

- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and its implementing regulation 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Section 504 also prohibits retaliation.

- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Title II also prohibits retaliation.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

Before OCR completed its investigation, the District expressed a willingness to resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM) by taking the steps set out in the enclosed Voluntary Resolution Agreement, which when fully implemented will resolve this complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Agreement.

## **LEGAL STANDARDS**

### ***FAPE***

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide 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.

### ***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 individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint. This requirement is incorporated by reference into the Section 504 regulations at 34 C.F.R. § 104.61. The regulation implementing Title II, at 28 C.F.R. § 35.134, includes a similar provision. In order for OCR to make a finding that prohibited retaliation occurred, OCR must determine that: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If any of these elements are not present, then OCR cannot make a finding of prohibited retaliation. If all of these elements are present, OCR would then consider whether the recipient has a legitimate, non-retaliatory reason for taking the action, and whether or not the recipient's reasons are a pretext for retaliation.

## **Allegation 1 – Facts**

During the 2021-2022 school year, the Student attended the XXXXX at Interboro High School and was receiving services and accommodations pursuant to a Section 504 Plan for her identified disabilities of XXXXXXXXXXXXXXXXXXXX. On XXXXXXXXXX, the Student enrolled in the

Transition Program, a hybrid program that integrated asynchronous online work with in-person instruction.

The Complainant alleges that from the start of the XXXXXX school year until placement in the Transitions Program, the District did not implement the following provisions of the Student's Section 504 Plan<sup>1</sup>:

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<sup>1</sup> During the course of OCR's investigation, the Complainant clarified that she did not wish to raise that the District failed to implement the provision of the Student's Section 504 plan that called for "XXXXXXXXXXXX XXXXX" as an allegation in the OCR complaint.



### *Allegation 1: Analysis*

OCR has preliminary concerns that the Complainant and School staff had different understandings of the meaning of each of the Student's Section 504 Plan provisions and that the District did not adequately convene the Section 504 Team to establish the meaning and implementation of each provision. Further, it is not clear from OCR's preliminary investigation whether each of the Student's Section 504 Plan provisions were implemented consistently throughout the XXXXXX school year before the Student moved to the Transition Program. Before completing our investigation of Allegation 1, the District requested to resolve the allegation in accordance with Section 302 of the CPM. ,

### **Allegation 2 – Facts**

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*Allegation 2: Analysis*

OCR has concerns that the XXXXXXXXX communications towards the Student and the Complainant reflected a misunderstanding of the Student's disability, and were inappropriate. Pursuant to Section 302 of the CPM, the District requested to resolve Allegation 2 through a voluntary resolution agreement.

**Conclusion**

Before OCR completed its investigation of this complaint, pursuant to Section 302 of OCR's CPM, the District requested to resolve the case through a voluntary resolution agreement, and OCR determined such a resolution was appropriate. The District signed the enclosed Agreement on February 21, 2023, which when fully implemented, will address the evidence obtained and all of the allegations investigated in this complaint. The Resolution Agreement requires that the District: (1) disseminate a memorandum to all administrators, faculty, and staff at the High School reminding them that retaliation is prohibited under Section 504 and Title II; (2) disseminate a memorandum to the XXXXXXXXX reminding him of the obligation to implement Section 504 plans, that offensive and disparaging comments regarding a student's disability status is prohibited by law, and that such conduct may warrant disciplinary action; (3) provide training to all administrators, faculty, and staff at the High School regarding the requirements of Section 504 and Title II to implement Section 504 Plans and communicate in a respectful manner regarding the disability status of students with disabilities; and (4) convene a meeting of the Student's multidisciplinary team to determine whether the Student suffered an educational loss due to the District's alleged failure to fully implement her Section 504 plan, and if so, whether the Student is entitled to compensatory education.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Michael Branigan at [Michael.branigan@ed.gov](mailto:Michael.branigan@ed.gov), or by phone at 215-656-8516.

Sincerely,

/s/  
Craig D. Ginsburg  
Supervisory Attorney  
Philadelphia Office

Enclosure