



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

November 20, 2017

Daniel J. Warwick  
Superintendent  
Springfield Public Schools  
1550 Main Street  
Springfield, MA 01103

Re: Complaint No. 01-15-1155  
Springfield Public Schools

Dear Superintendent Warwick:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint filed against the Springfield Public Schools. The Complainant alleged that the District discriminated against his daughter (Student) on the basis of her national origin and disability, and retaliated, by:

- failing to respond appropriately to incidents of harassment and assaults against the Student by other students at the Kennedy Middle School (School) based on her national origin (XXXXX) during the 2014-2015 school year (Allegation 1);
- treating the Student differently based on her national origin by secluding her in a room apart from other students for the duration of a school day as a purported safety measure in April 2015 (Allegation 2);
- failing to provide the Student with a free, appropriate public education (FAPE) by not evaluating the Student's eligibility for special education and/or related aids and services, after he notified the School of the Student's medical diagnoses in fall 2014 (Allegation 3); and
- retaliating for his advocacy on the Student's behalf by refusing to excuse her medical absences from the 2014-2015 school year (Allegation 4).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. OCR also 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. In addition, OCR 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Section 504 and Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint. The regulation implementing Title II contains a similar provision at 28 C.F.R. § 35.134.

In reaching a determination, OCR reviewed documentation from the Complainant and the District, including the District's relevant policies and procedures contained in the Parents & Student Handbook for school years 2014-2015, 2015-2016 and 2016-2017, specifically, the sections entitled "Civil Rights and Safety Policies," "Special Education Referral/Evaluation," and "General Information Regarding Attendance." OCR also reviewed the District's Code of Conduct (as revised June 25, 2014), in addition to internal and external correspondence, and District records. OCR interviewed the Complainant, the Complainant's Representative (who was the Student's XXXXXXXXXX), and District staff, including: the Assistant Principal, the Student's XXXXXXXXXX XXXXXXXXXX and English/Homeroom teacher (the English Teacher), and the XXXXXXX XXXXXXXXXX XXXXXXXXXX.<sup>1</sup>

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Title VI regarding Allegations 1 and 3, which the District agreed to resolve through the enclosed resolution agreement. OCR found insufficient evidence to support the Complainant's Allegations 2 and 4. OCR's findings and conclusions are discussed below.

### **Background**

OCR's review of the District's enrollment data indicates that the District is comprised of 38 elementary schools, six high schools, six middle schools (grades six through eight) and seven specialized schools. The District's enrollment data also indicated that during school year 2014-2015, the District's student population, totaling 25,645, was as follows: 21.9% Black; 0.2% Asian; 62.1% Hispanic; 13.8% White; and 1.9% Multi-racial.

### **Legal Standards**

OCR investigated the following legal issues under the regulations cited:

- *Allegation 1*: whether the Student was subjected to a hostile environment based on her national origin during the 2014-2015 school year and, if so, whether the District failed to respond adequately to the hostile environment, in violation of the regulation implementing Title VI at 34 C.F.R. § 100.3(a) and (b)(1) and (2);

---

<sup>1</sup> OCR also obtained written statements from the Student's math and social studies teachers (who were no longer employed by the District).

- *Allegation 2*: whether the District denied the Student an equal opportunity to participate in its programs and activities by placing her in a separate room apart from other students for the duration of a school day, in violation of the regulation implementing Title VI at 34 C.F.R. § 100.3(b)(1) and (2);
- *Allegation 3*: whether the District denied the Student a free appropriate public education (FAPE) by failing to evaluate her eligibility for special education and/or related aids and services, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.35(a) and (b); and the regulation implementing Title II at 28 C.F.R. § 35.130; and
- *Allegation 4*: whether the District retaliated for the Complainant’s advocacy by refusing to excuse the Student’s medical absences, in violation of the regulation implementing Title VI at 34 C.F.R. § 100.7(e).

## Analysis

### Allegation 1 – Hostile Environment

The Complainant alleged that the Student, who was enrolled in seventh grade during the 2014-2015 school year at the District’s John F. Kennedy Middle School (School), was subjected to continuing incidents of harassment based on her national origin. Based on the information provided by the Complainant and his Representative to OCR, the alleged incidents included the following:

- (a) in fall 2014, students opened the restroom door while the Student was undressing;
- (b) in or around April 2015, two students “trashed” her school supplies, and another student attempted to remove her head scarf;
- (c) in mid-April 2015, a student “assaulted” the Student;
- (d) on or about April 29, 2015, students “booed” and spit on the Student, and “collided against her”; and
- (e) on or about April 30, 2015, students “threatened [the Student’s] life.”

