



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

October 28, 2021

Robert Malay  
Superintendent of Schools  
School Administrative Unit 29

By email: XXXXXXXXXXXXXXXXX

Re: Complaint No. 01-19-1137  
School Administrative Unit 29

Dear Superintendent Malay:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against School Administrative Unit 29, which we will refer to as the District. The Complainant alleged that the District discriminated against her son (Student) on the basis of his disability by inappropriately restraining and secluding him on numerous occasions during the 2018-2019 school year.

As explained further below, OCR's investigation indicated that there were no instances of restraint or seclusion of the Student. Accordingly, OCR modified the legal issues investigated to the following:

- Whether the District denied the Student a free appropriate public education (FAPE), in violation of 34 C.F.R. Sections 104.33(a) and (b), and 28 C.F.R. Section 35.130, in its response to the Student's behavioral needs; and
- Whether the District failed to reevaluate the Student, who was receiving special education and/or related services, based on new information about the Student's needs, in violation of 34 C.F.R. Section 104.35(d) and 28 C.F.R. Section 35.130.

Before OCR completed its investigation, the District expressed a willingness to voluntarily resolve the concerns identified by OCR by taking the steps set out in the enclosed resolution agreement.

### **Jurisdiction**

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, 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 U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public

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entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education.

## **Legal Standards**

### **Section 504 and Title II**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education, that is a FAPE, to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a district shall (1) draw upon information from a variety of sources, including physical condition 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, which requires placement in the regular educational environment to the maximum extent appropriate.

Also, the Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's current educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP, behavior intervention plan, and/or placement are necessary.

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

### **Definitions**

The Civil Rights Data Collection defines physical restraint as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head

freely. It does not include a physical escort, which means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

“Seclusion” is defined by the Civil Rights Data Collection as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout or temporary removal from the general education setting, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting, and is implemented for the purpose of de-escalation.

### **Summary of Preliminary Investigation**

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff, including the Student’s principal, case manager/special education teacher, behavioral interventionist, and classroom teacher.

### **Findings of Fact to Date**

The Student was enrolled in XXXXX grade at the District’s Fuller School during the 2018-2019 school year. At the beginning of the school year, he had an IEP and intervention plan in place.

The IEP, dated XXXX XX XXXX, described the Student’s disability as XXXXXXXXXXXX XXXXX XXX XX XXXXXXXXXXXXXXXXXXXX XXXXXX. It provided for XXXXX XXXXX XXXXXXXXXXX XX XXXXXXXXXXX XXXXX XXXXXXXXXXX XX X XXXXXXX XXXXXXXXXXX XXXXX XXXX XX XXXX, XXXXXXX XXXXXXXXXXX XXXXX, and XXXXXXX XXXXXXX XXX XXXXX XXXX XXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX XXX XXXXX XXXXXXXXXXX XXXXX. With respect to behavior, the IEP indicated that the Student XXXXX XX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX X XXXXXXX XXXX XXXXXXXXXXX XXXXXXXXXXX XX XXXXXXXXXXX XXX XXX XXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX.

Regarding behavior, the IEP stated that staff should be XXXXX XX XXX XXXXXXX XXXXXXXXXXX XXX XXXXXXX XXXXXXXXXXX XXXXXXX XX XXXXXXX XXXX XXX XXXXX XXX XXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX. XX XXX XXXXXXX XXXX XXXXXXX XX X XXXXXXX XXXXX XXXX XX XXX XXXX X XXXXXXX XXXXXXX XXXXXXX XXX XX XXXX XXXXXXX XX XXXXXXX X XXXXXXXXXXX XXXX XXXX XXXXXXX XX XXXXXXX XXXXXXXXXXXXXXXXXXX XXXXX. The IEP indicated that XXXXXXX XXX XXXXXXX XX XXXXX XXXXXXX XXXXXXX XX XXXXXXXXXXX XXXXXXX. The IEP did not address any restraint or seclusion.

The IEP also required that the Student have a “specific behavior plan XXXXXXX XXXXXXX XXXXXXX XXXXXXX. The District did not provide documentation or other evidence of a behavior plan in place at the start of the school year.

The intervention was developed during the XXXXXXXXXX school year. It was based on an “informal” Functional Behavioral Assessment developed from a XXXXXXXX XXX XXXX file review, an XXXXXXXX XX XXXXX educational evaluation, and the Student’s IEP that was in place in XXXXX XXXX.

