



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

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REGION XV
MICHIGAN
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February 27, 2015

Lee P. Geiger, Esq.
Graydon Head & Ritchey LLP
7759 University Drive, Suite A
West Chester, Ohio 45068

Re: OCR Docket #15-14-1106

Dear Mr. Geiger:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on February 13, 2014, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Indian Hill Exempted Village School District (District), alleging that the District discriminated against a student (the Student) with a disability (migraine variants). During the course of OCR's investigation, OCR clarified the complaint allegations, which alleged the following with respect to the 2013-2014 school year:

1. The District discriminated against the Student on the basis of disability when it issued an xxxxxxxxxxx xxxxxx xxxx xxxxxxxxxxxxxxx xxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx without convening the Student's Section504 team.
2. The District failed to address the Student's parent's xxxxxxxx and xxxxxxxx xxx xxxxx complaints, that the Student was subjected to disability discrimination by the Indian Hill High School (the high school) xxxxxxxxxxx xxxxxxxxxxx
3. The District failed to provide the Student's parent a meaningful opportunity to provide input into the Student's Section 504 plan, developed at a meeting on xxxxxxxx xxx xxxxx
4. The District failed to provide the Student's parent with notice of her procedural safeguards following the xxxxxxxx xxx xxxxx Section 504 meeting.

5. The District retaliated against the Student and the Student's parent, after the Student's parent advocated on behalf of the Student with respect to xxx rights as a student with a disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. Additionally, the regulations implementing Section 504 and Title II both prohibit retaliation against individuals engaging in activities protected by the statutes. Both Section 504 and Title II As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

- Whether the District denied a qualified student with a disability the opportunity to participate in or benefit from its aids, benefits, or services on the basis of disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i) and the Title II regulation at 28 C.F.R. § 35.130(a).
- Whether the District failed to make reasonable modifications in policies, practices, or procedures when those modifications were necessary to avoid discrimination on the basis of disability, in violation of the Title II implementing regulation, at 28 C.F.R. § 35.130(b)(7).
- Whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE), including the provision of related aids and services designed to meet the student's individual needs as adequately as the needs of students without disabilities are met and that was based on adherence to procedures that satisfy the educational setting, evaluation, placement, and procedural safeguards requirements set forth in the Section 504 implementing regulation at 34 C.F.R. §§ 104.33-104.36.
- Whether the District made a significant change in placement without reevaluating a student with a disability, in violation of the Section 504's implementing regulation at 34 C.F.R. § 104.35(a).
- Whether the District failed to provide the Student's parents a meaningful opportunity to provide input into the Student's placement decisions, in violation of the Section 504's implementing regulation at 34 C.F.R. § 104.35(c).

- Whether the District failed to provide a Student’s parent with notice of her procedural safeguards to challenge its determination through an impartial due process hearing, in violation of the Section 504’s implementing regulation at 34 C.F.R. § 104.36.
- Whether the District adopted grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 and Title II regulations, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b).
- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II, or because that individual made a complaint under Section 504 or Title II in violation of the Section 504’s implementing regulation at 34 C.F.R. § 104.61 and the Title II implementing regulation at 28 C.F.R. § 35.134.

During the course of OCR’s investigation, OCR reviewed documents provided by the Student’s parent and the District. Additionally, OCR interviewed the Student’s parent and relevant District personnel. OCR also interviewed the Student and provided the Student’s parent with an opportunity to respond to information submitted by the District. After a careful review of the information obtained during OCR’s investigation, OCR has determined that: (1) there is sufficient evidence to demonstrate that the District violated Section 504 and Title II with respect to unilaterally altering the services the Student was entitled to receive pursuant to xxx Section 504 plan; (2) the evidence is sufficient to support that the District failed to respond to the Student’s parent’s disability discrimination complaints; (3) the evidence is sufficient to show that the District has not fully adopted and implemented grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation or the Title II regulation; and (4) the evidence is sufficient to show that the District failed to provide the Student’s parent with notice of xxx procedural safeguards. However, OCR finds that the evidence is insufficient to conclude that the District failed to provide the Student’s parent with a meaningful opportunity to provide input into the Student’s placement decisions and that the District retaliated against the Student and/or the Student’s parent, as alleged. The bases for these determinations are discussed below.

