



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 28, 2016

Xxx XXXXXXXXXXXX xxx
Clark Hill PLC
151 South Old Woodward, Suite 200
Birmingham, Michigan 48009

Re: OCR Docket #15-15-1073

Dear Xx. XXXXXXXXXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on xxxxxxxxx x xxxx, with the U.S. Department of Education’s Office for Civil Rights (OCR) against the Muskegon Montessori Academy for Environmental Change (the Academy), alleging that the Academy discriminated against a student (the Student) based on xxx disabilities and retaliated against the xxxxxxxxx xxxxxxxx. Specifically, the complaint alleged:

1. At the beginning of the xxxx-xxxx school year, the Academy failed to timely and appropriately evaluate the Student for a disability, and provide xxx with disability services, related to xxx xxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxx, xxxxxxxxxxxx, xxxxxxxx, and xxxx xxxxxxxxxxxx xxxxx xxxxxxxxx.
2. During the xxxx of xxxx, the Academy excluded the Student from xxxx-xxx classroom instruction and prevented xxx from having xxxxxx with xxx classmates due to xxxxxxxxxx related to xxx disabilities.
3. In xxxxxxxxx xxxx, the Academy xxxxxxxxx the Student for xxxxxxxxxx related to xxx disabilities, without appropriately conducting a xxxxxxxxxxxxxxxx xxxxxxxxxxxxxx.
4. During the xxxx-xxxx school year, the Academy failed to provide the xxxxxxxxx xxxxxxxx with notice of xxx procedural safeguards with respect to education decisions regarding the Student.
5. In xxxxxxxxx xxxx, an Academy official retaliated against the xxxxxxxxx xxxxxxxx for xxx advocacy on behalf of the Student by informing xxx that if the Student remained at the Academy, the Academy would pursue due process regarding xxx request for disability-related services for the Student.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by public entities, respectively. These laws also prohibit retaliation against individuals who seek to enforce rights or oppose discrimination under these laws. As a recipient of Federal financial assistance from the Department and as a public entity, the Academy is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation into:

- Whether the Academy failed to conduct an evaluation of a student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the student's placement in regular or special education, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35.
- Whether the Academy failed to educate a student with a disability with students without disabilities to the maximum extent appropriate to the needs of the student, in violation of 34 C.F.R. § 104.34(a).
- Whether the Academy failed to appropriately reevaluate a student before making a significant change in placement, in violation of 34 C.F.R. § 104.35(a).
- Whether the Academy failed to provide a qualified student with a disability a free appropriate public education (FAPE), in violation of 34 C.F.R. § 104.33.
- Whether the Academy failed to 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 and an impartial hearing with opportunity for participation by the person's parents and representation by counsel, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.36.
- Whether the Academy 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 he/she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Section 504 or Title II in violation of Section 504's implementing regulation at 34 C.F.R. § 104.61, and Title II's implementing regulation at 28 C.F.R. § 35.134.

In addition to this OCR complaint, the Complainant also filed a complaint with the Michigan Department of Education (MDE). MDE investigated and found the Academy to be in violation of its laws and regulations with respect to each of the following allegations, with the exception of allegation f below:

- a. whether the Academy failed to obtain informed consent from the Student's parent prior to conducting an initial evaluation;
- b. whether the Academy failed to provide the Student's parent with a proper procedural safeguards notice;
- c. whether the Academy failed to assess the Student in all areas related to the suspected disability;
- d. whether the Academy failed to conduct an observation of the Student in the classroom when evaluating xxx for a xxxxxxxx xxxxxxxx xxxxxxxx;
- e. whether the Academy failed to identify, locate, and evaluate a student suspected of having a disability;
- f. whether the Academy denied access to records;
- g. whether the Academy failed to respond appropriately to a request for an independent educational evaluation;
- h. whether the Academy failed to maintain records in sufficient detail to demonstrate compliance with program rules and regulations; and
- i. whether the Academy provided the Student with a FAPE.