The intervention plan included XXXXXXXXXXXX XXXXXXXXXXX XXXX in the Student Support Center, which was the XXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXX. District staff described the center as part of the school’s multi-tiered system to provide social-emotional learning support for students who needed either small group or individual check-ins with the behavioral interventionist. District staff filled out forms tracking behavior for students accessing the Student Support Center, which were reviewed on a weekly basis. The behavioral interventionist and SSC team would use that data to design interventions and support, which they would then implement.

The intervention plan also included opportunities to XXXX XXXXX; XXXXXXX XXX XXXXXXX XXXX XX XXX X XXXXXXX XXXXX XX XXX XXX XX X XXXX XXXXXXXXXXX; XXXXXXX X XXXXXXX XXXXXXX XXXXXXX XXX XXX XX XXXXXXXXXXXXXX XXX XXXXXXX XXXXX XX XXXX XXX XX XXXX XXXXXXXXXXX XXXXXXX XX XXXXXXXXXXX. The intervention plan did not address the use of restraint or seclusion.

### **Behavioral Interventions**

The District informed OCR that the Student was not restrained by District staff at any time during the 2018-2019 school year. District staff told OCR that they were aware that restraint was not to be used for the Student, because the Complainant had informed the District that XXX XXXXXXX XXXXX XXXXXXX XXX X XXXXXXX XXXXXXX XXX XXXXXXXXXXX XXX XX XXXXXXX XXXXXXX.

District staff stated when the Student was escalated and XXXXXXX XX XXXXXXX XXXX XXXXX XXXXX XXXXXXX XX XXXX XXXXX XX XXXXX XXXXX XXX XX XXXXX XXXXX XXXXXXX XXXXX XXXXXXX XX XXX XXXX XX XXXX XXXX but they did not use any restraint holds at any time. District staff stated that the only other time they made physical contact with the Student was when escorting the Student back to class/school using the Crisis Prevention Institute method for a physical escort. Specifically, a staff member stood on each side of the Student, and each staff member held the Student’s arm with one hand and his armpit with their other hand; during these escorts, the Student was allowed to stop walking and/or sit on the floor until he was ready to proceed again, except when the Student XXXXX XX XXX XXXX XXX XXXXXXX XXX XXXXXXX XXXXXXX to be brought to a landing or floor so he could sit safely.

OCR did not find, and the Complainant did not provide, evidence of any specific incidents of restraint involving the Student during the 2018-2019 school year.

District staff also stated indicated that while the Student frequently accessed the Student Support Center, he was not secluded on any of those occasions. District staff stated that the Student had

regular, daily intervention meetings with the behavioral interventionist in the Student Support Center, when only the behavioral interventionist was in the room with him. The District indicated that the Student also accessed the Student Support Center when he became dysregulated, to cool down. The District stated that at such times, two staff members were always in the Student Support Center with the Student, and the door was closed but not locked. These staff members could include the Student's behavioral interventionist, case manager/special education teacher, principal, classroom tutor, occupational therapist, and/or counselor. District staff stated that the Student was not prevented from leaving the Student Support Center at any point; rather, on a number of occasions, the Student was able to open the door and XXXXX XXXX XXX XXXX XXXXXXX XXX XXXXX XXXXXXX. District staff also stated that when the Student became escalated in the classroom, they would clear the room of other students while staff tried to have the Student regulate in class, but the Student was not prevented from leaving and would run to the Student Support Center.

OCR did not find, and the Complainant did not provide, evidence of any specific incidents of seclusion involving the Student during the 2018-2019 school year.

The Complainant informed OCR that during the 2018-2019 school year, the District would try different strategies for six weeks, such as sending the Student to the Student Support Center for a period of XXX hours at a time for his behavior, and then would change the strategies when they were not effective, but did not maintain any systematic behavior plan, protocol, or assessment.

District staff informed OCR that, although there was not a specific behavior plan, they followed protocols that were collaboratively created with the Complainant and the Student's other parent. They described that the interventions they tried included: giving the Student space; talking to him privately; having friends chat with him; using distraction; and attempting to help him self-soothe and use calming tools. District staff stated that if the Student continued to escalate XX XXX XXXXX XX XXX XXXX XXX XXXXXXX, another staff member would be contacted to assist, and the Student would go to the Student Support Center to help him de-escalate and get his body back under control.

