discriminated against the Student based on disability when her IEP team told her that she could not be enrolled in special education classes if she wanted to take cosmetology classes.

OCR first examined whether there is sufficient evidence to establish a prima facie case of discrimination. The Complainant alleged that the Student’s IEP team told her that she could not be enrolled in special education classes if she wanted to take cosmetology classes. The Complainant alleged that this was said to the Student at all three of her 2015-2016 IEP meetings, and that the Director of Exceptional Student Education and Special Education Teacher said that cosmetology was something the Student could take when she finishes school, not while in school.

OCR was unable to substantiate that this was ever said to the Student or the Complainant. While members of the IEP team did recall discussing that the Student might become a cosmetologist, none recall the alleged statement being made. During his interview, the Assistant Principal told OCR that he did not recall that statement being made, and further said that it wouldn’t have been an accurate statement if it were made.

District staff additionally explained that XXXX is a course only offered to Juniors and Seniors. The Assistant Principal explained during his interview that the XXXX program is a two-year program that accepts 25 students within the District. He explained that the Student would be

explained that it does not track dress code warnings and, because the Student only received a warning, the Student was not included in the comparator data.

able to apply to the program during her Sophomore year, and that she would have to take an entrance exam in April of her Sophomore year to determine if she is accepted into the program. The District also provided OCR with course descriptions from the Applied Technology Center from the 2016-2017 District Course Catalog, which includes a statement that “Students must be in a junior homeroom to enroll in XXXX”

Finally, the Assistant Principal, as well as the Director of Exceptional Student Education, told OCR that there are students with disabilities currently enrolled in the XXXX program, and provided OCR copies of enrollment data, which confirmed this.

OCR provided the Complainant an opportunity to rebut the District’s evidence. She told OCR that the head of the Applied Technology Center told her that the Student could not enroll in cosmetology if the Student were enrolled in the special education program. The Complainant indicated that the reason the Student is enrolled in the diploma track is because she wants to take XXXX.¹⁸

OCR finds insufficient evidence that the Student was told she could not be enrolled in special education classes if she wanted to take cosmetology classes. Additionally, the District has made clear that students with disabilities are not precluded from enrolling in the XXXX program, and that at least one student with a disability was enrolled in the program last year. Finally, OCR notes that the Student is not yet eligible to enroll in the XXXX Program, due to her grade level. Because OCR found insufficient evidence of a prima facie case of discrimination, OCR’s analysis ends here. Should the Student be precluded from participating in the XXXX program because of her disability in the future, when she is eligible to apply and enroll, the Complainant may file a complaint with OCR at that time.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on September 27, 2016 which, when fully implemented, will resolve Allegation 1(b). The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant with respect to Allegation 1(b) and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be

¹⁸ The Complainant also told OCR that she believes the Student should be in special education because she was not successful throughout the school year, and believes that the District is trying to pass the Student through the school system. The Complainant expressed a concern that the District is setting the Student up for failure and that the Student may face adverse employment consequences if she continues on the diploma track rather than in special education.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

We appreciate the District’s cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Shana Heller or Zorayda Moreira-Smith, the OCR attorneys assigned to this complaint. You may reach Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov or Ms. Moreira-Smith at 202-453-6946 or Zorayda.Moreira-Smith@ed.gov.

Sincerely,

| _____ /S/

Kristi R. Harris
Supervisory Attorney, Team IV
Office for Civil Rights
District of Columbia Office

Enclosure

cc: John Reagle, District Counsel