

September 22, 2016

Lisa Wiles  
Superintendent  
Ellenville Central School District  
28 Maple Avenue  
Ellenville, New York 12428

Re: Case No. 02-16-1188  
Ellenville Central School District

Dear Superintendent Wiles:

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR) in the above-referenced complaint filed against the Ellenville Central School District (the District). The complainant alleged that the District discriminated against two students (Student A and Student B) enrolled in the Ellenville High School (the School), on the basis of their disabilities, during school year 2015-2016.

With respect to Student A, the complainant alleged that the District failed to provide Student A with the special education and related aids and services required by her individualized education program (IEP), from the beginning of school year 2015-2016 through January 2016, as follows: “use of a scribe/amanuensis” (Allegation 1); access to “speech to text” software capability on her computer for responses during testing (Allegation 2); and, access to “books on tape/CD” (Allegation 3). Additionally, the complainant alleged that Student A’s scribe required her to spell words during her English Common Core Exam on January 26, 2016, contrary to the “Spelling Waived” provision in her IEP (Allegation 4). The complainant further alleged that the District failed to convene a group of persons knowledgeable about Student A, such as the Committee on Special Education (CSE), when it eliminated a provision pertaining to the “use of scribe/amanuensis” from her IEP for school year 2015-2016 in January 2016 (Allegation 5).

Regarding Student B, the complainant alleged that the District failed to provide Student B with the special education and related aids and services required by his IEP, from the beginning of school year 2015-2016 through November 2015, as follows: access to “speech to text” software (Allegation 6); the “use of computer/word processor” to record responses (Allegation 7); one-to-one “assistance to help him read and understand across subject areas” (Allegation 8); communication among teachers regarding his assignments (Allegation 9); and, “books on

tape/cd” (Allegation 10). The complainant also alleged that the District failed to implement Student B’s behavior intervention plan (BIP), from the beginning of school year 2015-2016 through November 2015, when it failed to provide him with “additional support and re-teaching to assist him” with starting an assignment, in instances where he was “struggling with an academic task” (Allegation 11).

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 or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (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 District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant, Student A, Student A’s parent, Student B, Student B’s parent, and District personnel.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires recipients to provide a free appropriate public education to each qualified individual with a disability in the recipient’s jurisdiction. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33(b), an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of non-disabled students are met; and, are based upon adherence to the evaluation and placement procedures set forth in the regulation. Implementation of an IEP is one means of meeting this requirement. Additionally, the regulation implementing Section 504, at 34 C.F.R. §104.35(c), requires that a recipient ensure that decisions regarding a student’s educational placement (including the provision of related aids and services) be made by a group of persons knowledgeable about the disabled student, the meaning of evaluation data, and the placement options. Further, the regulation implementing Section 504, at 34 C.F.R. §104.36, requires that a recipient provide notice to a parent prior to making any decisions regarding education placement and related aids and services for a disabled student.

**Student A:**

OCR determined that during school year 2015-2016, Student A was enrolled in the XXXX grade at the School. The CSE determined that she was eligible for special education and related aids and services with the classification of “XXXXXXXXXXXXXXXXXXXX.” OCR determined that Student A received specialized instruction from a special education co-teacher in XXXXXXXX XXXXXXXX XXXX (Special Education Co-Teacher 1) and a special education co-teacher in XX XXXXXXXX (Special Education Co-Teacher 2). Special Education Co-Teacher 2 also served as her resource room teacher.

With respect to Allegation 1, the complainant alleged that the District discriminated against Student A, on the basis of her disability, by failing to provide Student A with the “use of a scribe/amanuensis” as required by her IEP, between September 2015 and January 2016. The District acknowledged that Student A’s IEP, dated April 13, 2015, was revised on June 8, 2015, to include use of scribe as a related aid or service during the upcoming June 2015 Regent’s examinations.<sup>1</sup>

OCR determined that the District provided Student A with writing assistance during examinations. Specifically, Special Education Co-Teacher 1 informed OCR that between September 2015 and January 2016, she pulled Student A out of class to work on longer written assignments, including examinations. Student A’s XX XXXXXXXX teacher (Gen Ed Teacher 1) also informed OCR that he and Special Education Co-Teacher 2 provided Student A with additional assistance to complete written assignments and examinations during class. Furthermore, Special Education Co-Teacher 2, who also serves as Student A’s resource room teacher, informed OCR that she assisted Student A in completing written assignments and examinations from Student A’s XXXXXXXX XXXXXXXX XXXX and X.X. XXXXXXXX classes during her resource room period. Student A confirmed that she received assistance completing written examinations in the resource room.