Additionally, during the course of the investigation, MDE found the Academy noncompliant on two additional grounds: (1) the Academy did not file a due process hearing after denying the Student's parent's request for an independent educational evaluation (IEE); and (2) the Academy did not provide written notice to the Student's parent within seven days following an Individualized Education Program (IEP) team meeting on xxxxxxxx xx xxxx.

OCR's Case Processing Manual (CPM) provides that, generally, OCR will close complaint allegations when the allegations filed with OCR have been resolved by another federal, state, or local civil rights enforcement agency, all allegations were investigated, and any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint and there was a comparable resolution process under comparable legal standards. OCR's review of the information provided by the parties shows that allegation #4 in the instant OCR complaint with respect to the Academy's failure to provide procedural safeguards is the same as allegation b above that the Complainant filed with MDE. The information obtained shows that MDE investigated this allegation by reviewing the Academy's procedural safeguards developed pursuant to the Individual with Disabilities Education Act (IDEA) and interviewing witnesses and determined that the Academy failed to provide appropriate procedural safeguards to the Student's parent following a request for an evaluation of the Student. MDE then ordered the Academy to remedy this violation by revising its notice of procedural safeguards and subsequently providing it to the Student's parent. As the Section 504 implementing regulation at 34 C.F.R. § 104.36 provides that compliance with the procedural safeguards section of IDEA is

one means of meeting the Section 504 requirement, OCR administratively closed allegation #4, as OCR determined that MDE provided a comparable resolution process, including the provision of remedies, under comparable legal standards.

Although allegation #1 in the OCR complaint was also similarly filed with MDE as allegations c and i above, and MDE found the Academy to be in violation, OCR continued its investigation of this allegation in this instance because OCR’s review of the information obtained to date indicated that MDE’s remedies were not comprehensive enough to be comparable to the remedies OCR generally requires in similar cases.

In order to investigate this complaint, to date, OCR interviewed the Complainant and the Student’s parent. Additionally, OCR reviewed documents submitted by the Complainant and records submitted by the Academy. OCR also received numerous updates from the Complainant, the Student’s parent, and the Academy regarding the current status of the Student. On April 16, 2015, prior to OCR’s completion of its investigation, the Academy expressed interest in resolving this complaint pursuant to Section 302 of OCR’s CPM. Accordingly, OCR has resolved allegations ##1-3 pursuant to Section 302 of the CPM. However, with respect to allegation #5, OCR has determined that the evidence obtained is insufficient to conclude that the Academy retaliated against the Student’s parent as alleged. The reasons for OCR’s determinations are explained below.

Allegations ##1-3: Alleged Disability Discrimination

- **Summary of Information Provided by the Complainant and the Student’s Parent**

[XXX--- paragraph redacted--- XXX]

On xxxxxxxx xx xxxx, the Academy held a Section 504 team meeting, at which Academy staff informed the Student’s parent that the Student did not qualify as a student with a disability under Section 504. The Complainant stated that the Academy’s Section 504 coordinator told the Student’s parent that Section 504 eligibility is reserved for “life changing” problems, and provided as an example a diabetic student who could die from not getting insulin. Also, according to the Complainant, the Student’s mother was told by the Academy that students with mental disabilities only need Section 504 plans at larger, “more chaotic” schools where students “can easily get lost in the shuffle,” and Section 504 plans for students with xxxxxx disabilities are not always necessary at smaller schools like the Academy.

- **Summary of Information Obtained to Date from the Academy**

The documentation xxx submitted on behalf of the Academy shows that the Academy was aware of the Student’s disabilities and of possible behavior problems early in the xxxx-xxxx school year. On the Student’s school registration form provided by the Academy, the Student’s parent indicated that the Student has special medical needs, including xxxxxxxxxxx and xxxxxxx.

[XXX--- paragraph redacted--- XXX]

Following this meeting, the Academy provided the Student’s parent with a written notice of Section 504 procedural safeguards. As noted above, the Student xxxxxxx to the Academy on xxxxx xx xxxx.