Background

During the 2013-2014 school year, the Student was a xxxxxx in the District’s high school (the school). He was diagnosed with xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx and received services pursuant to a Section 504 plan, starting in the xxxxxx xxxxx and continuing throughout the 2013-2014 school year. The Student withdrew from the District on xxxxxxxx xxx xxxxx

Allegation #1 – Alleged Disability Discrimination

The Student's parent told OCR that, during the 2012-2013 school year, xxx provided xxxxxxxx xxxxx to the high school explaining that the Student may have xxxxxxxxxxxxxx xxxx xxxxxxxx due to the nature of xxx disability. Accordingly, xxx and the District created a Section 504 plan that was designed to specifically address the Student's needs, including the educational services he would receive xxxxxx xxx xxxxx xxxxxxxxxxxx. Specifically, at the beginning of the 2013-2014 school year, the Student's Section 504 plan provided for the following:

X---paragraph redacted---X

The Student's parent explained to OCR that beginning on xxxxxxxx xx xxxxx the high school xxxxxxxxxxxx xxxxxxxxxxxx began questioning the Student about xxx xxxxxxxxxxxx and inquired as to whether xxx xxxxxxxxxxxx were truly necessary. The Student's parent told OCR that the xxxxxxxxxxxx xxxxxxxxxxxx made comments to the Student such as "do you know how many days you've been xxxxxxxxxxxx and xxxxx xxx xxxxx xx xx xx xxxxx xxxxx".

The Student's parent told OCR that she complained to the superintendent on xxxxxxxx xx xxxxx about the xxxxxxxxxxxx xxxxxxxxxxxx comments, and on approximately xxxxxxxx xxx xxxxx the xxxxxxxxxxxx xxxxxxxxxxxx told her that the District did not have current xxxxxxxx information from the Student's xxxxxxxx in the Student's file; the Student's parent asserted to OCR that she had previously provided a xxxxxxxx from the Student's xxxxxxxx dated xxx xx xxxxx to the Student's xxxxxxxxxxxx xxxxxxxxxxxx. The xxx xx xxxxx xxxxxxxxxxxx letter notes the Student's diagnosis of xxxxxxxxxxxx xxx xxxxxxxxxxxx xxxxxxxxxxxx and explains that the Student's xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxx xxx x xxx xxxxx xxx xxxxx xx xxx xxxxx xx xx xxx xxxxx xxxxx xx xx xxxxxxxx xx xxxxxxxxxxxx. The xxxxxxxxxxxx letter also states, in relevant part, that the Student is xxxxxxxxxxxx xxxxx xxx xxxxxxxx xx xxx xxxxxxxxxxxx xxxxxxxx xx xxxxx xxxxx xxxxxxxx xxxxx xxxxxxxx. The xxxxxxxxxxxx xxxxxxxxxxxx reiterated to the Student's parent that the high school did not have a current xxxxxxxx letter for the Student and then asked the Student's parent for a xxxxxxxx xxxxxxxxxxxx which the Student's parent provided, to talk to the Student's xxxxxxxx to discuss options such as changing the Student's xxxxxxxxxxxx and the Student's xxxxx xxxxxxxxxxxx.

The Student's parent reported that on approximately xxxxxxxx xxx xxxxx the xxxxxxxxxxxx xxxxxxxxxxxx called the Student into the office and told the Student that xxxxxxxx xxxxxxxx xxx xxxxxxxxxxxx xxx xxxxx xxx xxxxx xxxxxxxx and that the Student should just xxxxx xx xxxxx. At that time, the Student's parent reported that the xxxxxxxxxxxx xxxxxxxxxxxx gave the Student a letter, addressed to the Student's parent, which stated that the Student's xxxxxxxx would be xxxxxxxxxxxx xxx xxx xxxxxxxxxxxx xx xxx xxxxxxxxxxxx xxxxxxxx xxxxx xxxxx xxx xxxxxxxx xxxxx xxx xxxxxxxx xxx xxxxxxxx xxx xxxxxxxx xxxxxxxxxxxxxxxxxxxx xxx xxxxx xx xxxxxxxx xxx xx xxxxxxxxxxxx xx xxxxxxxx xxxxx. The letter also xxxxxxxxxxxx xxx xxxxxxxx xxxxx xxxxxxxxxxxxxxxxxxxx and the filing of xxxxxxxx xxxxxxxx against both the Student and the Student's parent.

The Student's parent stated that she met with the District's Section 504 coordinator on xxxxxxxxxxxx xxx xxxxx at which time the Section 504 coordinator explained that the xxxxxxxxxxxx xxxxxxxxxxxx was "cracking down" on all students for xxxxxxxxxxxx, not just the Student. The Student's parent also spoke with the Student's guidance counselor who told her that the Student's Section 504 plan was still in effect, but suggested that the Student's

xxxxxx remove the xxxxxx xx xxxxx the Student may be xxxxxx from the xxxxxxxx xxxx, and make it more general.