OCR further determined that the first state standardized test administered during school year 2015-2016 was the English Language Arts Common Core Exam held on January 26, 2016, and that during this examination two special education teachers served as Student A’s scribe. Student A confirmed that a scribe wrote her responses for her during the examination on January 26, 2016.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District discriminated against Student A, on the basis of disability, by failing to provide Student A with the “use of a scribe/amanuensis” from the beginning of school year 2015-2016 through January 2016, as required by her IEP. Accordingly, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the District discriminated against Student A, on the basis of her disability, by failing to provide Student A with access to “speech to text” software capability on her computer for responses during testing, as required by her IEP for school year 2015-2016. Student A also asserted that she was not provided with access to “speech to text” software during school year 2015-2016. Specifically, Student A asserted that her XXXXXXXX XXXXXXXX XXXX classroom did not have “speech to text” software installed, and that she was unable to use “speech to text” software in her resource room class because the computers did not work.<sup>2</sup> Student A further asserted that when she asked Special Education Co-Teacher 2 to use “speech to text” software in her classroom, Special Education Co-Teacher 2 told her that she did not have it. Student A informed OCR that she did not have access to “speech to text” software at school, and because of this, she was unable to complete many written assignments at school. Student A further informed OCR that she downloaded a

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<sup>1</sup> The District asserted that this was done to accommodate a XXXXXXXX XXXXXXXX that Student A had XXXXXXXXXX.

<sup>2</sup> Student A asserted that the computers in her resource room class frequently had viruses on them or did not turn on.

“Google Docs” application to her cell phone that contained “speech to text” software so that she could type her written assignments at home.

OCR determined that Student A’s IEP in effect from September 2015 through January 2016 specified access to “speech to text” software capability on her computer for responses as a related aid or service for testing only. The complainant informed OCR that she discussed this provision with the CSE Chairperson during school year 2014-2015 when she served as Student A’s special education teacher, and that the accommodation was intended to apply to any written responses because “any assignment that is graded is considered a test.” OCR determined that Student A’s amended IEP, dated June 8, 2015, included a discussion in the meeting notes specifying that the “Student will be trained on the use of the speech-to-text capability on the [resource room] RR computer to allow for use in extended written responses due to the significant XXXXXXXX XXXXXXXX XXXXX.” Special Education Co-Teacher 2 asserted that Student A’s access to “speech to text” was not intended to be limited to testing; rather, Student A was to be provided “speech to text” software via the computers in the resource room classroom.

Special Education Co-Teacher 2 informed OCR that her resource room classrooms had several computers with “speech to text” software installed; however, OCR determined that during a CSE meeting on January 14, 2016, Special Education Co-Teacher 2 stated that Student A had not “tried out” the “speech to text” software” and the CSE discussed alternatives to “speech to text” software.<sup>3</sup> The District asserted that Special Education Co-Teacher 2 advised Student A that “speech to text” software was available on the computers in the resource room classroom and offered to help Student A learn how to use it; however, in the audio recording of the CSE meeting, when the complainant asked Special Education Co-Teacher 2 whether Student A had access to the “speech to text” software in Special Education Co-Teacher 2’s classroom, Special Education Co-Teacher 2 advised the complainant that Student A had not used the “speech to text” software, and that she had not “tried it out with her” to ensure that Student A was able to use the software. Furthermore, during the course of OCR’s investigation, another student in Special Education Co-Teacher 2’s classroom informed OCR that the “speech to text” software was not installed on the computers in that classroom until after winter break.