District staff stated that in the Student Support Center, they would offer the Student a "break spot" to sit and be safe, and try to use distraction. If the Student continued to escalate, they would give him simple directions (such as sitting on the floor) and wait before repeating them, and if he was escalating to aggressive behavior at that point, they would use quiet waiting. District staff stated that if it was close to an hour and the Student was still being aggressive, they would contact the Complainant to say whether they could de-escalate him or whether he needed to go home.

The District did not provide any records regarding the occasions when the Student accessed the Student Support Center for calming purposes, such as any documentation of the reasons/circumstances for each visit, strategies used, the amount of time he spent in the center, whether the Complainant was contacted, and if the Student was able to return to class, etc.

### **IEP Team Meetings**

The District provided an incident log and daily data sheets that reflected a total of XX behavioral incidents involving the Student during the 2018-2019 school year, including XXXXXX XXX XXXXXXXX XXXX XXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XXX XXXXXXXX XXXX XXX XXXXXXXX XXXXXXXX. The incident log appears incomplete, since the last incident listed is on XXXX XX XXXX, while the Student's attendance record indicates an additional incident in XXXX XXXX (discussed *infra*).

The documentation provided by the District indicated that the Student's IEP team convened XXXXX times over the course of the 2018-2019 school year concerning the Student's behavior; these meetings included the Complainant and the Student's other parent. The relevant discussion and outcome of each IEP meeting are summarized below.

XXXXXXX XX, 2018 IEP Meeting

The District convened the Student's IEP team on XXXXXXXX XX, 2018, for a progress meeting. The incident log reflects that prior to the meeting, the Student had XXX behavioral incidents since the start of school, including XXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXX XX XXXXXXXX. The meeting notes reflect that the Team discussed the Student's experiences over the summer and his behaviors. The notes indicate that the team agreed to revisit the XXXXXXXX XXXX Functional Behavioral Assessment and ensure that staff were using a consistent approach.

XXXXXXXXXX XX, 2018 IEP Meeting

After the XXXXXXXX XX meeting, the incident log reflected that the Student had XX behavior incidents, including XXXXXXXX XX XXXXXXXX XX XXXXX XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX. On several occasions, the Student lost recess or was escorted to the Student Support Center. The Student was given an out-of-school suspension for XXX days on XXXXXXXXXXXX XX, 2018, after he XXXXX XXXXXXXX XXX XXX XXXXXXX XXXX XXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXX.

The incident log reflected that the Student's team met on XXXXXXXX XX, 2018 for a progress meeting and to create and implement a behavior plan. The District did not provide OCR with documentation of the discussion at this meeting, nor any documentation of this new plan, however. According to the incident log, the Student stayed in the Student Support Center for XXXX hours "following a new plan for time out of class after aggression" later that day.

XXXXXXXX XX, 2018 – *Function Behavioral Assessment and New Intervention Plan*

XXXXXXXX XX, 2018, the District conducted another Functional Behavioral Assessment for the Student. It was based on assessments from the prior school year, i.e., educational, psychoeducational, and occupational therapy evaluations conducted in XXXXX and XXXXX XXXX, and the file review from XXXXXXXX XX XXXX. The assessment's stated goal was to teach the Student self-regulation skills in the social-emotional domain, and increase classroom

participation and task completion. It stated that the Student Support Center and referral data would be reviewed to determine the frequency and duration of behavior and the success or need to adjust the plan.

The Functional Behavioral Assessment resulted in a new intervention plan that included: XXXXXXXXXXXX XXXXXXXXXXXX time in Student Support Center, similar to the prior plan; XXXX XXXXXXXX XX XXXXXX XXX XXXXXXXX XX XXXXXX XXXXXXXX XXXXXXXX XX XXXXXXXXXX XXX XXXXXXXXXX; XXXXXXXX XXXXXXXX XXXXXX XX XXXXXXXX XXXXXXXX XXX XXXXXXXX; XXXXXX XXXXXXXX XX XXXXXXXXXXXXXXXX XXXXXXXXXXXX XXXX XXXXXXXX XXXX XX XXXXXXXX XXX XXXXXX XXXXXXXX XXX XXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX. This intervention plan did not address the use of restraint or seclusion.