In the District's June 3, 2014, position statement to OCR, it explained and provided a copy of the Student's xxxxxxxxxx xxxxxx demonstrating that, by xxxxxxxx xx xxxxx the Student had already been xxxxx xx xxxxxx xxxx xxxxxxx xx xxxxx since the start of the 2013-2014 school year. The District stated that it was the xxxxxxxxxx xxxxxxxxxx job to track xxxxxxxxxx and because the number of the Student's xxxxxxxxxx and xxxxxxxxxx fell outside of an xxxxxxxxxx xxxxxx xx xxxxxxxx xx xxx xxxxx xxxxxxxxxx xx xxx xxxxxxxxxx xxxxxx it was the xxxxxxxxxx xxxxxxxxxx job to address the situation; the xxxxxxxxxx xxxxxxxxxx determined that the Student's xxxxxxxxxx were no longer xxxxxxxxxx The District also stated that the xxxxxxxxxx xxxxxxxxxx treated the Student the same as any other student whose xxxxxxxxxx were no longer xxxxxxxxxx

OCR reviewed the attendance letter that was issued to the Student on xxxxxxxx xx xxxxxx and confirmed that it stated that the District planned to xxxxxxxx xxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx xxx xxxxxxxx xx xxxxxxxx x xxxxxxxxxx xxxx xxx xxxxx xxxxxxxxxx xxx xxxxxx xxxx xx xxx xxxxxxxx xxxxxxx xx xxxxxxxx xxx xxxxxxxxxx xxxxxx xx xxxxxx xxx xxxxxxxx xxxxxxx xxx xxxxxxx xxxxxxxx xx xxxxxx xxx xx xxxxxxxxxx xx xxxxx xx xxxxxx xx xxxxxx xx xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx xxx xxxxxxxx xxxxxxxxxx xxxxxx xx xxxxxx xxxxxxxxxx xxx xxxxxxxxxx xxx xxx xxxxxxxxxx The xxxxxxxxxx xxxxxxxxxx told OCR that she was aware of the Student's Section 504 plan, and that it was xxx decision, alone, to issue the xxxxxxxxxx x letter to the Student because she believed the Student's parent and the Student needed to provide an updated xxxxxxxxxx xxxxx in late-xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxx because the Student was xxxxxxxxxx xxxxx xx xxxxxxx xx xxx xxxxx xx xxxxxx xxxxxx his xxxxxxxxxx had identified in the xxx xx xxxxxx letter.

The xxxxxxxxxx xxxxxxxxxx acknowledged to OCR that she did not attempt to reconvene a Section 504 team meeting prior to the issuance of the xxxxxxxxxx xxxxxxx and her conversations with the Student about the possible consequences of not providing an updated xxxxxxxxxx xxxxxx or xxxxxxxxxx xxxxxxxxxx xxxxxx xxx xxxxxxxxxx which was not required by his Section 504 plan. The xxxxxxxxxx xxxxxxxxxx told OCR that after she issued the xxxxxxxxxx xxxxx letter to the Student, he had xxxxxxxxxx xxxxxxxxxx for the remainder of his enrollment at the District. The Student's parent did not provide a new xxxxxxxxxx xxxxxxxxxx xxxxxx until xxxxxxxxxx xxx xxxxxx The Student was not suspended and neither he nor his parents were charged with xxxxxxxxxx while he was enrolled in the District.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), prohibits recipient school districts from, on the basis of disability, excluding a qualified person with a disability from participation in, denying her the benefits of, or otherwise subjecting her to discrimination under any program or activity. The Title II implementing regulation contains a similar provision at 28 C.F.R. § 35.130(a). The Title II regulation, at 28 C.F.R. § 35.130(b)(7), requires public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Under Section 504, recipients must provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability. 34 C.F.R. § 104.33(a). The provision of a free appropriate public education is the provision of 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 based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36 regarding educational setting, evaluation, placement, and procedural safeguards. Those services may include modifications to the regular education program, including adjustments to rules regarding absences when a student's absences are due to a disability. The FAPE requirement is not subject to a reasonable accommodation standard or other similar limitation.

School districts must also reevaluate a student with disabilities periodically and before any significant change in placement. 34 C.F.R. § 104.35(a).

