

September 23, 2019

Michael Thomas Duffy
President
Great Oaks Foundation
222 Broadway, 19th Floor
New York, New York 10038

Re: Case No. 02-15-1054
Great Oaks Charter School – Newark

Dear President Duffy:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Great Oaks Charter School – Newark (the School). The complainant alleged that the School discriminated against four students (Students A, B, C and D), on the basis of their disabilities, as follows:

- failed to implement Student A’s Individualized Education Program (IEP) during school year XXXX-XXXX (Allegation 1);
- failed to provide Student B with (a) speech-language and (b) pull-out resource services, as stipulated in his IEP, with adequately trained service providers, during school year XXXX-XXXX (Allegation 2);
- failed to reevaluate Student B, in (a) XXXXX and (b) XXXX XXXX (Allegation 3);
- failed to provide Student B’s parent with notice of IEP meetings, during school year XXXX-XXXX (Allegation 4);
- failed to conduct manifestation determination reviews (MDRs) for Student B prior to imposing disciplinary sanctions, during school years XXXX-XXXX and XXXX-XXXX (Allegation 5);
- failed to provide Student B with special education and related aids and services, as stipulated in his IEP, while he was on home instruction during school year XXXX-XXXX (Allegation 6);
- used an “inappropriate tactic” to prevent Student B’s parent from transferring Student B to another school, during school year XXXX-XXXX (Allegation 7);
- failed to provide Student C with home instruction, as stipulated in her IEP, with adequately trained special education instructors and other service providers, during school year XXXX-XXXX (Allegation 8); and

- failed to reevaluate Student D during school years XXXX-XXXX and XXXX-XXXX (Allegation 9).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The School 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 both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(vii), states that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The complainant was the XXXXXXXX XX XXXXXXXX XXXXXXXX XXX XXX XXXXX prior to filing this complaint with OCR.¹ In its investigation, OCR reviewed documentation that the complainant, the parents/guardians of Students A, B, C and D (parents A, B, C and D, respectively), and the School submitted. OCR also interviewed the complainant.² OCR made the following determinations.

Student A

With respect to Allegation 1, the complainant alleged that the School discriminated against Student A, on the basis of his disability, by failing to implement his IEP during school year XXXX-XXXX. Student A reached the age of 18 during OCR's investigation of this complaint. Pursuant to OCR's case processing procedures, when disclosure of the identity of a complainant or injured party is necessary in order to resolve the complaint, OCR will require written consent before proceeding. A complainant filing on behalf of or pertaining to another person is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who becomes 18 while the complaint is under investigation or in monitoring.

¹ The complainant's XXXXXXXX XXXX XXXXXXXXXXXX during school year XXXX-XXXX.

² The School and the complainant acknowledged that because the complainant, while XXXXXXXX XX XXX XXXXX XXXXXXXX XX XXX XXXXXXXX XX XXXXXXXX XXXXXXXX, had been XXXXXXX XXXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXXXXX XXX XXXXXXX XXXXXXX XXXXXXX during the period of time in which the alleged violations occurred, neither XXX XXXXXXXXXXX nor the current staff would be able to provide information relating to the allegations of the instant investigation that could not be obtained through documentary evidence.

In an email sent to the complainant on April 3, 2018, OCR asked that the complainant have Student A sign and return an attached consent form in order for OCR to continue processing Allegation 1. OCR advised the complainant that Allegation 1 could be dismissed if a consent form signed by Student A was not received within 20 days. To date, OCR has not received a consent form signed by Student A. OCR has determined that it is unable to proceed further with an investigation of Allegation 1 in the absence of a consent form signed by Student A. Accordingly, consistent with its case processing procedures, OCR has dismissed Allegation 1.

Student B

With respect to Allegation 2, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to provide him with (a) speech-language and (b) pull-out resource services, as stipulated in his IEP, with adequately trained service providers, during school year XXXX-XXXX. The complainant asserted that Student B was enrolled in XXXXXXXXXXXX in another district (District A) during school year XXXX-XXXX. The complainant asserted that in XXXXXXXX XXXX, District A conducted a speech/language evaluation for Student B; thereafter, District A determined that Student B was eligible to receive special education and related services pursuant to the classification of “XXXXXXXXXX XXXXXXXX.”³ The complainant asserted that District A developed an IEP for Student B (IEP 1); however, the School, the complainant, and parent B were unable to provide a copy of IEP 1 to OCR.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of an IEP is one means of meeting this standard. The quality of the educational services provided to disabled students must be equal to that of the services provided to non-disabled students; thus, disabled students’ teachers must be trained in the instruction of persons with the disability in question.

Student B began attending the School in XXXXXX XXXX and was enrolled in XXXXX grade during school year XXXX-XXXX. The School asserted that it implemented IEP 1, as written, from the beginning of school year XXXX-XXXX until the School’s IEP Team reviewed IEP 1 on XXXXXXXX XX, XXXX, and developed a new IEP for Student B on XXXXXXXX XX, XXXX (IEP 2).⁴ IEP 2 included provisions for (i) “consultative-tutorial services”⁵ in reading and math

³ The School, the complainant, and parent B were unable to provide a copy of this speech/language evaluation to OCR.

⁴ IEP 2 retained Student B’s classification of “XXXXXXXXXX XXXXXXXX”; and, indicated that Student B had also been diagnosed with XXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXXXXX XXXX, XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXXXXXX, and XXXX XXXXXXXX. IEP 2 further noted that Student B “XXXXXXXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXX XXXXXXX XXXXX X XXXXXXXX XXXXXXXX XXXXXXXX XXXXX.”

⁵ Consultative services relate to services provided by a special education teacher or related services provider directly to the regular education teacher to assist in meeting the IEP goals and objectives of the student with a disability.

five (5) times per week for 50 minutes per session; and, (ii) counseling services two (2) times per week for 30 minutes per session. IEP 2 remained in effect through the end of school year XXXX-XXXX.

With respect to Allegation 2(a), the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to provide him with speech-language services, as stipulated in his IEP, with adequately trained service providers, during school year XXXX-XXXX. The complainant and parent B⁶ asserted to OCR that IEP 1 stipulated that the Student would be provided with speech-language services, but that the School failed to provide the services.

The School acknowledged that Student B arrived at the School at the beginning of school year XXXX-XXXX with a pre-existing IEP, which cited an evaluation that stated that Student B required speech therapy; and, the assessment summary indicated a XXXXXXXXXXXX XXXXXXXXXXXX. As stated above, the complainant, parent B, and the School were unable to provide a copy of IEP 1 to OCR. The copy of IEP 2 provided to OCR did not include a provision for speech therapy services. Nevertheless, the School asserted that it provided weekly speech therapy to the Student, 2 sessions for 40 minutes per week, by a certified Speech-Language Pathologist, throughout school year XXXX-XXXX; and, OCR determined that Student B's IEP developed on XXXX XX, XXXX (IEP 3) stated that Student B would "continue" to receive speech-language services for two 40 minute sessions per week. Accordingly, the evidence demonstrates that the IEP Team intended for Student B to receive speech-language services throughout school year XXXX-XXXX.

The School submitted to OCR sign-in sheets, invoices, and session notes maintained by a speech-language specialist that the School asserted would demonstrate that the School provided Student B with two 40-minute sessions of speech-language services per week throughout school year XXXX-XXXX. The School also provided documentation to OCR of the speech language specialist's certification. OCR reviewed this documentation and determined that it did not support the School's assertion; rather, it indicated that from XXXXXXXX XX XXX, through XXXX X XXXX, a certified speech-language specialist met with Student B only once per week. Further, the documentation did not specify the duration or location of these weekly sessions; or whether services were provided individually or in a group setting.

Based on the foregoing, OCR determined that the School was aware that Student B required speech-language services during school year XXXX-XXXX; specifically, two 40-minute sessions of speech-language services per week. The School, however, did not provide sufficient evidence

Consultative services are most often provided in the general education classroom setting and typically include cooperative teaching instruction and planning.

⁶ OCR requested to interview parent B, but the complainant advised OCR that she, as the parent advocate, would obtain any information requested of her client. In an email to the complainant dated December 19, 2014, OCR requested additional information regarding her complaint. On January 9, 2015, parent B submitted a written response to OCR's request for additional information regarding the complainant's allegations relating to Student B. In her response, parent B alleged that at the time of Student B's enrollment "a complete updated [sic] IEP was given to the [School]. IEP required pull-out resource, speech, and counseling. Counseling was provided. There were no special [education] instructors nor pull-out resource [room services] or speech teachers available. They were also not provided until [the] XXXX school year."

to substantiate that it provided Student B with such services throughout school year XXXX-XXXX. On September 18, 2019, the School signed the enclosed agreement to resolve this compliance issue. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2(b), the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to provide him with pull-out resource services, as stipulated in his IEP, with adequately trained service providers, during school year XXXX-XXXX. The School asserted that neither IEP 1 nor IEP 2 included any provision for pull-out resource services. As stated above, neither the complainant, the School, nor parent B provided a copy of IEP 1 to OCR. OCR reviewed IEP 2, which did not include any provision for pull-out resource services.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that Student B's IEPs in effect during school year XXXX-XXXX stipulated that the School would provide Student B with "pull-out resource services." The regulation implementing Section 504 does not require a recipient to provide a student with special education related services that are not included in a Student's IEP or for which the evidence otherwise demonstrates that a group of knowledgeable persons determined that such services were necessary.⁷ Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to provide him with pull-out resource services during school year XXXX-XXXX. Accordingly, OCR will take no further action with respect to Allegation 2(b).

With respect to Allegation 3, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to reevaluate him in (a) March 2014 and (b) June 2014. The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any person, who because of a disability, needs or is believed to need special education or related services before making a significant change in the student's placement. The regulation implementing Section 504, at 34 C.F.R. § 104.35(d), also requires a recipient to conduct periodic reevaluations of students who have been provided special education and related services. A reevaluation procedure consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), in making determinations regarding the appropriateness of special education related aids and services, a recipient shall, among other things, draw upon information from a variety of sources and 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. Section 504 also requires, at 34 C.F.R. §104.36, that a recipient establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need

⁷ It is OCR's policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons convened for the purpose of evaluating a student and/or making determinations about a student's placement, including decisions regarding whether a student is eligible for related aids and services and the manner in which such aids and services will be provided. Any disagreement between a parent/guardian and the group should be addressed through a due process hearing. A due process hearing officer is empowered to review the determinations made by the group of knowledgeable persons. The parent/guardian may exercise his or her right to due process by contacting the School in writing.

or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parent or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

In support of Allegation 3(a), the complainant asserted that parent B requested that the School reevaluate Student B in XXXXX XXXX. The School denied this assertion; and, the complainant did not provide any documentation or identify any witnesses to support that such a request was made. OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, the preponderance of the evidence did not substantiate the complainant's assertion that parent B requested a reevaluation of Student B in XXXXX XXXX. Additionally, OCR found no evidence indicating that the School was otherwise obligated to reevaluate Student B in XXXXX XXXX; the Student's next triennial evaluation was not scheduled to take place until the following school year.

With respect to Allegation 3(b), OCR determined that the IEP Team, including parent B, convened on XXXX XX, XXXX. The School provided to OCR a copy of a notice sent to parent B on XXXX XX XXXX; the notice stated that during the meeting on XXXX XX, 2014, the IEP Team determined that no new assessments of Student B were necessary. The notice advised parent B that she had 15 calendar days to request any assessment(s) of Student B or file a request for a due process hearing. The School also provided to OCR a copy of a Triennial Reevaluation Form, signed by parent B on XXXX X, XXXX, which waived a triennial reevaluation of Student B.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to reevaluate him in XXXXX and XXXX XXXX. Accordingly, OCR will take no further action with respect to Allegation 3.

With respect to Allegation 4, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to provide parent B with notice of IEP meetings during school year XXXX-XXXX. As stated previously, the School held two IEP meetings for Student B during school year XXXX-XXXX; one on XXXXXXXX XX, XXXX (meeting 1), and another on XXXX XX, XXXX (meeting 2). The School provided to OCR a copy of a notice sent to parent B in advance of meeting 1, entitled "Notice of Special Education IEP/Placement Meeting." The notice for meeting 1, which was dated XXXXXXXX XX, XXXX, stated that the purpose of meeting 1 was to "determine or re-determine eligibility" and "develop an [IEP] if appropriate" for Student B; and, listed the time, location, and participants for meeting 1. The School included a copy of a document entitled "Parental Rights in Special Education (PRISE)" with the notice. The School was unable to provide a copy of any notice sent to parent B in advance of meeting 2; however, as stated previously, OCR determined that parent B attended meeting 2.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to provide parent B with notice of meeting 1. Although the School was unable to provide evidence that it notified the complainant of meeting 2, the evidence demonstrates that

the complainant attended meeting 2; accordingly, at some point prior to the date of meeting 2, the complainant was notified of meeting 2. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to provide parent B with notice of meeting 2. OCR will provide technical assistance to the School regarding its recordkeeping practices and requirement under the regulation implementing Section 504 to provide notice to parents of IEP meetings.

With respect to Allegation 5, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to conduct MDRs for Student B prior to imposing disciplinary sanctions, during school years XXXX-XXXX and XXXX-XXXX. The complainant asserted that the School imposed several suspensions on Student B for conduct that was a manifestation of his disability.

OCR has previously determined that a district may discipline a disabled child in the same manner as it would discipline a non-disabled child, unless the disabled child's IEP, Section 504 plan or Behavioral Intervention Plan (BIP) specifies differently or unless the discipline creates a significant change in the disabled student's placement. If the proposed exclusion of a disabled student is permanent (expulsion) or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a significant change in placement under the regulation implementing Section 504, at 34 C.F.R. § 104.35(a). If a series of suspensions that are each of 10 days or fewer in duration creates a pattern of exclusions that constitutes a significant change in placement, the requirements of 34 C.F.R. § 104.35(a) would also apply. The determination of whether a series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that will be considered in determining whether a series of suspensions has resulted in a significant change in placement are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

In order to implement an exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the student, in accordance with 34 C.F.R. § 104.35. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform to the regulation implementing Section 504, whether the misconduct is caused by the student's disability. If it is determined that the disabled student's misconduct is caused by the student's disability, the recipient must determine whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated non-disabled students are excluded. When a placement of a disabled student is changed for disciplinary reasons, the student and his or her parent or guardian are entitled to the procedural protections required by the regulation implementing Section 504, at 34 C.F.R. § 104.36.

During school year XXXX-XXXX, Student B was issued XXX in-school suspensions (ISS) for violating the School's Code of Conduct: (i) on XXXXXXXXXX X, XXXX, Student B received a XXX-day ISS; and, (ii) on XXXXXXXXXX XX, XXXX, Student B received a XXXXX-day ISS. During school year XXXX-XXXX, Student B was also issued XXX, XXXX-day out-of-school suspension (OSS), served on XXXXXXXXXX XX XX XX XX, XXXX. Thus, at the conclusion of school year XXXX-XXXX, Student B had served XXXX days of OSS and XXXX days of ISS,

which OCR determined did not create a significant change in Student B's placement during school year XXXX-XXXX. IEP 2, which was in effect at the time of these suspensions, did not include any provision(s) that precluded the School from issuing Student B an ISS or OSS, or from otherwise disciplining Student B in accordance with the Code of Conduct.

During school year XXXX-XXXX, Student B was issued XXX, XXXX-day ISSs: (i) on XXXXXXXX XX, XXXX; and, (ii) on XXXXXXXX XX, XXXX. During school year XXXX-XXXX, Student B was also issued XXX, XXX-day OSSs: (i) on XXXXXXXX XX, XXXX; and, (ii) on XXXXXXXX XX, XXXX. Thus, at the conclusion of school year XXXX-XXXX, Student B had served XXX days of OSS and XXX days of ISS, in addition to the XXXX days of OSS and XXXX days of ISS served during school year XXXX-XXXX. OCR reviewed this series of suspensions and determined that these did not create a pattern of exclusion that constituted a significant change in Student B's placement, as the suspensions were short in length; occurred over the course of two school years; and, amounted to a total of XXXdays of OSS and XXX days of ISS served over two school years. OCR determined that IEP 3, which was in effect at the time of the suspensions during school year XXXX-XXXX, did not include any provision(s) that precluded the School from issuing Student B ISS or OSS, or from otherwise disciplining Student B in accordance with the Code of Conduct.

Based on the foregoing, OCR determined that the discipline imposed on Student B during school years XXXX-XXXX and XXXX-XXXX did not create a significant change in Student B's placement during those school years; and as a result, the School was not obligated to conduct MDRs prior to imposing these disciplinary sanctions. Additionally, as stated above, Student B's IEPs did not preclude the School from imposing these suspensions. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to conduct MDRs for Student B prior to imposing disciplinary sanctions, during school years XXXX-XXXX and XXXX-XXXX. Accordingly, OCR will take no further action with respect to Allegation 5.

With respect to Allegation 6, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by failing to provide him with special education and related aids and services, as stipulated in his IEP, while he was on home instruction during school year XXXX-XXXX. Specifically, the complainant asserted that the School was obligated to provide Student B with the special education and related aids and services set forth in his IEP during his XXX-day ISS, XXXXX-day ISS and XXXX-day OSS served during school year XXXX-XXXX, because she asserted that these suspensions constituted a significant change in Student B's placement.

As previously stated, OCR determined that the suspensions imposed on Student B during school year XXXX-XXXX did not constitute a significant change in Student B's placement. The regulation implementing Section 504 does not require the School to provide Student B with his special education and related aids and services under the circumstances described above. Further, OCR determined that Student B was not otherwise entitled to receive home instruction during school year XXXX-XXXX. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student B, on the basis of his disability, by failing to provide him with special education and related aids and

services, as stipulated in his IEP, while he was on home instruction during school year XXXX-XXXX. Accordingly, OCR will take no further action with respect to Allegation 6.

With respect to Allegation 7, the complainant alleged that the School discriminated against Student B, on the basis of his disability, by using an “inappropriate tactic” to prevent parent B from transferring Student B to another school during school year XXXX-XXXX. Specifically, the complainant asserted that parent B had asked the School to provide her with Student B’s identification number because parent B needed to include this number on a transfer application for Student B; but, that the School refused to provide the information until the transfer deadline had passed. Neither the complainant nor parent B identified the individual to whom the alleged request was made.

The School informed OCR that it had no record of any request made by parent B for Student B’s identification number, or for any other assistance regarding transfer to another school. The complainant did not provide any documentary evidence to substantiate that such request was made.

As stated above, OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, the preponderance of the evidence did not substantiate the complainant’s assertion that parent B requested Student B’s identification number, or that the School denied such a request. OCR found no evidence that the School used any other “inappropriate tactic” to prevent parent B from transferring Student B to another school. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the School discriminated against Student B, on the basis of his disability, by using an “inappropriate tactic” to prevent Student B’s parent from transferring him to another school during school year XXXX-XXXX. Accordingly, OCR will take no further action with respect to Allegation 7.

Student C

With respect to Allegation 8, the complainant alleged that the School discriminated against Student C, on the basis of her disability, by failing to provide her with home instruction, as stipulated in her IEP, with adequately trained special education instructors and other service providers, during school year XXXX-XXXX. OCR determined that during school year XXXX-XXXX, Student C was enrolled in the XXXXXX grade at the School. Student C began attending school in school year XXXX-XXXX on XXXXXXXX XX, XXXX, on a reduced schedule, at which time the School began to provide XXX instruction to Student C in a XXXXXX classroom for five (5) hours per day. Pursuant to her IEP dated XXXXX XX, XXXX, Student C was to receive four 60-minute sessions per week of home instruction in English Language Arts (ELA) and math.⁸

The School provided no evidence to OCR that it provided home instruction to Student C pursuant to her IEP between XXXXXXXX XX XXXX, and XXXXXXXX X, XXXX. The School provided timesheets to OCR indicating that a state-certified teacher provided Student C with an average of ten hours of home instruction per week from XXXXXXXX X, XXXX, through XXXXXXXX XX, XXXX. The IEP Team reevaluated Student C on XXXXXXXX XX, XXXX, and XXXXXXXX XX,

⁸ The IEP identified Student C’s classification as “XXXXXXX XXXXXXXX XXXXXXXX.” The complainant informed OCR that Student C also had XXXXXXXXXXXXXXXX XXXXXXXX related to an XXXXXXXX XXXXXXXX.

XXXX; determined that Student C's classification should be changed to "XXXXXXXXXXXX XXXXXXXX" XXXX; and, recommended placement in a XXXXXXXX, XXXXXXXXXXXXXXXX school for XXXXXXXXXXXX. The IEP Team amended Student C's IEP on XXXXXX XX, XXXX, and placed Student C on home instruction pending determination of an appropriate XXXXXXXX school. The School provided timesheets to OCR demonstrating that it continued to provide the Student with an average of ten (10) hours of home instruction per week until the end of school year XXXX- XXXX.

Based on the foregoing, OCR determined that there was no evidence to substantiate that the School provided home instruction to Student C between XXXXXXXX XX, XXXX, and XXXXXXXX X, XXXX, as required by her IEP. On September 18, 2019, the School signed the enclosed agreement to resolve this compliance issue. OCR will monitor the implementation of the resolution agreement.

Student D

With respect to Allegation 9, the complainant alleged that the School discriminated against Student D, on the basis of her disability, by failing to reevaluate her during school years XXXX-XXXX and XXXX-XXXX. The complainant and parent D asserted that parent D made several requests on unspecified dates during school years XXXX-XXXX and XXXX-XXXX for the School to reevaluate Student D; however, neither the complainant nor parent D provided any documentation to support this assertion.

OCR determined that Student D was enrolled in the XXXXXXX and the XXXXX grades at the School during school years XXXX-XXXX and XXXX-XXXX, respectively; and received special education and related aids and services pursuant to an IEP. The School denied that parent D ever requested that the School reevaluate Student D during school years XXXX-XXXX or XXXX-XXXX; and, OCR found no evidence to substantiate that parent D made any request for reevaluation of Student D during school years XXXX-XXXX and XXXX-XXXX.

As stated above, OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, the preponderance of the evidence did not substantiate the complainant's assertion that parent D requested that the School reevaluate Student D during school years XXXX-XXXX and XXXX-XXXX.

On XXXX X, XXXXX, the IEP Team convened to conduct Student D's annual review and to determine appropriate assessments for Student D's triennial reevaluation. The IEP Team determined that the following assessments were necessary: (i) an educational assessment; (ii) a speech/language assessment; (iii) a social assessment; and, (iv) a psychological assessment.

OCR determined that the School completed the speech/language assessment and social assessment.⁹ OCR further determined that during the meeting on XXXX X, XXXX, parent D

⁹ The complainant and parent D asserted that the School never completed the social history component of the educational evaluation; however, the School provided documentation to OCR indicating that Student D's case manager, who was the School's social worker, conducted the social assessment on XXXX XX XXXX. With respect

provided her consent for the School to complete all four evaluations, but subsequently withdrew her consent for the educational and psychological assessments because she wanted an outside evaluator to complete these assessments. In emails sent on XXXX XX XXX XX, XXXX, XXXX XX, XXXX, XXXXX X, XXXX, and XXXXX X and XX, XXXX, the case manager contacted parent D and inquired whether parent D had found outside evaluators to complete the educational and psychological assessments; and if so, to provide the evaluations. The School informed OCR that parent D did not find an outside evaluator to complete these assessments.

Based on the foregoing, OCR determined that the School could not complete its reevaluation of Student D because parent D withdrew her consent to conduct the educational and psychological assessments; instead, she stated that she would find an outside evaluator to complete these assessments. OCR determined that parent D did not thereafter obtain an outsider evaluator and did not provide consent to the School to complete these assessments. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School discriminated against Student D, on the basis of her disability, by failing to reevaluate her during school years XXXX-XXXX and XXXX-XXXX. Accordingly, OCR will take no further action regarding Allegation 9.

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 School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions regarding OCR's determination, please contact Gary Kiang, Senior Compliance Team Attorney, at (646) 428-3761 or gary.kiang@ed.gov; Tiffany Lyttle, Compliance

to any delay in completing the social assessment, OCR determined that on XXXX XX XXXX, and XXXXXX X XXXX, the case manager attempted to schedule the social assessment with parent D, who was unresponsive.

Team Attorney, at (646) 428-3754 or tiffany.lyttle@ed.gov; or Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Paul O'Neill, Esq.