Although the intervention plan required the “[u]se of a behavior plan to promote safe behavior and following adult direction,” District staff confirmed that there was no separate behavior plan for the Student. OCR found that while the Student’s intervention plan set forth general management techniques, it did not contain specific protocols or strategies for when the Student was becoming/became dysregulated, nor did it describe circumstances in which the Complainant would be contacted and/or guidelines for sending the Student home because of his behavior.

#### *XXXXXXXX XX 2018 IEP Meeting*

The incident log indicates that thereafter, the Student had XX additional behavioral incidents, including: XXXXXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX XXX XXXXXXXX XXXXXXXXXXXX XXXXXX XXXXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXXXXXXX XXX XXXXXXXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXXX XXX XXXXXXX XXXXXX XX XXXX XXXXXXXXXXXX XX XXX XXXXXXXXXX XXXXXX XXXXXXXXXXXX. The Student was also escorted to the Student Support Center on multiple occasions (though the incident log did not specify for how long), including for XXX incidents on XXXXXXXXXXXX XX XXX XXXXXXX, for which he received XXXXXXXXXXXX out of school suspensions for aggression including XXXXXXXX XXXXXXXXXX XXXXXXX XXXXXX.

On XXXXXXXX XX 2018, the District convened the Student’s IEP team at the Complainant’s request. According to the meeting notes, the Complainant specifically requested to discuss the frequency with which the Student was being sent home and the criteria for doing so, in addition to XXX XXXXXX. The team proposed to amend the Student’s IEP to reflect XXXX XXXXXX XXXXXXX XXX XXXXXX XXX X XXXX XXXXXXX XXX XXX, in addition to XXX XXXXXX XXX XXX XX XXXXXXX XXXXXXX XXXXXXX. Although the Complainant agreed to this proposal on XXXXXXXXXXXX XX, 2018, the evidence indicates that the Student was not provided with a XXX XXXX until in XXXXXXXX XX XXXXXX 2019. District staff attributed the delay to XXX XXXX XXXXXXX XX XXXX X XXXXXXX XXXXXXXXXXX XXX XXX XXXXXXX.

The District did not provide any documentation indicating that the Student’s IEP was formally revised during the 2018-2019 school year to reflect the additional service of the XXX XXXX.

#### *XXXXXXXX XXX 2019 IEP Meeting*

The incident log reflects that through late XXXXXXXX 2019, the Student experienced XXXXX more behavioral incidents, in which he XXXXXXX XXX XXX XXXXXXX XXX XXXXX. The District convened the Student's IEP team on XXXXXXX XXX 2019, for a progress meeting.

The District was unable to provide OCR with the team's notes, but provided an attendee's notes reflecting that the discussion included the Student's noncompliance and aggression, the use of the Student Support Center to take breaks, and the use of simplistic tools in the classroom. The notes did not indicate that the IEP team proposed to change the Student's services or conduct evaluations in response to these incidents. Rather, the notes stated that the IEP team would convene another meeting.

*XXXXXX XX 2019 IEP Meeting*

The Student had XXXXX behavioral incidents through XXXXXXXX 2019, including XXXXXXXX XXXXXXXX XX XXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXX XXX XXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXX XX XXX XXXXXXX XXXXXXX XXXXXXX XXXXX XX XXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XX XXXX XXXXX XXX XXXXXXX XX XXX XXXX XXXX X XXXXX.

On XXXXXXXX 2019, the District convened the Student's IEP team (including the Complainant and the Student's other parent). The IEP team decided to evaluate the Student, included reviewing the Student's previous evaluations, recent observations, and XXXXX XXXXXXX XXXXXXX XXXX XXX XXXXXXX XXXXXXX. The team reviewed the file as well as previous evaluations (XXXXX XXXX) and proposed to find the Student eligible with a second disability of XXXXXXX. The Complainant agreed to the proposal the same day. The District did not put in place a behavior plan, or any new or additional interventions or supports at this time.

*XXXX XX 2019 IEP Meeting*

In the approximately two months following the XXXXXXX XXXX IEP meeting, the incident log reflected XXXX behavioral incidents, which included the Student XXXXXXX XXX XXXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXX XXX XXXXXXX XXX XXXXXXX XXX XXXXXXX XXX XXXXXXX XXX XXXXXXX XXXXXXX XXXXXXX.