[XXX--- paragraph redacted--- XXX]

[XXX--- paragraph redacted--- XXX]

[XXX--- paragraph redacted--- XXX]

The Academy also submitted to OCR copies of its Section 504 policies and procedures and a PowerPoint presentation regarding the Academy’s processes related to special education. OCR reviewed these materials as part of its investigation and found that some provisions of the

policies, procedures, and presentation do not comport with the requirements of the Section 504 regulation. For example, the Academy provided a Wayne RESA document entitled “Section 504 Rehabilitation Act of 1973 A Toolkit for Schools.” OCR reviewed the “What is Section 504?” portion of that document, with the exception of two subsections on service animals and impartial due process hearings, and identified that, on page 9 of the document, the Academy has not filled in the name and contact information for the Academy’s Section 504 Coordinator. Also, on page 10, the document includes a limited definition of a “person with a disability.” Specifically, this document states that the only students eligible for protection under Section 504 are students who: (1) have a mental or physical impairment (2) which substantially limits (3) one or more major life activities. Although only a person who has a physical or mental impairment that substantially limits one or more major life activities is entitled to a FAPE, persons who are regarded as having such an impairment and who have a record of such impairment are also students with a disability entitled to protection under Section 504. Additionally, on pages 14 and 15, the document improperly states that a Section 504 team should include “persons knowledgeable of the student, the evaluation findings, and the meaning of the data.” The regulation implementing Section 504 at 34 C.F.R. § 104.35(c) requires that placement decisions be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. In addition, during the investigation OCR received a copy of a Section 504 procedural safeguards notice the Academy used that did not include a review procedure, as required by the regulation implementing Section 504 at 34 C.F.R. § 104.36.

The PowerPoint presentation submitted by the Academy to OCR deals with the Academy’s “Child Study” process. The presentation instructs teachers to try three different accommodations or interventions in the classroom for two or three weeks to address student behavior or learning challenges. If problems persist, according to the presentation, the Academy’s Child Study Team develops a set of accommodations to be implemented in the classroom. After a month of implementation, the team reconvenes, and if the accommodations did not sufficiently address the identified problems, the Academy then considers whether special education evaluation is appropriate for the student. It appears that this process is followed even for students who the Academy suspects may have a disability.

As noted above, prior to the conclusion of OCR’s investigation into allegations ##1-3, the Academy requested to voluntarily resolve the complaint allegations.

- **Applicable Legal Standards**

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). An appropriate education for the purposes of FAPE 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.

To be eligible to receive FAPE under Section 504, a student must have a mental or physical impairment that substantially limits one or more major life activities. 34 C.F.R. § 104.3(j). Pursuant to Section 504 and Title II, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting.

Section 504 places an affirmative duty on the recipient to individually evaluate any student who, because of disability, needs or is believed to need special education or related services. 34 C.F.R. § 104.35(a). Recipient school districts must establish standards and procedures for the evaluation and placement of such students which ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b).

In interpreting evaluation data and in making placement decisions, the recipient must: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34. 34 C.F.R. § 104.35(c).

The Section 504 regulation, at 34 C.F.R. § 104.34(a), requires the recipient to educate, or provide for the education of, each qualified student with a disability in its jurisdiction with persons without disabilities to the maximum extent appropriate to the needs of the student with a disability. The recipient must place a student with a disability in the regular educational environment unless it is demonstrated that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Section 504 and Title II also require that, in providing or arranging for the provision of nonacademic and extracurricular services, recipient institutions shall ensure that a person with a disability participates with non-disabled persons in such activities and services to the maximum extent appropriate to the needs of the person with a disability. 34 C.F.R. § 104.34(b).