The Complainant further alleged that students made comments to the Student on unspecified dates including: “you have no hair”; “go back home”; “you’re wearing that [hijab] because you are a whore”; and “you are ugly with that [hijab].” The Complainant stated that the Student reported the harassment to the XXXXXXXX XXXXXXXXXX and the XXXXXXX XXXXXXXXXX XXXXXXXX, and the Student’s advocate met with District staff concerning the incidents, but the District failed to take any action.

Harassment based on race, color and national origin is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful, or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student’s participation in or receipt of benefits, services, or opportunities in the recipient’s program. If OCR determines that harassing conduct occurred, and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was

reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.<sup>2</sup> The recipient is also responsible for taking steps to remedy the effects of the harassment on any student who was harassed. These duties are a recipient's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

To determine whether a hostile environment exists, the conduct at issue must be severe, pervasive or persistent. Where the conduct is not sufficiently severe to create a hostile environment, the offending conduct must be more than a casual or isolated incident and must be repeated, continuous, and prolonged. If OCR determines that the harassment was so severe, persistent or pervasive that it would have adversely affected the participation in some aspect of the recipient's educational program by a reasonable person of the same race, color, or national origin as the victim and in similar circumstances, OCR will find that a hostile environment existed.

Whether conduct creates a hostile environment must be determined from the totality of the circumstances, with particular attention to certain factors including the context, nature, scope, frequency, duration, and location of the conduct. In making this determination, OCR takes into account the relevant particularized characteristics and circumstances of the victim. OCR's analysis incorporates the age, intelligence, and experience of a reasonable person under like circumstances and takes into account the developmental differences in maturity and perception due to age. In addition, the identity, number, and relationships of the individuals involved will also be considered by OCR on a case-by-case basis.

OCR found that the District's procedures during school year 2014-2015 (which remained in effect through the 2016-2017 school year) for responding to incidents of harassment, including those based on national origin, state that staff who witness such incidents must notify the principal and the building grievance coordinator, who in turn may contact the District grievance coordinator. Following this notification, the principal or designee in conjunction with school safety personnel should immediately begin an investigation. A student reporting an incident should be directed to the principal or designated civil rights administrator, once emergency needs are attended, and consideration should be given to whether immediate or interim steps are needed to ensure the safety of the student and to prevent retaliation. The investigation must determine whether a civil rights violation has in fact occurred, and should include preserving and gathering evidence from the scene of an incident, and interviewing all victims and witnesses at the scene or as soon thereafter as possible, as well as interviewing others who may have relevant knowledge. The investigation should make a finding of any civil rights violation, and all incidents must be reported on the "Incident Form" and sent to the Safety and Security Office.

*Incident (a) – Restroom*

The Complainant alleged that in fall 2014, other students opened the restroom door when the Student was undressing. OCR found that on October 7, 2014, the former Assistant Principal and the Student's XXXXXXXX XXXXXXXXXX met with the Student's mother and advocate concerning the Student's reports that other students were looking over the restroom stall at her.

---

<sup>2</sup> See 59 Fed. Reg. 11448 (Mar. 10, 1994) ("Racial Incidents and Harassment Against Students At Educational Institutions; Investigative Guidance").

The District reported that the Student identified one of the students, who had transferred out of the School, but did not identify any other students involved in the alleged incident. OCR did not find, and the Complainant did not provide, any evidence indicating that the incident was reported as being based on the Student's national origin, or any other evidence indicating that the students' conduct was because of or motivated by the Student's national origin. OCR found that the Assistant Principal arranged for the Student to have permission to use the nurse's restroom or, if occupied, the female teachers' restroom, and OCR did not find any evidence that any other such incidents involving the Student took place.

*Incident (b) – Destruction of School Supplies & Removal of Headscarf*

OCR did not find any information to support the Complainant's allegation that an incident took place in or around April 2015 involving two students who "trashed" the Student's school supplies, and a third who attempted to remove the Student's headscarf. However, OCR determined that on March 17, 2015, a student (Student 2) broke the Student's pencil box during class. The Assistant Principal stated that she contacted the Student's parents, issued a lunch detention to Student 2, and replaced the broken pencil box and contents.