Here, the evidence demonstrates that the District violated the requirements of Section 504, at 34 C.F.R. §§ 104.33 –104.36 and Title II, at 28 C.F.R. § 35.130(b)(7), when it failed to consider whether it needed to modify the District's xxxxxxxxxxxx policy as applied to the Student to ensure that the District did not discriminate against him for xxxxxxxx xxxxxxxx xx xxx xxxxxxxxxxxx. It is undisputed that the District failed to reconvene the Student's Section 504 team before issuing the xxxxxxxxxxxx xxxxxxxx that xxxxxxxx xx xxxxxxxxxxxx xx xxxxxxxx the services he received pursuant to his Section 504 plan, which never required him to provide a xxxxxxxxxxxx xxxxx xxx xxxxx xxxxxxxxxxxx and provided that he would receive xxxxxxxx xxx xxxxxxxx xxxxxx. As a result of the District's failure to convene the Section 504 team, it never considered modifying the District's xxxxxxxxxxxx policy as it related to the Student. The xxxxxxxxxxxx xxxxxxxxxxxxxx treatment of the Student the same as all other students, in this instance, was inappropriate as the modification of xxxxxxxxxxxx policies may be required for students with disabilities in certain situations. Accordingly, OCR finds that there is sufficient evidence to demonstrate that the District violated Section 504 and Title II with respect to unilaterally altering the services the Student was entitled to receive pursuant to his Section 504 plan, by issuing the xxxxxxxxxxxx that imposed new requirements on the Student.

Allegation #2 – Alleged Failure to Respond to Complaints of Disability Discrimination

The Student's parent alleged that the District failed to address her complaints that the Student was subjected to disability discrimination. Specifically, the Student's parent explained that she complained to the District's superintendent by letter on approximately xxxxxxxx xx xxxxxx about the xxxxxxxxxxxx xxxxxxxxxxxxxx conversation with the Student, on xxxxxxxx xx xxxxxx concerning his xxxxxxxxxxxx. In the letter, the Student's parent stated that, on xxxxxxxx xx the xxxxxxxxxxxx xxxxxxxxxxxx stopped the Student at the xxxxxx xxxxxx xxxxxxxxxxxxxx him about his recent xxxxxxxx and questioned his xxxxxxxxxxxx xx xxx xx xxxxxxxx. The Student's parent's letter also explained the Student's xxxxxxxx xxxxxxxxxxxxxx referenced the services he was to receive in his Section 504 plan, and expressed concern regarding the assistant principal's questioning of the Student's disability. The Student's parent told OCR that the

superintendent responded to her letter by telephone, stating that the information had been passed on to the high school principal, but stated that she received no other follow-up from the superintendent or the principal regarding her concerns.

The Student's parent told OCR that she made a second disability discrimination complaint to the high school principal by letter dated xxxxxxxx xxx xxxxx. The letter described the Student's problem as xxxxxxxx xxxxxxxxxx mentioned his Section 504 plan services, and complained of the xxxxxxxx xxxxxxxxxx conduct in sending a letter xxxxxxxxxx xxxxxxxx xx xxxxxxxxxx xxx xxxxxxxx xxxxxxxxxx which xxxxxxxxxx x xxxxxxxx xxx xxxxxxxx xxx xx xxxxxxxxxx. The Student's parent stated that the xxxxxxxx xxxxxxxxxx "failed to acknowledge the [Student's Section] 504 plan" and xxxxxxxxxx xxx xxxxxxxxxx xx xxxxxxxx xxxxxxxxxx. In the letter, the Student's parent xxxxxxxx x xxxxxxxx xxx xxxxxxxx x xxxxxxxx xx xxxxxxxx xxxxxxxx xxx xx xxxxxxxx. The letter was copied to the superintendent, the District's Section 504 coordinator, the Student's xxxxxxxx xxxxxxxxxx and the Student's xxxxxxxx. The superintendent told OCR that he referred the xxxxxxxx xxx xxxxxx letter to the principal and the Section 504 coordinator. The principal told OCR that he was heading out of town on the senior class trip at the time of the xxxxxxxx xxx xxxxxx letter, and that the Section 504 coordinator said she would handle the matter.

The Section 504 coordinator is the official designated in the District's grievance procedures to receive disability discrimination complaints. She told OCR that she did not treat the letter as a disability discrimination complaint or grievance, but rather as "concerns," which corresponded with concerns expressed during an earlier xxxxxxxx xxxxx meeting between the Section 504 coordinator and the Student's parent. The Section 504 coordinator told OCR that after learning of the parent's "concerns," she spoke with the principal and the guidance counselor, and left a message for Student's parent stating that the letter was received, that high school staff would follow up, and that she could call if she had any questions.

The Section 504 coordinator scheduled a meeting in xxxxxxxx xxxxx to discuss the Student's parent's concerns. At the meeting, she followed up with the Student's parent, her attorney, the District's attorney, and the principal, and there was discussion about the Student's Section 504 eligibility, the need for a revised xxxxxxxx xxxxxx and potential accommodations xxxxxx xxx xxxxx xxx xxxxxxxx xxxxxx xxxxx xxxxxxxxxx. The meeting participants planned for a Section 504 meeting in January. There was no other response to the Student's parent's complaints.