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action regarding the person’s initial placement or any subsequent significant change in placement. The permanent exclusion of a child with a disability, or exclusion for an indefinite period or for more than 10 consecutive school days constitutes a significant change in placement under Section 504. A series of suspensions that are each of 10 days or fewer in duration that creates a pattern of exclusions may also constitute a significant change in placement. Consistent with the regulation at 34 C.F.R. § 104.35(a), before implementing a suspension or expulsion that constitutes a significant change in the placement of a student with a disability, the school district must conduct a reevaluation of the student to determine if the misconduct in question is caused by the student’s disability or if the student’s current educational placement is appropriate. If the team determines that the student’s misconduct is a manifestation of the student’s disability, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student’s educational placement is appropriate and what, if any, modifications to that placement are necessary. If, on the other hand, the group determines that the conduct is not a manifestation of the student’s disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded.

OCR generally has taken the position that, where a student who has not previously been identified as a student with a disability receives discipline that constitutes a significant change in placement, the student has a right to the due process procedures associated with discipline under Section 504 if the district knew or should have known that the student had a disability prior to the misbehavior.

Allegation #5: Alleged Retaliation

- **Summary of OCR’s Investigation**

With respect to the retaliation allegation, the Complainant alleged that the Academy retaliated against the xxxxxxxx xxxxxx in two ways. First, according to the Complainant, after the xxxxxxxx xxxxxxxx requested an xxx for the Student, the MIChoice Director of Curriculum, Instruction and Assessment responded to xxx request in a letter dated xxxxxxxx xxxx, which the Complainant believes was written in a threatening tone and employed language meant to intimidate. Second, on xxxxxxxx x xxxx, the xxxxxxxx xxxxxxx met with MIChoice’s then-Chief Administrative Officer (CAO), a meeting that the xxxxxxxx xxxxxxx recorded with the knowledge and consent of the parties. The Complainant alleged that the Academy retaliated against the xxxxxxxx xxxxxxx during that meeting by pressuring xxx to take the Student to a different school and offering to remove any xxxx xxxx xxxxxxxxxxxx from the xxxxxxxx xxxxxxx if xx were to be enrolled elsewhere. Toward the end of the meeting, according to the Complainant, the xxxxxxxx xxxxxxx asked if there would be any accommodations provided to the Student if xx stayed at the Academy. The MIChoice CAO responded that if the Student remained at the Academy they would have to initiate a due process hearing because they disagreed regarding the evaluation data. The Complainant asserted that the language and attitude exhibited during that meeting constituted a threat, the implication of which was “if you elect to keep the Student here, there will be a legal proceeding and you will have to face our attorney.”

The Complainant and the xxxxxxxx xxxxxxx provided a copy of the xxxxxxxx xx letter and a recording of the xxxxxxxx x meeting, which OCR reviewed as part of its investigation. In relevant part, the xxxxxxxx xx reads as follows:

This letter is in response to your request for an xxxxxxxx xxxxxxxxxxx xxxxxxxx at public expense for [the Student] received by the Academy on xxxxxxxx x xxxx.

The Academy has given, and continues to be willing to give, consideration to your request for an xxx but such is difficult, if not impossible, without you providing us additional information as to exactly what evaluations you disagree with and why. Although the Academy cannot legally require you to provide this information, the provision of this information can assist the Academy in determining whether to grant your request. At this juncture, not knowing why you disagree with the Academy's evaluation(s), the Academy believes it has little choice but to deny your request for an xxx at this time and initiate a due process hearing to demonstrate that its evaluation(s) is/are appropriate pursuant to R 340.1723(c).

Pursuant to 34 CFR § 300.157 of the regulations of Individuals with Disabilities Education Act (IDEA), a parent who is a "prevailing party" may be granted by a court reimbursement for reasonably attorney fees and related costs expended as a result of a due process hearing. The amount of fees may be reduced if a parent fails to provide the Academy with written notice of the problems (and proposed resolution) which prompted this hearing request. In addition, a Academy may make a written offer of settlement to a parent at least ten days prior to the hearing. If the parent is not substantially justified in rejecting the settlement offer, and has not obtained a more favorable result from the hearing officer, fees and costs may not be recoverable by the parent.