The Assistant Principal stated that she had no indication that this or any prior incidents were based on the Student's national origin until, later the same day, she received a letter from the School's XXXX XXXXXXXXX Coordinator (the Coordinator) dated March 17, 2015. In the letter, the Coordinator reported receiving a call from the Student's advocate informing her that Student 2 was "bullying [the Student] and continuously disrespects her religious beliefs," including kicking her seat, breaking her pencils, swearing at her, asking "several times to remove her scarf to see her hair," and "put[ting] his hand on her head... about to take off her scarf." The Coordinator also stated in the letter that she had provided the Assistant Principal with copies of a bullying incident report, and a written statement by the Student, which stated that Student 2 "disrespects me and my culture" and that she was "too afraid to come to school because he might take off my scarf."

The Coordinator's letter stated that she had spoken with the XXXXXXXXX XXXXXXXXX about Student 2's conduct, and that the XXXXXXXXX XXXXXXXXX "is aware that this has been an issue in the past." However, the XXXXXXXXX XXXXXXXXX informed OCR that he was not aware of any ongoing issues between the Student and Student 2 prior to the incident of March 17, 2015. The XXXXXXXXX XXXXXXXXX stated that, in response to the report, he spoke with Student 2, who denied the alleged conduct concerning the Student's headscarf. The XXXXXXXXX XXXXXXXXX also spoke with Student 2's mother and asked her to discuss the issue with Student 2 and to emphasize the importance of respecting personal space, "both physical and emotional." After speaking with the Student and the XXXXXXXXX XXXXXXXXX, the Assistant Principal developed a "safety plan" on March 18, 2015, which included providing the Student with an undated pass to her office, and ensuring that the Student and Student 2 were not seated near each other in class.

The District maintained that that no further incidents occurred involving the Student and Student 2. However, notes from a staff meeting on March 23, 2015 indicated that Student's Math Teacher "brought forth the on-going issue of the Student and Student 2" and stated that an incident had occurred in her class in which Student 2 told the Student that she "did not have hair (because her hair is covered)," and the Student responded with a "general shut-up type comment." The Student's Math Teacher informed OCR that she responded to the incident by

contacting the Student’s and Student 2’s parents, issuing detention to Student 2, and reporting the incident at the staff meeting. The meeting notes further indicate that Student 2 “will be suspended for his comments if this continues.”

District staff, including the Math Teacher, stated that they were not aware of any “ongoing issues” between the Student and Student 2, and that this notation may have been a reference to the continuing safety plan, rather than behavior. However, OCR found that despite the repeated incidents alleged in the report of March 17, 2015, and the subsequent incident that occurred in the Student’s Math class, there was no evidence that the District took any actions to further investigate whether any other harassing comments or conduct by Student 2 took place, and to address any hostile environment created for the Student.

*Incident (c) – Assault*

The Complainant alleged that in mid-April 2015, another student (Student 3) “assaulted” the Student. OCR found that on April 9, 2015, the Student reported to her English Teacher that another student had slapped her in the face.<sup>3</sup> The English Teacher informed OCR that Student 3, who was “best friends” with the Student, said that Student 3 slapped the Student because she was upset by a “derogatory remark” the Student made about “Puerto Ricans.”<sup>4</sup>

The English Teacher stated that because she was leaving for the day, she referred the matter to another teacher who mediated the issue, after which both students agreed that the issue was over. The English Teacher informed OCR that she later spoke with students in her class who were upset about the Student’s comment and explained that the comment may have been a “miscommunication” that was based on “cultural differences.” OCR found that Student 3 received a one-day school suspension for the incident.<sup>5</sup> OCR did not find, and the Complainant did not provide, any evidence indicating that the incident was reported as having been based on the Student’s national origin, or any other evidence indicating that Student 3’s conduct was because of or motivated by the Student’s national origin.