OCR reviewed the District's disability grievance procedures, which are titled "Guidelines on Equal Educational Opportunity for Disabled Students Under Section 504" (Guidelines). The Guidelines provide notice in that they are posted online on the District's website. The Guidelines include information concerning where complaints may be filed, i.e., with the director of pupil services/Section 504 coordinator, whose address and phone number are listed. The Guidelines apply to students, parents, staff and the public.

The Guidelines provide for an informal grievance process, which is handled by the building principal, in which all present can provide statements and other evidence. The informal process states that there will be an attempt to reach an informal settlement within 10 days. If

a settlement is not reached, the grievant will be advised of the right to request a formal grievance proceeding from the Section 504 coordinator, whose title, address, and phone number are provided. The Guidelines make clear that the informal grievance process is optional and that a Student's parent can file a formal grievance at any time by submitting a request to the District's Section 504 coordinator.

The Section 504 coordinator is the designated District official responsible for conducting the investigations. The formal procedures afford all interested persons an opportunity to present witnesses and other evidence relevant to the complaint. There are designated and reasonably prompt timeframes for the major stages of the complaint process (10 working days to reach informal settlement; formal grievances to be filed within the later of 10 work days of receipt of informal settlement results or 20 working days after becoming aware of the alleged discriminator action). The Guidelines require the District to issue a written decision to the grievant no later than 30 working days after its filing. The grievant may appeal the decision by writing to the Superintendent within 15 working days of receiving the Section 504 coordinator's decision. There is a prohibition against retaliation.

OCR's review of the District's guidelines noted some deficiencies. Specifically, the Guidelines do not provide for written notice of the outcome to all parties, including the subject of the grievance. There is also no assurance that the school will take steps to prevent recurrence of any disability harassment and to correct discriminatory effects on the Student's parent and others, if appropriate.

The principal told OCR that he believed that there were grievance procedures online for filing complaints of disability discrimination, but stated that he was unsure how they were disseminated. He could not say how staff, parents, and the public are notified about the procedures. However, he stated that the complaints usually came to him.

The Section 504 implementing regulation at 35 C.F.R. § 104.7(b) states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation at 28 C.F.R. § 35.107(b) provides that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II.

When evaluating a recipient's grievance procedures under Section 504 and Title II, OCR considers a number of factors to determine if the grievance procedures meet regulatory requirements, including whether the procedures provide for, among other factors, notice to the parties of the outcome of the complaint and assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

Here, the evidence shows that on xxxxxxxx x xxx xxxxxxxxx xxx xxxxx the Student's parent complained to the District's superintendent and high school principal, respectively, about the District's efforts to disregard the Student's Section 504 plan, by imposing xxx xxxxxxxxxx

xxxxxxxxxxxx on the Student. The evidence also shows that the Student's parent's complaints specifically noted the xxxxxxxx xxxxxxxxxxxx behavior toward the Student regarding his disability, including specifically questioning xxx xxxxxxxx xxxxx xxx xxxx xxxxxxxxxxxx xxxxx xxx xxxxxxx xx xxx xxxxxxxxxxxx. The evidence demonstrates that the superintendent referred the xxxxxxxx x complaint to the principal, but nothing further was done and the Section 504 coordinator did not treat the complaints as disability discrimination complaints or grievances, despite the specific nature of the complaints. Thus, OCR finds that there was no investigation of these complaints consistent with the District's Section 504 grievance procedures. Accordingly, OCR has determined that the evidence is sufficient to support that the District failed to respond to the Student's parent's disability discrimination complaints allegation, in violation of Section 504, as alleged.

OCR also finds that the District has adopted grievance procedures that do not provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation or the Title II regulation, in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b) because they lack certain provisions, i.e., a notice of the outcome to the subject of the grievance and an assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate. Further, the District's principal thought the procedures were online but was otherwise unaware how they were disseminated and could not say how staff, parents, and the public are notified about the procedures.

Allegation #3 – Alleged Failure to Provide the Student's parent with a Meaningful Opportunity to Provide Input into the Student's Section 504 Plan

The Student's parent told OCR that following her receipt of the xxxxxxxx xxxxxxxxxxxx xxxxxxxx x letter that appeared to change the Student's placement, and her discussions with the Section 504 coordinator and the guidance counselor, she requested a Section 504 meeting. The Student's parent told OCR that the District had not held a Section 504 meeting for the Student since the Student was in the eighth grade. The Student's parent told OCR that, rather than promptly scheduling a Section 504 meeting, the District sent home a one-page Section 504 plan for the Student, dated xxxxxxxx xx xxxxx just before the Thanksgiving holiday break. Following her xxxxxxxx xxx xxxxx request, the Student's parent also received copies of the Student's Section 504 plans from previous school years.