Please remember that during the pendency of this hearing and any subsequent proceeding, under 34 CFR § 300.518 of the regulations of the Individuals with Disabilities Education Act (IDEA), unless you and the Academy agree otherwise [the Student] shall remain in his/her present educational placement. If you would like to discuss changing [the Student's] placement/program and/or services from those which he/she is currently receiving while the hearing is pending, please contact me immediately.] [sic]

OCR reviewed the recording of the xxxxxxxx x meeting as well and found that the meeting began with a discussion of the services offered at a small school compared with those provided at a much larger school. The xxxxxxxx xxxxxxx expressed concern that the Student would need more supports to succeed at the Academy, and the MIChoice CAO responded that it would be difficult for a school of the Academy's size to provide supports five days a week, whenever a student needs them. He acknowledged that the law requires the Academy to provide supports, but again asserted that it is difficult for the Academy to provide them on an as-needed basis. He went on to state that the Montessori model only works when students are exposed to it from a very young age and questioned whether the Student could be successful at the Academy.

[XXX--- paragraph redacted--- XXX]

The Academy asserted through its position statement that the Academy did not threaten the xxxxxxxxxxx xxxxx and that the letter denying xxx request for an xxx merely sets forth what is required by Michigan law.¹ As described above, MDE, following its investigation, found the Academy in violation for not having filed a due process hearing after denying the xxxxxxxxxxx xxxxx request for an xxx.

OCR gave the xxxxxxxxxxx xxxxx and the Complainant an opportunity to respond to the information provided by the Academy. The Complainant and the xxxxxxxxxxx xxxxx reasserted that each of the above-referenced actions constituted adverse action taken in retaliation for the xxxxxxxxxxx xxxxx advocacy and for the filing of both the OCR complaint and the MDE complaint. They also asserted that the Academy continued demonstrating aggression, negativity, and hostility at meetings with the xxxxxxxxxxx xxxxx. They said this was particularly evident at an xxxxx x xxxxx, meeting when the Academy denied the xxxxxxxxxxx xxxxx the opportunity to tape record the meeting. Additionally, the xxxxxxxxxxx xxxxx and the Complainant explained that the Student felt some of this hostility when one teacher warned the Student about a potential dress code violation while other students in the class were wearing similar clothing, and on another occasion when a teacher suggested that the Student would be held back even though xxx xxxxxx was assured xx would not be.

- **Applicable Legal Standards**

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 prohibits recipients from intimidating, threatening, coercing, or discriminating against any individual for the purpose or interfering with any right or privilege secured by the regulation or because s/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 examines: 1) whether the individual has engaged in a protected activity; 2) whether the recipient knew about the individual's protected activity; 3) whether the recipient took a materially adverse action against the individual; and 4) whether there is some evidence of a causal connection between the protected activity and the materially adverse action. 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 or from otherwise exercising a right or privilege secured under the statutes and regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners do not constitute materially adverse

¹ The IDEA regulation at 34 C.F.R. § 300.502(b)(2) states, in relevant part, "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either . . . [f]ile a due process complaint to request a hearing to show that its evaluation is appropriate[] or . . . ensure that an independent evaluation is provided at public expense. . . ."). Michigan Administrative Rules for Special Education 340.1724, states that a public agency must respond to a request for an independent educational evaluation within 7 calendar days of receipt of the request by indicating its intention to honor the request or initiate a due process hearing.

actions. The significance of any given act of retaliation will often depend upon the particular circumstances. Depending on context, an act that would be immaterial in some situations may be material in other situations. Whether an action is materially adverse is judged from the perspective of a reasonable person in the individual's position

While OCR would need to address all of the above elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation where the evidence otherwise demonstrates that retaliation cannot be established. For example, if the evidence shows that the parent did not engage in protected activity, it is unnecessary to examine other elements of the *prima facie* case. If these elements of a *prima facie* case of retaliation are established, OCR examines whether the recipient has articulated a legitimate, non-retaliatory justification for its actions that is not a pretext for retaliation.