Based on the foregoing, OCR determined that the preponderance of the evidence does not support that the District provided Student A with access to “speech to text” software from September 2015 to January 2016, in accordance with her IEP, as deemed necessary by the CSE to meet Student A’s individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

With respect to Allegation 3, the complainant alleged that the District discriminated against Student A, on the basis of her disability, by failing to provide Student A with access to “books on tape/CD [compact disc]” as required by her IEP for school year 2015-2016, between September

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<sup>3</sup> During this discussion the complainant expressed concern that Student A could not use the “speech to text” software because she had previously experienced difficulty using it during school year 2014-2015 when the complainant XXXXXX as her XXXXXXXX XXXX XXXXXXXX. As a result of this discussion, the CSE Chairperson agreed to talk to the School’s information technology department to determine whether there was other software available, and/or whether Student A could use her cell phone for “speech to text” capability.

2015 and January 2016. Student A asserted that her XXXXXXXX XXXXXXXX XXXX teacher and Special Education Co-Teacher 1 informed her in or around October 2015, that the District did not have copies of various reading materials on CD, and they suggested that she listen to the books online.<sup>4</sup> Additionally, Student A asserted that the District did not provide her with access to “books on tape/CD” until approximately April 2016. Student A acknowledged that Special Education Co-Teacher 2 read aloud to her during her resource room class, but asserted that she only read aloud portions of chapters to help her complete assignments related to the reading.<sup>5</sup>

OCR determined that Student A’s IEP in effect from September 2015 through January 2016 required access to “books on tape/CD” during instructional time; or as an alternative, that books should be “read aloud in the classroom.” The District asserted that Special Education Co-Teacher 1 advised Student A that she had CDs containing the required XXXXXXXX XXXXXXXX XXXX reading material, and that the CDs were located in her classroom. Special Education Co-Teacher 2 also asserted that she advised Student A that the CDs were located in Special Education Co-Teacher 1’s classroom; and further asserted that she read books aloud to Student A during resource room class as an alternative to “books on tape/CD.”

OCR determined that Student A’s CSE discussed her access to “books on tape/CD” during a CSE meeting on January 14, 2016; and, during this meeting the complainant and Student A’s mother expressed concern that the Student did not have access to “books on tape/CD.” OCR determined that during this meeting, Special Education Co-Teacher 2 asserted that she read aloud to Student A during resource room, but she did not confirm that she had access to “books on tape/CD.” During the meeting, the CSE Chairperson stated that “they probably should have given her the CD” and he would “look into the [CD issue] to see what happened” because there were some “indications that [Student A] didn’t get all of her modifications because of the CDs.” The CSE Chairperson informed OCR that the District provided Student A with a set of CDs for XXXX XXX XXXX in or around March 2016 so that Student A could “catch up on her reading.”<sup>6</sup>

Based on the foregoing, OCR determined that the preponderance of the evidence does not support that the District provided Student A with access to “books on tape/CD”, or in the alternative read the entirety of the books to her in the classroom, from September 2015 to at least January 2016, in accordance with her IEP, as deemed necessary by the CSE to meet Student A’s individual educational needs as adequately as the needs for non-disabled students are met. Specifically, the fact that District staff stated that there was an indication that Student A did not receive this modification, and the District later bought CDs for at least one reading assignment, suggests that Student A did not have books on tape or CDs for at least some of her books as required by her IEP. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.33.

With respect to Allegation 4, the complainant alleged that the District discriminated against Student A, on the basis of her disability, on or about January 26, 2016, when Student A’s scribe

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<sup>4</sup> Specifically, Student A asserted that her teachers informed her they did not have copies of XXXXXXXX or XXXX XXX XXXX.

<sup>5</sup> Student A stated that, for example, Special Education Co-Teacher 2 would read portions of a chapter aloud to her so that she could answer comprehension questions, but did not read the entirety of the reading material aloud to her.

<sup>6</sup> OCR determined that the District also provided Student A with a CD player in or around April 2016.

required her to spell words during her English Common Core Exam, contrary to the “Spelling Waived” provision in her IEP for school year 2015-2016. Student A also asserted that her scribe asked her to spell several words during the examination on January 26, 2016.

