



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

October 10, 2018

Bill Furbush
wfurbush@pelhamsd.org

Re: Complaint No. 01-17-1139
Pelham School District

Dear Superintendent Furbush:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Pelham School District (District). The Complainant alleged that the District discriminated against the Student on the basis of disability when in the fall of 2016, it did not implement his Individualized Education Program (IEP) by failing to develop a plan for his transition into the XXXXX grade (Allegation 1); in October 2016, it failed to address the Complainant's report that the XXXXXX XXXXXXXXXXXX subjected him to disability-based harassment (Allegation 2); it did not reevaluate him prior to implementing a significant change of placement by moving him from a regular education to a self-contained classroom from XXXXXXXX X to XXXXXXXX XX, 2016 (Allegation 3); and after the Complainant reported the XXXXXX XXXXXXXXXXXX's disability-related harassment of the Student to the District's Director of Student Services, it retaliated against the Student by moving him from a regular education to a self-contained classroom from XXXXXXXX X to XXXXXXXX XX, 2016 (Allegation 4).

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1, 3, and 4. In addition, before OCR concluded its investigation of Allegation 2, the

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by fostering educational excellence and ensuring equal access.*

District expressed a willingness to resolve the allegation and OCR determined that it was appropriate to resolve the allegation with an agreement.

Background

The Complainant and District confirmed that during the 2016-2017 school year, the Student started the XXXXX grade at the Pelham Memorial School (School). The District's data indicates that the Student suffers from certain health conditions which caused him to have "XXXXXXXXXXXXXXXXXXXXXXXX" from XXXXXXXXXXXXX to XXXXXX school.

The Complainant informed OCR that in XXXXXXXX 2015, she requested that the District develop a plan for the Student's transition into the School. According to the Complainant, starting in XXXXXXXX 2016, the District made numerous unsuccessful attempts to address the Student's needs. Specifically, the Student's XXXXXXXX XXXXXXXX discussed the Student's upcoming transition to the School. The Complainant asserted that this discussion proved unsuccessful because the Student ultimately shut down. The Complainant stated that once the 2016-2017 school year started, the District created various plans that were ineffective because they assumed the Student could remain at the School the XXXXXX XXX when he could not. The Complainant added that the District refused to allow the Student to receive services from a Board Certified Behavior Analyst (BCBA), and initially convened an IEP Team for the Student (Team) that did not include the Director of Student Services.

The District's data reveals that prior to the start of the 2016-2017 school year, the Team convened twice to develop a plan for the Student's transition into the School. Specifically, the Team convened on XXXX XX, 2016 and agreed to amend the Student's IEP to provide transportation for him to attend counseling sessions at the School, and added the School as the provider of his services as of XXXXX XX, 2016. The Team also proposed a full-time (32 hours per week) regular education classroom with aids/services placement for the Student at the School. Correspondence provided by the District shows that the Complainant agreed to the District's amendments to the IEP and all special education proposals.

The District data indicates that on XXXXX XX, 2016, the Team convened to discuss additional evaluation data and refine its plan for the Student's transition into the School. The Team discussed an independent evaluation conducted of the Student in XXXXX 2016, and obtained the Complainant's consent to share the Student's evaluation and health records with a BCBA, who could provide additional assistance with the Student's transition into the School. Correspondence provided by the District indicates that the Complainant consented to the District's amendment of the Student's IEP to provide a X:X XXXXXXXXXXXXX XXXX, and revise the Student's speech, executive functioning, and occupational therapy goals. On XXXXXXXX X, 2016, the District obtained the Complainant's consent to evaluate the Student's communication skills.

The Complainant and District confirmed that the Student's transition into the School was particularly difficult. From the beginning of the 2016-2017 school year to XXXXXXXX 2016, the Student remained in the School for no more than two hours per day, initially accompanied by the

Complainant. Correspondence provided by the District shows that starting on XXXXXXXX XX, 2016, the School began providing the Complainant written prior notice of the Student’s weekly schedule. For instance, during the week of XXXXXXXXXX XXth, the Student worked with his X:X XXXXXXXXXXXX XXXX to complete his coursework outside of his assigned classrooms throughout the school day, and received tutoring from his XXXXXXXXXXXX XXXXXXXXXXXX after school. The District’s data indicates that the X:X XXXXXXXXXXXX XXXX and Student occupied various locations throughout the School, such as conference rooms and the occupational therapist’s room. According to the Complainant, the Student’s X:X XXXXXXXXXXXX XXXX brought him to the XXXXXX XXXXXXXX room when he became more acclimated to the School.

Correspondence provided by the District reveals that on XXXXXXXXXX XX, 2016, the Complainant informed the School that the Student asked to start taking classes with his peers. In response, the School agreed to bring the Student to the room of each of his assigned classes after the other students left the building to show him where he would sit and generally discuss “what happens in the classroom.” The District’s data indicates that on XXXXXXXXXX XX, 2016, the Team and the BCBA convened to transition the Student into his assigned classes, because he had not attended any of his classes since the beginning of the school year. The BCBA explained that the District’s attempt to let the Student gradually increase his school attendance was not working, and recommended that the Student “XXXX XX” to his classes and stay for the entire school day. The Team, including the Complainant, committed to this approach which included, among other things, the School Psychologist playing XXXXXXXXXXXX with the Student at the beginning of the school day and walking him to Advisory¹, where he could leave two minutes early so he could arrive to his English class before his peers. In addition, the School arranged for the Student to work in alternative locations when he refused to attend his assigned classes.

Correspondence provided by the District confirms that the Student attended his assigned classes on XXXXXXXXXX XX, 2016. The following day, the Complainant informed the School that the Student was experiencing troublesome thoughts stemming from School. The District’s data does not indicate whether the Student attended the School during the remainder of the week.

Correspondence provided by the District indicates that on XXXXXXXXXX XX, 2016, the District convened the Team to review the Student’s IEP. On the following day, the Complainant also provided her consent for the District to perform a Functional Behavioral Assessment (FBA) of the Student.

The District’s data indicates that on XXXXXXXX X, 2016, the Complainant filed a grievance against the XXXXXX XXXXXXXXXXXX, alleging that the XXXXXX XXXXXXXXXXXX was harassing the Student. The District confirmed that because the grievance involved the XXXXXX XXXXXXXXXXXX, the XX XXXXXXXXXXXX conducted the District’s investigation into the matter. The XX XXXXXXXXXXXX interviewed the Complainant, the Student, the Student’s XXXXXX, and the following staff: XXXXXX XXXXXXXXXXXX, XXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX, XXXXXX XXXXXXXXXXXXXXXX, the Student’s X:X XXXXXXXXXXXXXXXX XXXX, and the Student’s XXXXXXXX XXXXXXXXXXXX teacher.

¹ Advisory was the Student’s XXXXX assigned class of the school day.

According to the XX XXXXXXXX, the Student's X:X XXXXXXXXXXXX XXXX stated that the Student was refusing to enter one of his assigned classes. The XXXXXXX XXXXXXXX explained that she approached the Student and encouraged him to go to his class. Specifically, the XXXXXXX XXXXXXXX reported that she told the Student that he could leave his class if he entered only for a short period of time and shared how important it was for him to learn with his peers. With the exception of the XXXXXXX XXXXXXXX, who offered no information because she was not present when the incident occurred, the School staff opined that the XXXXXXX XXXXXXXX's statements were not inappropriate. The XX XXXXXXXX stated that she interviewed the Student alongside the Complainant and the Student's father. The XX XXXXXXXX explained that the Student declined to answer many of her questions about the incident and whispered some responses to the Complainant and his father, who continuously asserted that the XXXXXXX XXXXXXXX harassed the Student on XXXXXXX X, 2016. The XX XXXXXXXX elaborated that during the interview, the Student became nonverbal and, at one point, turned his chair so his back faced her. Nonetheless, the XX XXXXXXXX recalled that the Student confirmed that the XXXXXXX XXXXXXXX tried to get him to go to class.

The XX XXXXXXXX confirmed that she determined that there was no evidence to support the claim of harassment by the XXXXXXX XXXXXXXX. The XX XXXXXXXX informed OCR that her role in the investigation concluded when she submitted her report to the District's former Superintendent. The XX XXXXXXXX reported that she did not share her findings with the Complainant, the Student, or the Student's father. OCR did not obtain information about whether the Superintendent notified the parties of the outcome of the investigation.

The District's data indicates that in a letter dated XXXXXXX X, 2016, the District reminded the Complainant of the New Hampshire compulsory education law and asked that she "allow [the Student] to remain in school the entire day." The District also remarked that if the Complainant believed the Student's "IEP should be amended to reflect a shortened school day," to please inform his Special Education teacher so that the Team could discuss the topic at its next meeting. The District's data reveals that on XXXXXXX XX, 2016, the Complainant provided the District a note from the Student's treating physician (Physician), who explained that "it is unrealistic" to expect the Student to "attend XXXX days of school." The Physician also noted that the Student "should not be penalized for utilizing his accommodation," which she understood to be a XXXX XXXXXXXXXXXX into the School by "increasing the duration of time spent there by XX minute increments each week." The Physician concluded by contending that the Student should not be "marked down as absent, nor his shortened days be considered truant." In a separate letter dated XXXXXXX XX, 2016, the Complainant told the District that "[t]he timing of your letter and the subsequent changes to [the Student's] accommodations for a shortened day have made us feel like you are attempting to intimidate us...Additionally we ask that you have [the Student's X:X XXXXXXXXXXXX XXXX] stop carrying a XXXXXXX-XXXXX and move [the Student] back to the room he was allowed to work in before XXXXXXX X, 2016."

Correspondence provided by the District indicates that in a letter dated XXXXXXX XX, 2016, the District reiterated that the Student has a "full time placement," not a XXXXXXXXXXX day at the School. The District's data did not indicate that the Student's IEP was ever amended to include an accommodation of a XXXXXXXXXXX school day or the incremental XXXXXXXXXXX of his school XXX. The Complainant confirmed that she and the Student's XXXXXXX did not

believe the District had previously provided the Student an accommodation of a shortened school day. Rather, the Student's father explained that in the XXXXXXXX XXth letter, he and the Complainant began advocating for the School to XXXXXXXX the Student's school day because they believed the District would otherwise consider him truant.

In the October 13th letter, the District also clarified that the Student was not moved or assigned to a new room. Rather, the District explained that on XXXXXXXX X, 2016, the Student's X:X XXXXXXXXXXXX XXXX brought the Student to the XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX (XXXX) because the room was available and he refused to go to Advisory. The District stated that the Student ultimately refused to work and left the XXXX at 8:45 a.m. The District stated that this was the only occasion he was brought to this room.

The Complainant asserted that the District changed the Student's educational placement to the XXXX from XXXXXXXX X to XXXXXXXX XX, 2016. The Complainant explained that before the XXXXXXXX Xrd incident, the Student worked in the XXXXXXXXXXXX XXXXXXXXXXXX and XXXXXXX XXXXXXXX rooms. The Complainant initially disputed that the Student was allowed to choose where he worked, but subsequently confirmed that he was given a choice between the XXXXXXXXXXXX XXXXXXXXXXXX and XXXXXXX XXXXXXXX rooms. Although the Complainant confirmed that she understood that the Student's educational placement did not change each time he worked in a different room, she asserted that his educational placement was changed when he occupied the XXXX because it is a self-contained room.

On XXXXXXXX XX, 2016, the District convened the Team to review the Student's accommodations, propose a shortened school day educational placement for the Student, and engage a third-party to provide XXXXXXXX-based services to him. During the meeting, after the District expressed its interest in shortening the Student's school day and providing him autism-based services, the Complainant stated that she planned to place the Student in a XXXXXXX XXXXXXXX school because the District cannot provide him a free appropriate public education. The Complainant explained that the District's plan for the Student's shortened day was similar to its previous plans, which were unsuccessful. Later that day, the District received notice that the Complainant had enrolled the Student in a XXXXXXX XXXXXXXX school. The Complainant and the Student's father confirmed that the District did not evaluate the Student before they removed him from the District.

Allegations 1 and 3

Legal Standard

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

regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

In investigating an allegation of a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

A school district must conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial placement or any subsequent significant change in placement. In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

A series of removals from a student's assigned educational placement that are ten days each or fewer in duration may create a pattern of exclusion that constitutes a significant change in placement requiring a prior evaluation. The determination of whether the series of removals creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors considered in determining whether a series of removals has resulted in a significant change in placement are the length of each removal, the proximity of the removal to one another, and the total amount of time the student is excluded from the assigned educational placement.

Analysis of Allegation 1

The Complainant alleges that the District failed to develop a plan that allowed the Student to successfully transition to the School. Specifically, the Complainant explained that although she notified the District that the Student required a transition plan in December 2015, the District waited three months to attempt its first plan. The Complainant also asserts that the District's plans were all unsuccessful.

The District denies that it failed to develop a plan for the Student to transition to the School. The District contends that it convened numerous Team meetings, implemented numerous plans, and would have tried additional plans if the Complainant had not removed the Student from the District.

OCR finds that there is insufficient evidence to support the Complainant’s contention that the District failed to implement the Student’s IEP by not developing a plan for his transition into the sixth grade. On the contrary, the evidence establishes that starting in February 2016, the District attempted numerous plans, amended the Student’s IEP twice, and implemented numerous accommodations to aid the Student’s successful transition to the School.

During the 2015-2016 school year, the District engaged the Student’s guidance counselor to discuss his transition to the School. In August 2016, the Team amended the Student’s IEP to assign him a X:X XXXXXXXXXXXX XXXX and revise his speech, executive functioning, and occupational therapy goals. After it became clear that the Student could not attend his assigned classes, the District arranged for him to spend the school day completing course work with his X:X XXXXXXXXXXXX XXXX and to receive additional tutoring after school. When the Student later expressed an interest in attending his assigned classes, School staff attempted to lessen his anxiety by showing him where he would sit in each of his classes. Once the BCBA recommended that the Student attend full school days, rather than gradually building to a full school day, the Team developed a plan to facilitate this process by providing him additional accommodations, such as assigning School staff to play basketball with him and walk him to Advisory, as well as giving him extra time to transition to his next class. Lastly, the Team proposed a shortened school day for the Student after his treating physician recommended and the Complainant requested this accommodation. Although the District offered to continue developing new plans to help the Student attend the School, the Complainant enrolled the Student in a XXXXXX XXXXXXXX school in XXXXXXXX 2016. Given these facts, OCR finds that the District appropriately implemented the Student’s IEP and developed numerous plans for his transition into the sixth grade. Accordingly, OCR did not determine that the Student experienced a denial of a FAPE in the fall of 2016.

Please note that OCR’s investigation of this allegation was limited to determining whether the District followed the procedures required by Section 504. OCR generally does not review or second-guess the result of individual evaluation, placement, and other educational decisions as long as the District follows the “process” requirements of Section 504 (concerning identification and location, evaluation, placement, and procedural safeguards). Substantive disagreements over a student’s evaluation, services, placement, or educational program are more appropriately addressed through a due process proceeding. Information about New Hampshire’s IDEA due process procedures may be found at https://www.education.nh.gov/instruction/special_ed/complaint.htm.

Analysis of Allegation 3

The Complainant contends that the District changed the Student’s educational placement when it assigned him to the XXXX classroom from XXXXXXXX X to XXXXXXXX XX, 2016. The Complainant also asserts that the District failed to reevaluate the Student before implementing this placement. The District denies that it changed the Student’s educational placement at any time during the fall of 2016. The District states that the Student only worked with his X:X XXXXXXXXXXXX XXXX in the XXXX classroom on XXXXXXXX X, 2016.

The District's data establishes that on XXXXXXXX X, 2016, the Student's X:X XXXXXXXXXXXX XXXX took him to the XXXX to work on his assignments because the Student refused to go to Advisory. Correspondence provided by the District indicates that the Student's X:X XXXXXXXXXXXX XXXX brought the Student to the XXXX because the Team agreed that the Student should be provided various locations within the School to complete work when he refused to go to his assigned classes. Although the District and the Complainant dispute whether the Student's educational placement was changed to the XXXX room and the number of days he worked in it, OCR finds that even if the Student worked in the XXXX room from XXXXXXXX X, to XXXXXXXX XX, 2016, this period did not result in a significant change of placement. In these circumstances, this six school-day period is not long enough to constitute a sufficient change of placement. Further, OCR notes that the Complainant confirmed that the Student was not working in XXXX room for the entire school day. Accordingly, OCR finds that the Student's use of the XXXX room to complete his work did not constitute a significant change of placement.²

Allegation 2

Legal Standard

A district's failure to respond promptly and effectively to disability-based harassment about which it knew or should have known, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A district may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the district had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

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

² Even though the District was not required to conduct a preplacement evaluation of the Student because it did not change his educational placement, the District's data demonstrates that it appropriately considered the Student's prior evaluations and initiated its own evaluation processes to determine whether the Student's IEP services remained appropriate. At the August 25, 2016 Team meeting, the Team discussed the Student's independent evaluation and obtained the Complainant's consent to share the Student's evaluation and health records with a BCBA. The District also provided the Complainant consent forms for an additional evaluation, which she authorized on September 8, 2016. Thereafter, the District sought permission to conduct an FBA on the Student that the Complainant also approved.

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

Analysis

Before OCR completed its investigation of this allegation, the District requested to resolve it pursuant to Section 302 of the *Case Processing Manual*, and OCR determined that a voluntary resolution was appropriate. To date, OCR has not obtained the data necessary to determine whether the District notified the Complainant of the outcome of its investigation of the XXXXXX XXXXXXXXXXXX's conduct on XXXXXXXX X, 2016. To complete the investigation, OCR would need to interview the District's former Superintendent and the Complainant. These interviews would provide OCR additional information about the District's investigation of the Complainant's grievance.

Allegation 4

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future;³ (2) the individual experienced an adverse action caused by the recipient;⁴ and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

³ A "protected activity" is the exercise of a right that is protected under OCR's non-discrimination laws.

⁴ An adverse action is something that could deter a reasonable person from engaging in further protected activity. If appropriate, petty slights, minor annoyances, and lack of good manners do not normally constitute adverse actions.

Analysis

OCR notes that the Complainant engaged in protected activity on XXXXXXXX X, 2016, when she filed a grievance against the XXXXXXX XXXXXXXXXXXX alleging that the XXXXXXX XXXXXXXXXXXX harassed the Student. However, there is insufficient evidence to support the allegation that the Student experienced an adverse action caused by the District.

As discussed above, OCR finds that there is insufficient evidence to support the Complainant's contention that during the fall of 2016, the District moved the Student from his regular education to a self-contained classroom. On the contrary, the District's data establishes that on XXXXXXXX X, 2016, the Student's X:X XXXXXXXXXXXXXXXX XXXX took him to the XXXX classroom to work on his assignments because the Student refused to go to Advisory. The Student's X:X XXXXXXXXXXXXXXXX XXXX brought the Student to the XXXX because the Team agreed to offer the Student various locations within the School to complete work when he refused to go to his assigned classes. The evidence demonstrates that starting in September 2016, the Student worked in alternative locations, such as conference rooms, occupational therapy, and the English Learner room. As stated above, the evidence does not indicate that the District changed the Student's educational placement by moving him to a self-contained classroom. OCR finds that allowing the Student to work in the XXXX would not deter a reasonable person from engaging in further protected activity. Therefore, because he did not experience an adverse action, OCR finds there to be insufficient evidence that the District retaliated against the Student.

Conclusion

Concerning Allegations 1, 3, and 4, for the reasons explained above, OCR finds there to be insufficient evidence that the District violated Section 504 and Title II. Concerning Allegation 2, on September 26, 2018, the District agreed to implement the steps enumerated in the enclosed Resolution Agreement (Agreement), which will address the concerns raised by Allegation 2. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be 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 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 Attorney Abra Francois at (617) 289-0142 or by e-mail at Abra.Francois@ed.gov.

Sincerely,

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Alison M. Minutelli
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