The Student's parent and District witnesses acknowledged that there was a yearly discussion, about the Student's Section 504 plan. The guidance counselor referred to those discussions as Section 504 meetings; however, the Student's parent stated that the meetings were not Section 504 meetings, but were meetings to discuss how the plan was to be implemented. The Student's parent told OCR that she did not realize a yearly written plan was produced after each of those meetings. It is undisputed that the services to be provided in the Section 504 plan remained the same for the Student each year.

There is also no dispute that a Section 504 meeting was held on approximately xxxxxxxx xxx xxxxx. Attendees at that meeting included the Student, the Student's parents, the director of pupil services, the counselor, the principal, a teacher, and counsel for the

District. The Student's parent agreed with the Section 504 plan that was decided upon at the meeting.

The Section 504 implementing regulation at 34 C.F.R. § 104.35(c)(3) requires that school districts ensure that placement decisions be made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. This provision has been interpreted to mean that a parent must be given a meaningful opportunity to provide input into placement decisions before they are finalized. If a parent disagrees with the determination, he or she may request a due process hearing.

As noted above, the evidence demonstrates that both the Student and the Student's parent were present for the Student's xxxxxxxx xxx xxxxx meeting, and had the opportunity to provide input into the Section 504 plan. Accordingly, the evidence is insufficient to find that the District failed to provide the Student's parent with a meaningful opportunity to provide input into the Student's placement decisions in violation of Section 504, as alleged.

Allegation #4 – Alleged Failure to Provide Procedural Safeguards

The Student's parent also told OCR that, following the xxxxxxxx xxx xxxxx meeting, she never received a notice of her procedural safeguards following that meeting. The Section 504 coordinator stated that such notices are posted on the District's web site and would be sent to a parent upon request. She stated that the District's procedural safeguards are never sent directly to parents on a routine basis.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that a recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

There is no dispute that the District failed to provide the Student's parent with notice of procedural safeguards after the Section 504 meeting in xxxxxxxx xxxxx or at any other time. The District acknowledged that it was not their practice to provide such notices, unless requested by a parent because the notice is posted on the District's website. Therefore, OCR finds that there is sufficient evidence that the District violated the regulation implementing Section 504, at 34 C.F.R. § 104.36, as alleged.

Allegation #5 – Alleged Retaliation

The Student's parent also alleged that the District retaliated against her and the Student because of her disability-related advocacy on the Student's behalf. In support of this allegation, the Student's parent stated that the District took retaliatory action when it: (1) told

her initially, that there was no xxxxxxxx xxxx in the Student's file and, later, that the note provided was insufficient to xxxxxx the Student's xxxxxxxxxx (2) issued the xxxxxxxxxx xxxxxxxx which threatened the Student with not being allowed to xxxx xx xxxxxx xxxxx xxxxxxxxxx xxxxxxxx xxxxxxxxxx xxx xxxxxxxxxx xx xxx xxxxxxxxxx xxxxxxxx xx xxx xxxxxxxxxx (3) provided the Student's xxxxxx with derogatory information about the Student and his family; (4) failed to respond to her letter, dated xxxxxxxx xxx xxxxx and, (5) failed to schedule a Section 504 meeting.

As discussed above, the Student's parent first made her complaint to the District regarding the assistant principal's behavior toward the Student on xxxxxxxx xx xxxxx

With respect to the xxxxxxxx xxxxxx the Student's parent claimed that, as a result of her xxxxxxxx x complaint, the xxxxxxxxxx xxxxxxxxxx told the Student's parent there was no xxxx in the file for the current school year, on xxxxxxxx xxx xxxxx The Student's parent stated that she had given the note to the guidance counselor, in xxx xxxxx and brought the xxxxxxxxxx xxxxxxxxxx a copy on xxxxxxxx xxx xxxxx When given the opportunity to clarify the complaint allegation, the Student's parent stated that the retaliatory act was the assistant principal's refusal to accept the xxxxxxxxxx xxx xxx xxxxx letter, as written. The xxxxxxxxxx xxxxxxxxxx denied telling the Student's parent that there was no xxxx in the Student's file, but stated that the xxxx was insufficient to xxxxxx the Student's xxxxxxxxxx because his xxxxxxxxxx exceeded the amount stated in the xxxxxxxxxx xxxxxx and that a new xxxx was required, as discussed above. Prior to the receipt of a new xxxxxxxxxx xxxxxx the District counted the Student's xxxxxxxxxx as xxxxxxxxxx But, his xxxxxxxxxx records were corrected once a new xxxx was obtained.