OCR determined that Student A’s IEP for school year 2015-2016 included the provision “spelling waived” during written assignments in the classroom and during testing. The District acknowledged that Student A’s scribe did not waive spelling for the English Common Core Exam on January 26, 2016; however, the District asserted that this did not substantively affect Student A’s score because essay responses are graded holistically, with spelling being the least important of the scoring rubric in accordance with the grading rubric issued by the New York State Education Department.

OCR determined that Student A’s scribe requested that Student A correct spelling errors in three words of her written response during the English Common Core Exam administered on January 26, 2016; however, the Scribe informed OCR, and Student A confirmed, that the Scribe suggested that Student A make the corrections by referring to the correct spelling used in the testing materials. Student A informed OCR that she was able to do so, and as a result, she corrected the spelling errors prior to submitting her final written response for the examination. As a result, the spelling errors did not count against Student A’s final English Common Core Exam score.

Based on the foregoing, OCR determined that although Student A’s scribe for the January 26, 2016, administration of the English Common Core Exam requested that Student A spell three words in her written response, Student A’s final score on the examination was not affected, and OCR did not identify any evidence to indicate that Student A was otherwise harmed. Therefore, OCR determined that the District’s failure to implement the “spelling waived” provision of Student A’s IEP by having her spell three words during the January 26, 2016, administration of the English Common Core Exam did not constitute a significant denial of a FAPE. Accordingly, OCR will take no further action regarding Allegation 4.

With respect to Allegation 5, the complainant alleged that the District discriminated against Student A, on the basis of her disability, by failing to convene a group of persons knowledgeable about Student A, such as the CSE, when it eliminated a provision pertaining to the use of a scribe from her IEP in January 2016. The District denied the complainant’s assertion that it had eliminated the related aid or service of use of a scribe from Student A’s IEP for school year 2015-2016.

OCR determined that due to a clerical error, Student A’s IEP for school year 2015-2016 (originally created on April 13, 2015) was not revised to include an amendment made on June 8, 2015, that included “use of scribe” as a related aid or service for testing. OCR further determined that on January 14, 2016, Student A’s IEP was further revised to include “use of scribe” as a related aid or service for state tests, not that this related aid or service was eliminated as the complainant alleged. OCR determined that the District provided Student A with a scribe by providing reading and writing assistance when completing examinations between September 2015 and January 2016; and, Student A was provided with a scribe during the English Language Arts Common Core exam on January 26, 2016.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against Student A, on the basis of disability, by removing the related aid or service of "use of scribe" from her IEP without holding a CSE meeting or amending her IEP. Accordingly, OCR will take no further action regarding Allegation 5.

**Student B:**

OCR determined that during school year 2015-2016, Student B was enrolled in the XXXX grade at the School. Student B's CSE determined that he was eligible for special education and related aids and services with the classification of "XXXXXXXXXXXXXXXXXX." Student B also has a BIP targeting his specific behaviors. OCR determined that Student B received specialized instruction in XXXXXXXX XXXXXXXX XXXX from Special Education Co-Teacher 1 and in XXXXXXXX XXXXXXXX from a special education co-teacher (Special Education Co-Teacher 3). OCR further determined that for approximately the first five weeks of school, Student B was placed in a resource room class taught by Resource Room Teacher 1. On or about October 12, 2015, Student B was transferred to Special Education Co-Teacher 2's resource room class.

With respect to Allegation 6, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide Student B with access to "speech to text" software, in accordance with his IEP, between September 2015 and November 2015. Student B asserted that Resource Room Teacher 1 did not provide him with access to "speech to text" software, and that the software was not available in any of his general education classrooms such as XXXXXXXX XXXXXXXX or XXXXXXXX XXXXXXXX XXXX because he was not permitted to use the computers in those classrooms.<sup>7</sup> Student B further asserted that the District did not install "speech to text" software on the computers in the resource room taught by Special Education Co-Teacher 2 until January 2016. Another student enrolled in Special Education Co-Teacher 2's classroom also informed OCR that "speech to text" software was not installed on the computers in that classroom during the fall 2015 semester.