*Incident (d) – “Booing,” Spitting and Colliding*

The Complainant and the Complainant’s Representative informed OCR that on or about April 29, 2015, students “booed” and spit on the Student, and “collided against her.” OCR found that on April 28, 2015, the Student informed District staff that during science class, a student (Student 4) spit on her, and that other students whom she could not identify pushed her and called her mother a “bitch.” The XXXXXXXX XXXXXXXX interviewed a student whom the Student had identified as a witness, and collected statements from other students, none of which indicated that they had witnessed the alleged incident. In response to the report of the incident, the XXXXXXXX XXXXXXXX met with the Complainant and the Student’s brother on April 29, 2015, and provided them with the District’s policy concerning bullying.

---

<sup>3</sup> The Complainant’s Representative referred to the Student being “slapped” by another student at the end of April 2015, which appears to be a reference to this incident.

<sup>4</sup> The alleged remarks by the Student, as stated in student witness statements of the incident, and District staff’s recollection, were that “Puerto Ricans who do the Nae-Nae are sluts, only black people do the Nae-Nae,” and “Puerto Ricans are yellow.”

<sup>5</sup> OCR also found no evidence that the District further investigated or imposed any discipline on the Student for her alleged comments.

On April 30, 2015, the District implemented additional provisions in the safety plan for the Student, consisting of moving her desk to the front of the room next to the teacher, teaming her with a student for transitioning, being “vigilant” regarding any inappropriate treatment of the Student, and reporting incidents to the XXXXXXXX XXXXXXXX and the Assistant Principal. The Assistant Principal emailed the Student’s teachers notifying them of the alleged incident and requesting additional information, and teachers responded that this type of conduct was not occurring in their classes. The District determined that the complaint was unsubstantiated and no corrective action would be taken. On the same date, the Assistant Principal also spoke with the Student’s brother to inform him of the safety plan and the option for the Student to transfer to another homeroom.

The District informed OCR that the incident of April 28, 2015, did not raise any concerns regarding any harassment of the Student based on her national origin. However, OCR determined that the XXXXXXXX XXXXXXXX’s notes regarding the incident, dated April 28, 2015, indicated that the conduct reported by the Student referenced her “headscarf.”<sup>6</sup> The XXXXXXXX XXXXXXXX informed OCR that he had no recollection of making this notation regarding the Student’s headscarf or the reason(s) for it. The District contended that it conducted a full “bullying” investigation of the incident, which included inquiry into potential national origin harassment. However, OCR found no evidence to indicate that once the District received notice, it investigated to determine the extent to which the Student was being subjected to harassment based upon her national origin. OCR concluded that the District did not address the potential harassment by conducting further investigation to address any hostile environment created for the Student.

#### *Incident (e) – Threats*

OCR found that on April 30, 2015, Student 4, who believed that the Student had used derogatory words about her (i.e., “black bitch”), confronted the Student in the cafeteria. The District informed OCR that Student 4 was sent home after the incident, and the Student and her friend, Student 3, were sent to write their statements of the incident in the “Reflection Room,” which the District described as a space that was used for in-house suspensions or to redirect students after they have “breakdowns.”

OCR determined that on May 1, 2015, Student 4 was sent to in-house suspension in the morning, but released when the Student did not attend school. Student 4 did not receive any further discipline. The same day, the Assistant Principal sent an email to a District staff member responsible for implementing the District’s anti-bullying policy, requesting a formal “bullying investigation.” In her email, the Assistant Principal noted that the conduct involved “seems to be a two-way street.” The Complainant informed the District that the Student would be absent from school on medical leave, and submitted a letter from a physician.

The District’s investigation concluded that the incident did not constitute bullying because the Student had not been “targeted,” and that the School had responded appropriately. The Chief Schools Officer, Principal and Assistant Principal met with Student’s parents and advocate to review the result of the bullying investigation. The Student was offered the option of remaining at the School with a safety plan in place and a complete change in schedule, or a change of venue

---

<sup>6</sup> The notation reads, in part: “student came and spit on me – said your mother is a bitch” and “if your [sic] wearing a headscarf took- a pen.”

to the District's Chestnut School. The Student transferred to the Chestnut School, where she completed the school year.<sup>7</sup>

The District contends that the Student and other students were engaged in inappropriate behavior that was "reciprocated on an equal basis" (e.g., name-calling, jostling, swearing, etc.), that no student was "targeted," and the incident did not constitute harassment based on national origin. However, OCR found that in Student 4's statement regarding the incident, she claimed that the Student had falsely accused her and other students of spitting on the Student and trying to pull off her religious garb to make her cry, and that other students previously told the Student to "shut up cuz she's a terrorist and called Puerto Ricans yellow." OCR found that the District was obligated to conduct further investigation to determine the extent to which the Student and/or other students were being subjected to verbal or physical harassment based on race/national origin, and whether it was targeted at one student individually, and/or students engaging in similar conduct towards one another. OCR also found that the District offered the Student a change in her schedule or relocation to another school, which may have penalized the Student, rather than the student(s) who may have engaged in harassing conduct.

Based on the above, OCR found that with respect to Allegation 1, the evidence substantiated that the District failed to respond appropriately to the reports that the Student was being harassed based on her national origin, particularly with respect to Incident (b) (alleged breaking of pencil box and removing headscarf), Incident (d) (alleged "booing," spitting and colliding), and Incident (e) (alleged threats).<sup>8</sup> OCR further found that the District was on notice that students were engaged in incidents that involved alleged comments and conduct by students based on national origin and/or race, particularly with respect to Incidents (c) and (e), which included comments directed at the Student as well as those attributed to her.

OCR determined that the District was on notice that the Student was allegedly being harassed by her peers based on national origin, based on reports made by the Student, and on her behalf by her advocate and the Coordinator. OCR further determined, by a preponderance of the evidence standard, that it was more likely than not that the Student was subjected to harassing conduct by Student 2, who commented in a derogatory manner about her headscarf, and that the Student and other students made disparaging remarks to one another based on national origin and/or race. OCR determined that collectively, these incidents resulted in a hostile environment for the Student, and potentially for other students, as the conduct was more than casual or isolated, and would have adversely affected participation in some aspect of the District's educational program by a reasonable person of the same race, color, or national origin as the victim and in similar circumstances.<sup>9</sup> OCR determined that the evidence indicates that the District spoke with students and took some measures to address particular incidents, but that it did not respond by fully assessing the extent and nature of the alleged harassment, and taking steps reasonably calculated to prevent recurrence. Based on the above, OCR determined that the evidence substantiated that the District violated Title VI with respect to Allegation 1, which will be addressed in the enclosed Resolution Agreement.

---

<sup>7</sup> The Student has since left the District and did not return during the course of OCR's investigation.

<sup>8</sup> OCR did not find evidence to substantiate that students made the other comments alleged in the complaint, including "go back home," "you're wearing that [hijab] because you are a whore" and "you are ugly with that [hijab]."

<sup>9</sup> *See* 59 Fed. Reg. 11448 (Mar. 10, 1994) ("Racial Incidents and Harassment Against Students At Educational Institutions; Investigative Guidance"), p. 4.

Allegation 2 – Different Treatment

The Complainant stated that on April 29, 2015, other students threatened the Student and that the District responded to that incident by placing the Student in a secluded room for the remainder of the school day, without notifying her parents. The Complainant stated that the Student told her parents about the incident on April 30, 2015, and they informed the Complainant's Representative, who contacted the District about the incident.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(iii) further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; or subject an individual to segregation or separate treatment in any matter related to the receipt of any service or other benefit under the program.

As stated above, OCR found that following the incident on April 30, 2015, the Assistant Principal sent the Student and her friend to the District's Reflection Room to write their statements of the incident. The Assistant Principal stated that the Student and her friend requested to remain in the Reflection Room, and their classwork was brought to them. The District's log indicated that the Student and her friend remained in the Reflection Room for approximately two and a half hours, until the investigation was completed, and that a teacher, paraprofessional, and approximately five other students were also present during that time.

OCR found no evidence that the District's decision to initially send the Student to the Reflection Room to write her statement of the incident was because of or motivated by her national origin. OCR also did not find any evidence to indicate that any other similarly situated students were treated differently based on national origin. Therefore, OCR determined that there was insufficient evidence to substantiate Allegation 2.

Allegation 3 – Failure to Evaluate Disability/Provide a FAPE

The Complainant stated that he, in addition to his wife and his Representative, met with the Student's teachers and XXXXXXXX XXXXXXXX during a parent-teacher conference in September 2014, and informed them of the Student's background, including her diagnoses of Post Traumatic Stress Disorder (PTSD) and depression. The Complainant alleged that the District should have initiated an evaluation of the Student for special education and/or related aids and services based on this information.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), provides that it is a school district's responsibility to conduct an evaluation, in accordance with the requirements of 34 C.F.R. §104.35(b), of any student who needs or is believed to need special education and/or related aids or services because of a disability. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33, a recipient is required to provide a free appropriate public education (FAPE) to qualified disabled students, which includes special education and/or related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of non-disabled students are met, and are based upon adherence to the evaluation, placement and due process procedures set forth in the regulation.

Students who are eligible for FAPE under Section 504 are entitled to the provision of any services the placement team decides are appropriate, regardless of cost or administrative burden.

The regulation implementing Section 504 does not require districts to evaluate all students with suspected or diagnosed medical conditions or at a parent's request. In determining whether a district has an obligation to evaluate a student, OCR considers the indicia of disability that were available to the district suggesting a need for special education and/or related aids and services, including but not limited to academic performance and medical and behavioral conditions.

The Section 504 regulation defines a person with a disability as one who has a physical or mental impairment which substantially limits one or more major life activities, at 34 C.F.R. § 104.3(j). The regulation includes a non-exhaustive list of impairments and major life activities. Title II, as amended by the *ADA Amendments Act of 2008* (Amendments Act), similarly provides an expansive definition of impairments and major life activities, so that "major life activity" is generally interpreted broadly.<sup>10</sup> Accordingly, in determining if a student has a disability under Section 504/Title II, schools must consider all major life activities that may be impacted by the student's impairment, not just learning, and should review facts concerning the condition, manner or duration of a student's performance of a major life activity, including for example, thinking, reading, or concentrating.

The implementing regulation for Title II states that it does not set a lesser standard than Section 504. Accordingly, OCR interprets Title II to impose the same FAPE obligations as those imposed by Section 504.

OCR found that on September 10, 2014, at the request of the Complainant's Representative (*i.e.*, the Student's XXXXXXXXXX), the Complainant and his Representative met with the Student's teachers and XXXXXXXXXX XXXXXXXXXX to discuss concerns about the Student, based on her prior school experiences in which she was "poorly" and "unfairly treated in XXXX" by teachers who subjected her to physical abuse.<sup>11</sup> The District acknowledged that at the meeting, the Complainant and his Representative informed District staff that the Student had anxiety and depression, but asserted that it was not obligated to evaluate the Student for several reasons, *i.e.*, the Student had no medical diagnosis, had not "exhibited the characteristics of depression and/or anxiety over a long period of time and to a marked degree that adversely affected her educational performance," and the Student's status as a "refugee from XXXX... cannot be used as a basis for initiating an evaluation for special education." As a result of the meeting, the District implemented the following measures to support the Student: (1) use of a key to access the restroom in the guidance office; (2) late day attendance; (3) support with counseling; (4) a note for physical education to pair her with females; and (5) check-ins with the XXXXXXXXXX XXXXXXXXXX.

---

<sup>10</sup> The Amendments Act specifically expanded the definition of major life activities to include, but not be limited to, the general activities of "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Additionally, it included "major bodily functions" in the definition of major life activities, to include, but not be limited to, "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

<sup>11</sup> The Complainant did not allege, and OCR did not find, any evidence to indicate that these measures were not adequately implemented.

The District further stated that in May 2015, the Complainant provided medical documentation from the Student’s physician concerning the Student’s diagnosis of depression and anxiety, in support of the Complainant’s request to medically excuse the Student’s absences. The District contended that its obligation to conduct an evaluation was not triggered at that time because the Student was making effective progress and successfully accessing the curriculum; specifically, the Student had “performed well” academically and did not present as being depressed or anxious.

OCR confirmed that evidence did not indicate that the Complainant or his Representative specifically requested that the Student be evaluated during the 2014-2015 school year. However, based on the above, OCR determined that, even absent the Complainant’s request, the District failed to adequately assess whether the Student required an evaluation for a Section 504 plan due to any impairment that substantially limited one or more major life activities. Specifically, the District failed to assess whether an evaluation was appropriate in the absence of a diagnosis, and based upon relevant indicia, not limited to “longstanding” academic issues. OCR further determined that while the District developed and implemented several provisions to support the Student in school, it did not consider whether the Student was eligible to receive these measures as related aids and services. OCR concluded that the evidence substantiated that the District violated Section 504 and Title II by not fully and appropriately considering whether the Student required an evaluation.

#### Allegation 4 – Retaliation

The Complainant stated that the District retaliated for his advocacy on the Student’s behalf by refusing to excuse her medical absences. The Complainant informed OCR that the Student had a number of absences that resulted from when she stopped attending school and was placed on medical leave from May 1-8, 2015. The Complainant stated that the District subsequently transferred the Student to a different school within the District (Chestnut School). The Complainant stated that he wished to enroll the Student in another district, but was unable to do so due to the Student’s unexcused absences from the time she was on medical leave.

In order to investigate allegations of retaliation, OCR must first determine that there is sufficient information that: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient (a) knew that the individual engaged in a protected activity or (b) believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If OCR determines that any element is missing, OCR will conclude that there is insufficient evidence to support a finding of retaliation.

OCR found that Complainant engaged in a protected activity, of which the District was aware, by advocating on behalf of the Student. However, OCR did not find any evidence to substantiate that the Student was subjected to an adverse action. An act is an adverse action if it is likely to dissuade a reasonable person in the complainant’s position from making or supporting a charge of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

On May 5, 2015, the District received a note from the Student’s physician requesting that the Student’s absences be medically excused, based on the Student’s history of depression and anxiety. The Assistant Principal stated that the District entered the absences as excused the same

day. OCR reviewed the Student's record and determined that it did not reflect any absences during the period indicated by the Complainant (i.e., the fourth marking period).

Based on the Student's record, OCR determined that the Student's absences were medically excused upon receiving the Student's medical documentation. Accordingly, OCR determined that the evidence fails to indicate that the Student was subjected to any adverse action. OCR did not find, and the Complainant did not provide, any other evidence to support that the District retaliated with respect to the Student's absences. Therefore, OCR determined that the evidence is insufficient to support Allegation 4.

### **Conclusion**

On October 30, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement). During the course of the investigation, the District informed OCR that the Springfield Empowerment Zone Partnership (SEZP), a non-profit entity that is a voluntary partnership of the District and the Massachusetts Department of Elementary and Secondary Education, had assumed managerial and operational control over the School as of December 2014.<sup>12</sup> In addition, the District informed OCR that it had contracted with UP Academy Charter School (UP) in July 2016, to manage operations of the School.<sup>13</sup> Accordingly, on November 15, 2017, SEZP and UP also agreed to implement the Agreement.

The Agreement commits the District, SEZP and/or UP to take specific steps to address the identified areas of noncompliance, including:

- to conduct prompt, adequate, reliable and impartial investigations of all incidents of discrimination, including harassment, at the School that are known or reasonably should be known, and to take prompt and effective responsive action reasonably designed to end any hostile environment;
- to revise and administer its climate survey of students, parents/guardians, and personnel at the School to assess the presence and effect of discrimination, including harassment;
- to provide training to all District personnel who are directly involved in responding to complaints of discrimination based on race, color and/or national origin, including harassment;
- to ensure the School is appropriately identifying and evaluating students in accordance with Section 504 and Title II; and
- if the District receives notice that the Student intends to return during the 2017-2018 school year, to: (a) request a meeting with the Student and her parents/advocates which will address any needs/services as a result of any hostile environment the Student was subjected to while previously attending the School, and (b) convene a team of persons knowledgeable about the Student to determine whether the Student is eligible for a Section 504 plan or IEP.

This Agreement is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District, SEZP and UP deemed compliant if the District, SEZP and UP enter into an agreement that, fully

---

<sup>12</sup> OCR determined that the District remains the Local Educational Agency (LEA) for the School.

<sup>13</sup> The District informed OCR that none of the School staff previously employed at the School continued to be employed by the School after UP commenced operations.

performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District, SEZP and UP Academy have fulfilled the terms of the Agreement and are in compliance with Title VI, Section 504 and Title II. As stated in the Agreement, if the District, SEZP and UP Academy fail to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District, SEZP and/or UP written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's, SEZP's and/or UP's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District, SEZP and UP may 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, assists, or participates in a proceeding under a law enforced by OCR. 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. In the event that OCR receives such a request, it 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.

If you have any questions, you may contact Emma Kim, Senior Attorney, at (617) 289-0159 or by e-mail at [emma.kim@ed.gov](mailto:emma.kim@ed.gov).

Sincerely,

/s/

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Melinda Phelps, Esq.