- **Analysis and Conclusion**

Here, the evidence obtained shows that the xxxxxxxx xxxxxx engaged in protected activity by advocating for the Student's rights under Section 504, of which there is no dispute the Academy had notice. However, OCR finds that there is insufficient evidence to find that the Academy took a materially adverse action against the xxxxxxxxxxxxxx. The Complainant asserted that the tone in which Academy personnel addressed the xxxxxxxx xxxxxx and the threat of a due process hearing at a meeting on xxxxxxxx x xxxx, constituted an adverse action. The Complainant also asserted that the language and tone of the Academy's xxxxxxxx xx xxxx, letter constituted an adverse action because it was meant to intimidate, especially without complete procedural safeguards provided to the xxxxxxxx xxxxxxxx. Based on OCR's review of the meeting recording and the letter, OCR concludes that the language concerning a due process hearing contained in the letter and used during the xxxxxxxx x meeting were recitations of what is required by Michigan law, not unfounded threats to initiate unnecessary and unrequired legal proceedings. Because the Academy did not agree to provide an xxx, as requested by the xxxxxxxx xxxxxxxx, Michigan law required the Academy to initiate due process proceedings. Therefore, the Academy's statements in both the letter and the recording were consistent with and described actions required by Michigan law.

Furthermore, even if OCR had found that these actions were materially adverse actions, which it has not found, the Academy has provided a legitimate non-retaliatory reason for its action in that it was following the requirements of the law, and the evidence does not support that such a reason was pretext. Accordingly, OCR has determined that the evidence is insufficient to conclude that the Academy retaliated against the xxxxxxxx xxxxxxxx in violation of the Section 504 or Title II regulations, as alleged.

Voluntary Resolution and Conclusion

On March 9, 2016, the Academy signed the enclosed Resolution Agreement (the Agreement), which, when fully implemented, will resolve this issues raised in this complaint. The Agreement requires the Academy to: (1) reconvene the Student's IEP team to determine whether, (a) during the time period from the beginning of the xxxx-xxxx school year through xxxxx xx xxxx, the Student had a disability that entitled him to receive FAPE, and if so, determine what

compensatory education or other remedial services the Student requires from this time period when he was either on a xxxx-xxx xxxxxxxx or xxxxxxx xxxx xxxxxx altogether, and (b) since the Student's xxxxxxxxxxxx at the Academy on xxxxx xx xxxx, the Student has been denied FAPE while on a xxxx xxx xxxxxxxx that was not modified to provide instruction in all subject areas to the Student; and (2) will revise, adopt, and implement its Section 504 policies and procedures regarding, at a minimum, identification, evaluation, reevaluation, placement procedures, procedural safeguards, and provision of FAPE to qualified students with disabilities, as well revising its Section 504 grievance procedure to comply with the requirements of 34 C.F.R. § 104.7(b) and revising its notice of procedural safeguards to comply with 34 C.F.R. § 104.36. The Academy will also provide training to all Academy administrators and staff members who are responsible for Section 504 referrals, decision-making, and/or the provision of services under Section 504 to students with disabilities.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the Academy's implementation of the Agreement. Should the Academy fail to fully implement the Agreement, OCR will reopen the allegations and take appropriate action to ensure the Academy's compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Academy'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 Academy may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment. The Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the Academy's cooperation during OCR's resolution of this complaint. We look forward to receiving the Academy's first monitoring report pursuant to the Agreement, which will be due on May 1, 2016. For questions about implementation of the Agreement, please contact xx xxxxxxxx xxxxxx, who will be monitoring the Academy's implementation, by telephone at xxx xxxx xxxxx or by e-mail at xxxxxxxx.xxxxxxx@ed.gov. If you have any questions regarding resolution of this complaint, please contact xx xxxx xxxx at xxx xxx xxxx or by e-mail at xxxx.x.xxxx@ed.gov.

Sincerely,

/s/

Emily Babb
Acting Director

Enclosure