OCR determined that for school year 2015-2016, the CSE decided that Student B required access to "speech to text" software for written assignments.<sup>8</sup> OCR further determined that for the first XXXX weeks of school, until approximately XXXXXXXX XX, 2015, Student B was placed in Resource Room Teacher 1's classroom. Resource Room Teacher 1 acknowledged that she did not have "speech to text" software installed on the computers in her classroom. Resource Room Teacher 1 asserted that she once assisted Student B to type a paper; however, she could not recall

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<sup>7</sup> The complainant informed OCR that the only computers in these classrooms belonged to the teachers and were not available for student use.

<sup>8</sup> OCR determined that Student B's IEP dated April 13, 2015, for school year 2015-2016 did not actually contain the related aid or service of "speech to text" software; however, "speech to text" software was added as a related aid or service through an amendment dated April 15, 2015. Although the amendment was only in effect between April 23, 2015, and June 26, 2015, the District represented in its position statement that the Student had access to "speech to text" software as a required related aid or service during school year 2015-2016.

when this occurred or for which class the paper was assigned.<sup>9</sup> OCR further determined that Student B failed XXXXXXXX XXXXXXXXXX XXXX, XXXXXXX XXXXXXXX, and Resource during the first marking period. Special Education Co-Teacher 2 asserted that Student B preferred not to use the “speech to text” software. Special Education Co-Teacher 2 stated that instead, Student B dictated his written responses to her, and she typed them using the computer in her classroom.

Based on the foregoing, OCR determined that from September 2015 to approximately XXXXXXXX XX, 2015, the District failed to provide Student B with access to “speech to text” software in accordance with his IEP, as deemed necessary by the CSE to meet Student B’s individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.33.

With respect to Allegation 7, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide him with the “use of computer/word processor” to record responses, in accordance with his IEP, between September 2015 and November 2015. Student B asserted that while he was enrolled in Resource Room Teacher 1’s class, she did not provide him with the “use of computer/word processor”, or type written assignments for him while he was enrolled in her class. Additionally, Student B asserted that he was not provided with access to a computer in any academic class prior to the end of the first marking period (in or around November 2015), and that Special Education Co-Teacher 2 only assisted him in completing a written assignment in English Language Arts on the due date of the assignment.<sup>10</sup> Student B’s parent asserted that as a consequence of not receiving the related aid of “use of computer/word processor”, Student B could not complete his assignments and failed his academic courses during the first marking period.

OCR determined that for school year 2015-2016, Student B’s IEP required “access to a computer or word processor” for written essay responses and reports, as requested by Student B. Additionally, OCR determined that for the first XXXX weeks of school, until approximately XXXXXXXX XX, 2015, Student B was placed in Resource Room Teacher 1’s classroom. As discussed previously in connection with Allegation 6, Resource Room Teacher 1 asserted that she once assisted Student B to type a paper, but could not provide sufficient detail to corroborate that this occurred. OCR further determined that Student B failed XXXXXXXX XXXXXXXXXX XXXX, XXXXXXX XXXXXXXX, and Resource during the first marking period. Special Education Co-Teacher 2 asserted that Student B never requested to use the computer to complete assignments; instead, Student B dictated his written responses to her and she then typed his answers using the computer in her classroom.

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<sup>9</sup> Resource Room Teacher 1 also informed OCR that she did not know whether Student B preferred to type his own written responses or to dictate his responses to his teachers. Special Education Co-Teachers 1 and 2 both stated that Student B stated a clear preference to dictate his responses to his teachers.

<sup>10</sup> Student B asserted that he was not permitted to use the computers in his XXXXXXXX XXXXXXXXXX XXXX classroom, and he was not permitted to use the only computer in his XXXXXXX XXXXXXXX class because it belonged to his teacher.