With respect to the xxxxxxxxxx xxxxxxxx also discussed above, there is no dispute that, on xxxxxxxx xx xxxxx the xxxxxxxxxx xxxxxxxxxx gave the Student a letter to take home regarding his xxxxxxxxxx As explained above, the District told OCR that the letter was issued because the Student had already been xxxxx xx xxxxxx xx xxxxx xx xxxxxxxxxx xx xxxxx and that this was a letter sent to all students whose xxxxxxxxxx xxx xx xxxxxx xxxxxxxxxx The xxxxxxxxxx xxxxxxxxxx told OCR that she provided similar letters to more than 60 other students during the 2013-2014 school year. She also met with each of the students individually, including the Student, about the possible consequences of noncompliance with the letter.

The Student's parent also alleged that the District retaliated against the Student when xxxxxxxx xxxxxx made a call to the Student's xxxxxxxx on approximately xxxxxxxx xxx xxxxx making derogatory statements about the Student and his family in retaliation for her xxxxxxxx x letter to the superintendent. The Student's parent told OCR she approved the call with the understanding that the District was helping her obtain a properly worded letter for the Student's xxxxxxxxxx xxxxxx The xxxxxx told OCR that she spoke with the xxxxxxxxxx xxxxxxxxxx and expressed concern that the Student was xxxxxxxx x xxx xx xxxxxxxx that his xxxxxxxxxx did not appear to fit his diagnosis; that other xxxxxxxxxx xxxxxxxx had not been ruled out; and that she had xxxxxxxx xxxxxxxxxx about the Student's xxxxxxxxxx Thus, the xxxxxx said she needed to provide the xxxxxxxx with enough information to alert him to her concerns,

which included the lack of sufficient xxxxxxxx xxxxxxxxxxxx xx xxx xxxxxx xxx xxxxxxxx xxx
xxxxxxxxxxx xx xxx xxxxxx xxxxxxxx xxx xxx xxxxxxxx xxxxxx xxxxxxxx xxxxxxxx

The Student's parent also alleged that the District retaliated against her when the principal failed to respond to her xxxxxxxx xxx xxxxxx complaint. As discussed above, the principal informed OCR that, at the time he received the letter, he was leaving town to accompany the students on senior trip and, therefore, delegated the matter to the Section 504 coordinator. The 504 coordinator acknowledged to OCR that she did not perceive the letter to be a grievance, but rather as concerns expressed by the Student's parent and subsequently scheduled Section 504 meetings with all of the parties.

Finally, the Student's parent alleged that the District retaliated against her and the Student when it failed to schedule a Section 504 meeting. As discussed above, the District provided information showing that it held multiple meetings with the Student's parent in both xxxxxxxx xxxxxx xxx xxxxxxxx xxxxxx during which the Student's continued eligibility for Section 504 and attendant services were discussed and agreed upon

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose or interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. Title II's implementing regulation contains a similar prohibition against retaliation at 28 C.F.R. 35.134.

In analyzing retaliation claims, OCR first examines: 1) whether the individual engaged in a protected activity; 2) whether the recipient had notice of the individual's protected activity; 3) whether the recipient took a materially adverse action contemporaneous with or subsequent to the protected activity; and 4) whether there was a causal connection between the protected activity and the adverse action. If all of these elements establish a prima facie case, OCR next considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. Even if the recipient produces evidence of a legitimate, non-retaliatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide retaliatory motive.

Protected activity includes opposition in a reasonable form by the individual to an act or policy that is unlawful under Section 504 or Title II. To determine whether a "materially adverse action" has occurred, OCR considers whether the alleged adverse action could well dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination. Normally, petty slights, minor annoyances, and lack of good manners do not constitute materially adverse actions. Whether an action is materially adverse is judged from the perspective of a reasonable person in the individual's position. Although the materiality of an action may depend on the context, an individual's idiosyncratic personal preference is not sufficient to establish an adverse action. Depending on the particular

factual circumstances of a case, OCR will also consider whether a series of incidents, which standing alone do not conclusively demonstrate material adversity, may, taken together, constitute a materially adverse action.

If one of the above-listed elements of a prima facie case of retaliation or interference cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements establish a prima facie case, OCR next considers whether the recipient has articulated a legitimate, non-retaliatory, non-interfering reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for prohibited retaliation or interference.