On XXXX XXX 2019, the District convened the Student's IEP team for an annual review. The District proposed that the Student's IEP include: XXXXXXX XXXXXXX XXX XXXXXXXX XX XXXXXXX XXXXXXX XXXXXXX XXXX XXXXXXXXXXX XXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXX XXX XXXXXXX XXXXXXX XXXXXXX XXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX. The Complainant agreed to the proposal the same day. The District did not provide OCR with the revised IEP.

*XXXX XXX 2019 IEP Meeting*



The incident log indicated that after the XXXX XXXX IEP meeting, the Student had one behavioral incident, in which he XXXX XXXXXXX XXXX XXXXXXX XXXXXXX XXXX XXXX XXXXXXX XXXXXXX XXXXXXX XXXX XXXX XXX XXXXXXX XXXXXXX. The Student was removed from class and did not return to class that day.

In addition, the Student's attendance record indicated that the Student received out of school suspensions on XXXX X XXX XX, 2019, because he engaged in XXXXX XXXXXXX XXX XXXXXXX X XXXX XXXXX.

On XXXXX XXX 2019, the District convened the IEP team (including the Complainant) for a progress meeting. The meeting notes indicate that the team proposed that from XXXXX XXXX, 2019, the Student would participate in half days at school. The meeting notes indicate that the IEP team decided to reduce the Student's attendance to half-days based on his behaviors XXXXXXX XXXX XXXXXXX XXX XXXXXXX XXXXXXX, and the IEP team had identified afternoons as when more of the antecedents occurred. As a result, although the Student would continue to receive his XXXXXXX XXXXXXX services in the mornings, he would miss XXX remaining XXXXXXX XXXXXXX sessions. The Complainant agreed to the proposal the same day.

The meeting notes indicated that the Student's parents would pick him up at XXXXXXX. The District informed OCR that the Complainant and/or the Student's other parent proposed picking the Student up early from school; the Complainant stated that she may have proposed this because the Student was already being dismissed early almost every day at that point.

### **Early Dismissals and Other Missed Instruction**

In addition to the suspensions described above, the Student's attendance record reflects that he received XXXX out of school suspensions during the 2018-2019 school year, on XXXXXXX XXX XXXXXXX X XXX XXX XXXX XXX XXXX X XXX XX XXXX.

Regarding early dismissals, the Complainant informed OCR that the District called her to pick the Student up before the end of school XX XXXXX XXXX X XXXX. The Student's attendance record indicates that he was dismissed early on XX occasions, which included XXXXXXX morning dismissals and XX afternoon dismissals. The District did not provide documentation of the reasons for the each of the early dismissals, but the incident log indicates that several early dismissals were behavior-related.

The incident log also indicates that the Student missed recess on a number of occasions due to XXXXXXX XXXXXXX XXXXX XXXX XX XXX XXXXXXX, which District staff stated was consistent with school-wide safety rules. In addition, as previously described, the Student attended school in the mornings only during the final XX days of the 2018-2019 school year.

Regarding the Student Support Center, the incident log indicates that the Student accessed the center on XX separate occasions. Although the incident log states that the Student's individual/behavior/safety plan was followed in response to a number of other incidents, as noted

above, the District did not provide evidence of a specific plan, and it is unclear whether the Student accessed the Student Support Center on any of those other occasions.

With the exception of the XXXXXXXX XXXXX incident described above, the District did not provide any documentation regarding how long the Student was in the Student Support Center each time or how much classroom instruction he missed. While the District provided daily data sheets from XXXXX through XXXX 2019 (completed by XXX XXXXXXX XXXX) indicating how long the Student engaged in noncompliance in the classroom or XXXXXXX XXXX XXX XXXXXXXXXXXXXXXX, these forms did not track how long the Student was in the Student Support Center. Although the Student's IEP provided for XXXXXXX time in the Student Support Center, the evidence to date does not indicate the extent to which the Student's use of the Student Support Center impacted his other services. Further, District staff stated that the Student spent time out of his classroom when he was being unsafe and needed to de-escalate, which could range from XXXX XX XXXX hours. The evidence did not indicate that the Student was provided with individualized classwork instruction while he was in the Student Support Center.

District staff informed OCR that shortly after the XXX XXXX was provided, the Student's behavior initially appeared to decline in the severity of escalation and frequency of aggression, and the XXXX enabled them to collect more data regarding incidents. However, District staff stated that the XXXXXXX XX XXX XXXX may not have helped for the remainder of the school year, as indicated by the Student's continued behavioral incidents and his difficult ending to the school year.

### **Recent Steps**

During the course of the investigation, the District informed OCR that it hired a XXX XXXXXXX in XXXX 2019 and a XXXXXXX XXXXXXX in XXXXXXX 2020, and that it has made a number of proactive changes to address students' behavioral needs. The District stated that these steps included engaging an outside consultant to train and mentor school staff on conducting Functional Behavioral Assessments and the development of behavior plans, including by offering a multi-day training on Functional Behavioral Assessments during the 2020-2021 school year. The District further stated that the outside consultant was conducting a Functional Behavioral Assessment for the Student, with school staff observing, and providing guidance to the behavior interventionist and school psychologist in conducting Functional Behavioral Assessments for other students. Additionally, the District stated it worked with the outside consultant to identify formats for collecting, synthesizing, and communicating behavioral data, and it has implemented a daily tracking form for the Student's behavior (although OCR notes that the forms do not appear to track the amount of time the Student spends in the Student Support Center).

The District also stated that it has transitioned the Student Support Center to the "Panther's Den," which is now a place where students can take a break, complete classwork, or to de-escalate, and offers sensory tools and positive reinforcement activities. The District stated that it has established a trained "Panther Team" to respond whenever there is a crisis, and the members have completed trauma informed and safety care training. In addition, the District stated that it

worked with an outside organization to develop preventative measures and increasing strategies and options for de-escalation.

### **Analysis**

While the District convened XXXXXXXX IEP meetings for the Student during the 2018-2019 school year, the evidence obtained to date did not establish whether the Student's educational program was meeting his individual needs, where the Student experienced ongoing behavioral incidents, including aggression and XXXXXXXX XXX XXXXXXXX XXXX XXXXXXXX. District staff indicated that they tried various interventions and strategies throughout the school year; however, the evidence to date does not indicate whether the District maintained a consistent behavior or safety plan addressing situations in which the Student was dysregulated, including the amount of time spent in the Student Support Center. In addition, the evidence to date did not establish that the Student's intervention plan (which cited a behavior plan that was not provided to OCR) was based on a recent assessment of the Student's needs, and that it was developed in accordance with IEP processes with applicable procedural protections.

OCR could not determine, from the evidence obtained to date, whether the Student's IEP team reviewed and discussed data regarding the use of the Student Support Center or other interventions/strategies attempted for the Student. Specifically, OCR was unable to determine whether District staff were systematically attempting various de-escalation interventions and strategies and tracking their efficacy, including by documenting the Student's use of the Student Support Center for each behavioral incident. While the District contends that it provided the Student with a FAPE and followed the procedural requirements of Section 504, OCR was could not determine whether, from the evidence obtained to date, the Student's needs were being effectively addressed by his existing educational program and that the District re-evaluated the Student without undue delay.

As stated above, the evidence indicated that during the 2018-2019 school year, the incidents resulted in missed instruction and/or services while the Student was in the Student Support Center, in addition to the XX occasions when the Student was sent home early due to his behavior, and the last XX days of school which the Student attended only in the mornings. The District asserts that Student did not miss a significant amount of classroom instruction; however, the evidence obtained to date does not demonstrate whether the District had assessed the instruction/services missed by the Student. Further, the evidence to date does not indicate whether the Student was provided with individualized instruction while in the Student Support Center and/or provided opportunities to make up missed instruction/services. Accordingly, the evidence to date raises preliminary concerns about whether the Student received a FAPE, with respect to missed instruction/services.

In addition, the IEP team determined on XXXXXXXX XXX 2018, that the Student would be provided with a XXX XXXX, and the XXXX was provided in XXXXXXX XXXXXXX 2019. While the District asserted that it took XXXXXXXX XX XXXXXXXX months to provide the XXXX for the Student because the District XXXXXXXX XX XXXX XX XXXXXXXX XXX XXX XXXXXXXX, the evidence to date does not indicate the specific efforts made by the District during this time period to provide XXX XXXX.

### **Conclusion/Resolution**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving the concerns identified by OCR and OCR 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 raised in the complaint. 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. OCR would like to make you aware that individuals who file complaints with OCR 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.

Sincerely,

Meighan A.F. McCrea  
Supervisory Team Leader

Enclosure

cc:     XXXXXXXX XXXX XXXXXXXX XXXXX