Based on the foregoing, OCR determined that from September 2015 to approximately XXXXXXXX XX, 2015, the District failed to provide the Student with the “use of a computer/word processor” for written essay responses/reports in accordance with his IEP, as deemed necessary by the CSE to meet Student B’s individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

With respect to Allegation 8, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide him with one-to-one “assistance to help him read and understand across subject areas”, in accordance with his IEP, between September 2015 and November 2015. Student B asserted that while he was enrolled in Resource Room Teacher 1’s class, she did not provide him with any one-to-one assistance to read. Student B further asserted that after he was placed in Special Education Co-Teacher 2’s classroom, she did not provide him with one-to-one assistance in reading prior to the end of the first marking period (in or around November 2015), but thereafter she read all of the instructions for his assignments and examinations to him. Additionally, Student B asserted that although students read the class reading materials aloud during his XXXXXXXX XXXXXXXXX XXXX and XXXXXXX XXXXXXXX courses, he felt that he needed additional individual instruction and/or discussion with his teachers in order to understand the reading material.

OCR determined that none of the IEPs for Student B contained one-to-one “assistance to help read and understand across subject areas” as a specific related aid or service; rather, descriptive language regarding Student B’s reading abilities is included in the “Present Levels of Performance” section of his IEP.<sup>11</sup> The regulation implementing Section 504 does not require a district to provide a student with related aids or services that are not included in a student’s IEP.<sup>12</sup> Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District discriminated against Student B, on the basis of his disability, by failing to provide him with one-to-one “assistance to help read and understand across subject areas.” Therefore, OCR will take no further action regarding Allegation 8.

With respect to Allegation 9, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide Student B with communication among teachers regarding his assignments, in accordance with his IEP, between September 2015 and November 2015. In support of Allegation 9, the complainant alleged that Student B’s IEP states that he “needs organization/supervision by adults to maintain work”, and “it is important that teachers communicate with each other regarding what assignments are due or have not been done.” The complainant asserted that in or around November 2015, Special Education Co-

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<sup>11</sup> Specifically, the “Present Levels of Performance” section of Student B’s IEP states, “Student continues to have difficulty with reading. When given reading material to do on his own he has a hard time with word pronunciation and vocabulary. He isn’t independently reading novels.”

<sup>12</sup> It is OCR’s policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons, such as a CSE, convened for the purpose of developing a student’s educational program and determining which related aids and services should be included in a student’s IEP. Any disagreement between Student B’s parent/guardian and the CSE should be addressed through a due process hearing. A due process hearing officer is empowered to review the appropriateness of a placement decision made by the group of knowledgeable people. Student B’s parent/guardian may exercise her right to due process by contacting the District in writing.

Teacher 2 admitted to Student B’s parent that she had not previously communicated with any of Student B’s teachers regarding his assignments.

OCR determined that Student B’s IEP did not require communication among teachers regarding his assignments as a specific related aid or service; rather, this language appears only within the meeting comments section of his IEP.<sup>13</sup> As stated previously, the regulation implementing Section 504 does not require a district to provide a student with related aids or services that are not included in a student’s IEP. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District discriminated against Student B, on the basis of his disability, by failing to provide him with communication among teachers. Therefore, OCR will take no further action regarding Allegation 9.

With respect to Allegation 10, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide Student B with access to “books on tape/CD”, in accordance with his IEP, between September 2015 and November 2015. Student B asserted that Resource Room Teacher 1 did not provide him with access to “books on tape/CD” while he was enrolled in her class. He also asserted that Resource Room Teacher 1 did not read aloud to him during class. Student B further asserted that the District did not provide him with “books on tape/CD” until the third marking period in school year 2015-2016, in or around March 2016.

OCR determined that for school year 2015-2016, Student B’s IEP required that the District provide Student B with “books on tape/CD.” OCR further determined that for the first XXXX weeks of school, until approximately XXXXXXXX XX, 2015, Student B was placed in Resource Room Teacher 1’s classroom. Resource Room Teacher 1 informed OCR that she did not have “books on tape/CD” in her classroom. She did not indicate that Student B had access to “books on tape/CD” in any other classroom during the time period he was enrolled in her class. With respect to Student B’s XXXXXXXX XXXXXXXX class, OCR determined that the class did not generally use textbooks, and instead generally read the reading materials aloud during a class discussion. Special Education Co-Teacher 2 asserted that during resource room instruction, she read aloud to Student B the reading materials for XXXXXXXX XXXXXXXX class, and also read books from his XXXXXXXX XXXXXXXX XXXX class aloud, as he preferred this arrangement. Special Education Co-Teacher 1 asserted that she provided Student B with access to books on CD and also advised him how to access his books online. Special Education Co-Teacher 2 informed OCR that Special Education Co-Teacher 1 had notified her that Student B could check out the CDs to listen to them his resource room class; however, Student B denied being advised of the availability of books on CD until the spring 2016 semester. OCR determined that Student B failed XXXXXXXX XXXXXXXX XXXX, XXXXXXXX XXXXXXXX, and Resource during the first marking period.

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<sup>13</sup> Specifically, the meeting comments section of Student B’s IEP states, Student B “does, at times, get behind in his work or misplaces it and needs organization/supervision by adults to maintain work. It is important that teachers communicate with each other regarding what assignments are due or have not been done as the student quickly gets behind without reminders.” Student B’s BIP, dated January 5, 2016, provides that “Teachers should maintain regular communication with the student’s Resource Room teacher regarding current/missing assignments and upcoming tests/quizzes”; however, Allegation 9 is restricted to the time period between September 2015 and November 2015, when this BIP was not in effect.

Based on the foregoing, OCR did not find that the preponderance of the evidence supported that from September 2015 to approximately XXXXXXXX XX, 2015, the District provided the Student with “books on tape/CD” in accordance with his IEP as deemed necessary by the CSE to meet Student B’s individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.33.

With respect to Allegation 11, the complainant alleged that the District discriminated against Student B, on the basis of his disability, by failing to provide him with “additional support and re-teaching to assist him” with starting an assignment, in instances where he was “struggling with an academic task”, in accordance with his BIP, between September 2015 and November 2015. Student B asserted that Resource Room Teacher 1 did not provide him with “additional support and re-teaching to assist him” while he was enrolled in her class. Student B further asserted that Special Education Co-Teachers 1 and 3 did not provide him with the required assistance in his XXXXXXXX XXXXXXXX XXXX and XXXXXXXX XXXXXXXX classes because they always assisted other students instead. Student B further asserted that Special Education Co-Teacher 2 did not provide him with such assistance until after the end of the first marking period, when his parent complained to the District.

OCR determined that the District developed a BIP for Student B on September 30, 2015, requiring that the District provide him with “additional support and re-teaching to assist him” with starting an assignment, in instances where he was “struggling with an academic task.” OCR further determined that for the first XXXX weeks of school, until approximately XXXXXXXX XX, 2015, Student B was placed in Resource Room Teacher 1’s classroom. Resource Room Teacher 1 asserted that during the timeframe Student B was enrolled in her class there were occasions where Student B’s behavior necessitated implementation of his BIP.<sup>14</sup> She asserted that she provided him with “re-teaching to assist [Student B] in starting his assignments”, but could not provide any specific examples of when this occurred. When asked to identify the classes for which she might have provided re-teaching to Student B, Resource Room Teacher 1 responded generally that she would re-teach “various concepts” for “any of the academic subjects to which Student B was assigned.” OCR determined that Student B failed XXXXXXXX XXXXXXXX XXXX, XXXXXXXX XXXXXXXX, and Resource during the first marking period.

Based on the foregoing, OCR determined that the preponderance of the evidence did not support that the District provided Student B with “additional support and re-teaching to assist him” with starting an assignment, in instances where he was “struggling with an academic task”, from September 30, 2015 to approximately XXXXXXXX XX, 2015, in accordance with his BIP, as deemed necessary by the CSE to meet Student B’s individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

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<sup>14</sup> Although Resource Room Teacher 1 could not provide a specific example of an incident requiring the use of his BIP, she asserted that she did implement the BIP; for example, she asserted that when Student B “became upset” she “tr[ie]d to talk with him.”

On September 13, 2016, the District agreed to implement the enclosed resolution agreement to resolve the compliance issues identified in Allegations 2, 3, 6, 7, 10, and 11. OCR will monitor the implementation of the resolution agreement.

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, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we 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 regarding OCR's determination, please contact Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov); Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or [jessica.daye@ed.gov](mailto:jessica.daye@ed.gov); or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXXX, Esq.  
XXXXXXXX XXXXXX, Esq.