Here, the evidence shows that the District's Superintendent, principal and other administrative staff received copies of the Student's parent's xxxxxxxx x xxx xxxxxxxx xxx xxxxx letters in which she complained about the Student's Section 504 plan services. However, as discussed below, OCR finds that with respect to each the alleged instances of retaliation, the evidence was insufficient to establish one or more of the other elements necessary to support a retaliation violation.

With respect to the xxxxxxxx xxxx xxx xxx xxxxxxxxxxxx xxxxxxxx the evidence shows that while the actions were adverse to the Student and the Student's parent, and occurred shortly after the Student's parent's first complaint, the District provided legitimate non-retaliatory reasons for both requesting the xxxxxxxx xxxx and issuing the xxxxxxxxxxxx xxxxxxxx even though those actions were inappropriate in light of the Student's Section 504 plan. OCR finds that the evidence did not support that these actions were taken as a result of the Student's parent's complaints; rather the reasons provided by the xxxxxxxx xxxxxxxx including her statement that she treated all students with attendance problems, including those without Section 504 plans, the same as the Student, demonstrated a lack of understanding of Section 504 and its' procedural requirements. Thus, OCR did not find that the reasons provided were a pretext for discrimination. The inappropriateness of requesting the xxxxxxxx xxxx and issuing the xxxxxxxxxxxx xxxxxxxx and its' noncompliance with Section 504, is addressed above.

With respect to the alleged derogatory comments by the xxxxxx the evidence did not support that the xxxxxx made any derogatory comments about the Student and/or his family. Rather, the evidence gathered during the investigation indicates that the nurse expressed concern to the Student's xxxxxxxx about his xxxxxxxx and his xxxxxxxx xxx xxxx xxxxxxxx based on her experience with the Student. Additionally, the Student's parent had given permission to the school to contact the Student's xxxxxxxxxxxx office. Accordingly, OCR finds that the evidence is insufficient to support that the District took any adverse action against the Student's parent and/or the Student when the xxxxxx made the call.

With respect to the principal's alleged failure to respond to the Student's parent's xxxxxxxx xxx xxxxx complaint and request for Section 504 meeting, OCR finds that the evidence did not support the Student's parent's assertions. Rather the evidence showed that although the District's Section 504 coordinator did not address the matter as a complaint under the District's grievance procedure, she did specifically respond to the Student's

parent's xxxxxxxx xx letter by scheduling a xxxxxxxx xxx xxxxx meeting to discuss her concerns about the Student's xxxxxxxxxx and a xxxxxxxx xxx xxxxx Section 504 meeting. The District's failure to respond to the complaints as disability discrimination complaints under its grievance procedure, in noncompliance with Section 504, is addressed above.

Lastly, with respect to the allegation that the District retaliated against the Student and the Student's parent when it failed to hold a Section 504 meeting, OCR finds that contrary to the Student's parent's assertions, the District did, in fact, hold Section 504 meetings after the Student's parent's complaints.

Based on the above, OCR finds that the evidence is insufficient to conclude that the District retaliated against the Student and/or the Student's parent, in violation of Section 504, as alleged.

Resolution and Conclusion

To resolve the above-described compliance findings, the District submitted the enclosed resolution agreement (the Agreement), that was signed on February 10, 2015, to OCR on February 13, 2015. Under the terms of the Agreement, the District will: (1) send a letter to the Student's parent(s) notifying him/her that should the Student re-enroll at the District for the 2014-2015 school year, the District will reconvene the Student's Section 504 team to determine what modifications, if any, are necessary to its xxxxxxxxxx policy for any disability-related xxxxxxxx and to address what other services, if any, the Student may need as a result of disability-related xxxxxxxx (2) provide the Student's parent(s) with a written notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree; (3) investigate and notify the Student's parent, in writing, of the outcome of its investigation of the Student's parent's complaints to the District on xxxxxxxx x and xxxxxxxx xxx xxxxx of discrimination based on disability; (4) revise its Section 504 grievances procedures; and (5) adopt, publish and train on the revised Section 504 grievance procedures. OCR will monitor the implementation of the agreement. If the District does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.

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

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

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

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

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

If you have any questions about this letter or OCR's resolution of this case, please contact xxxx xx xxxxx Supervisory Attorney/Team Leader, at (216) 522-xxxx or by e-mail at xxxxxxxxxxxx@ed.gov.

For questions about implementation of the Agreement, please contact Ms. xxxxxxx xxxxx who will be monitoring the District's implementation, by e-mail at xxxxxxxxxxxx@ed.gov or by telephone at (216) 522-xxxx. We look forward to receiving the District's first monitoring report by April 1, 2015. Should you choose to submit your monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure