



against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Title II also prohibits retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

In reaching a determination, OCR reviewed documents and information provided by the Complainant and the District and interviewed the Complainant, the Student's father, and District staff. After carefully considering all of the information obtained during the investigation, OCR found that the District discriminated against the Student on the basis of disability with respect to Allegation 1; however, OCR found insufficient evidence regarding the remaining complaint allegations.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Title II prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standards when analyzing the same claims under Title II.

#### *Free Appropriate Public Education (FAPE)*

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's 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 non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34–104.36 pertaining to educational setting, evaluation and placement, and due process protections. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

#### *Exclusion*

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the

reevaluation is to determine whether the student’s disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student’s disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student’s disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student’s current educational placement.

#### *Evaluation/Reevaluation*

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to conduct an evaluation of any student who 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. Section 104.35(d) requires a school district to establish procedures for periodic reevaluation of students who have been provided special education and related aids and services. A reevaluation procedure consistent with the IDEA is one means of meeting this requirement.

Because the Section 504 FAPE obligation is ongoing, when a school district has reason to believe a student’s educational needs are not being met, it must consider different or additional approaches or services to address the student’s behavioral needs, and if necessary, reevaluate the student, which could include evaluating the need for positive behavioral interventions and supports and other strategies to address the student’s behavior. In addition, for a student already identified as a student with a disability, a school’s use of restraint or seclusion could be evidence that the student’s current array of regular or special education and related aids and services is not addressing the student’s needs. In OCR’s view, persuasive indicators that a student’s needs are not being met appropriately would include: situations that would impede the student’s learning or that of others, such as new or more frequent emotional outbursts by the student, or an increase in the frequency or intensity of behavior; a sudden change into withdrawn, non-communicative behavior; and/or a significant rise in missed classes or sessions of Section 504 services. A notable drop in academic performance, such as a sudden decline in grades, could also be an indicator of the need to consider different or additional approaches or services, but a change in a student’s academic performance is not a necessary indicator in every instance. These and other indicators that the student’s behavior is out of the expected range of behaviors of students that age could trigger a school district’s Section 504 obligation to determine if the student’s needs are being met appropriately, and whether a reevaluation is needed under Section 504.

#### *Retaliation*

The regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e) prohibits recipients from intimidating, threatening, coercing or discriminating against any



Allegations 3(a) and 3(b)- Retaliation

XX – Paragraph Redacted – XX

CONCLUSION

This concludes OCR's investigation of the complaint and 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination of insufficient evidence 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.

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.

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, 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.

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.

If you have any questions, please contact Diane Riddick, Equal Opportunity Specialist, at 215-656-8583 or by e-mail at [diane.riddick@ed.gov](mailto:diane.riddick@ed.gov) or Amy Niedzalkoski, Team Attorney, at 215-656-8571 or by e-mail at [amy.niedzalkoski@ed.gov](mailto:amy.niedzalkoski@ed.gov).

Sincerely,  
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Craig D. Ginsburg  
Supervisory Attorney  
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