



Summary of Preliminary Investigation

During the XXXXXX school year, the Student attended the XXXXXXXXXXXXXXXXXXXXXXXX in the District. In the XXXXXXXX, the Student had a Section 504 plan, which incorporated a behavior plan. In the XXXXXXXX, the team determined the Student was eligible for an Individualized Education Program (IEP), the IEP was created, and her behavior plan was modified. The IEP and behavior plan allowed XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XX. The Student is XXXXXXXX XXXX.

Legal Standards

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. 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. 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.

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI. Similarly, 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;<sup>1</sup> (2) the individual experienced an adverse action caused by the recipient;<sup>2</sup> and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, 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;

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<sup>1</sup> A “protected activity” is the exercise of a right that is protected under OCR’s non-discrimination laws.

<sup>2</sup> An adverse action is something that could deter a reasonable person from engaging in further protected activity.



determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations investigated. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at [Catherine.Deneke@ed.gov](mailto:Catherine.Deneke@ed.gov).

Sincerely,

/s/

Michelle Kalka  
Compliance Team Leader

Enclosure

cc: Joshua R. Coleman, [jcoleman@mlmlawfirm.com](mailto:jcoleman@mlmlawfirm.com)