

August 12, 2016

Dr. B.J. Worthington
Director of Schools
Clarksville-Montgomery County School District
621 Gracey Avenue
Clarksville, Tennessee 37040

Re: Complaint #04-13-1150

Dear Dr. Worthington:

OCR has completed its investigation of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on January 17, 2013, against Clarksville-Montgomery County School District (District), alleging discrimination on the basis of disability and retaliation. The Complainant alleged that a teacher (Teacher 1) subjected her XXXXX (Student), a former student at XXXXXXXXXX School (School), to disability harassment and a hostile environment from XXXXXX, 2011, through XXXX, 2012, and that another teacher (Teacher 2) and a teacher's aide (Aide) retaliated against the Student from XXXXXX 2012 through XXXXXX 2013.

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, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to the provisions of Section 504 and Title II.

OCR investigated the following legal issues:

1. Whether the District discriminated against the Student by failing to respond promptly and equitably to incidents of disability harassment, thereby, subjecting the Student to a hostile environment from XXXXX, 2011 through XXXXX, 2012, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.4 and Title II and its implementing regulation at 28 C.F.R. § 35.130.¹

¹ The Complainant filed this complaint on behalf of her XXXXX(Student), alleging retaliation and breach of an Early Complaint Resolution (ECR) settlement agreement entered into by the District to resolve her previous OCR complaint, #04-12-1270. OCR determined that this complaint sufficiently alleged a breach and therefore OCR re-opened the allegation regarding disability harassment raised (Issue 1, above) in the previous OCR complaint. OCR also investigated the new retaliation allegations in the instant complaint.

2. Whether the Student was subjected to retaliation from XXXXX 2012 through XXXXX 2013, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with the laws or regulations enforced by OCR or the evidence is insufficient to support such a conclusion.

During its investigation in this matter, OCR interviewed the Complainant, eight District personnel, two student witnesses, and one parent witness. OCR also reviewed information provided by the Complainant and the District, including: (the Student's school agenda, (v) a teacher's notes and journal, (vi) i) the District's procedures for reporting and investigating harassment, (ii) correspondence between the District and the Complainant, (iii) the Student's educational file, (iv) documents related to other complaints filed by the Complainant, (vii) documents related to a prior Early Complaint Resolution (ECR) Agreement, and (viii) video footage of an incident that took place in the School's hallway.

Based on its investigation, OCR has determined that there are flaws in the District's procedures for responding to complaints of disability-based discrimination, including harassment; the District failed to respond appropriately to the Complainant's allegations of disability harassment; the Student was subjected to a hostile environment; and the District engaged in acts of retaliation. Therefore, OCR finds sufficient evidence to establish that the District has violated Section 504 and Title II. The factual and legal bases of OCR's determination are set forth below.

Legal Standards

Set forth below are the Section 504 general nondiscrimination standards related to harassment of students with a disability; relevant Section 504 procedural requirements; and the standard prohibiting retaliation. The Title II implementing regulation is interpreted consistent with the foregoing standards with respect to the complaint allegations.

Section 504 – Notice of Nondiscrimination

The Section 504 regulations at 34 C.F.R. § 104.8(a) and the Title II regulations at 28 C.F.R. § 35.106 require that each recipient publish a statement (notice) that it does not discriminate on the basis of disability in its education programs or activities. The notice must state, at a minimum, that the recipient does not discriminate on the basis of disability in its education program or activity, including in admission to or employment in its education programs or activities. The notice should indicate that inquiries concerning Section 504 and/or Title II may be referred to the Section 504/Title II Coordinator(s) or to OCR. The Section 504 regulation at 34 C.F.R. § 104.8 (b) requires that the notice of nondiscrimination be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with its education program and activity and in recruitment of students or employees and it should include the name, office address, and telephone number for the designated Section 504 and/or Title II Coordinator(s).

The regulation at 34 C.F.R. § 104.7 (b), further requires a recipient to adopt and publish procedures that provide for the prompt and appropriate resolution of student and employee complaints alleging any actions prohibited by Section 504 and/or Title II and their implementing regulations. Such procedures must provide effective means for preventing and responding to disability-based harassment.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and appropriate, including whether the procedures provide for:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging discrimination and harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and the alleged perpetrator of the outcome of the complaint; and
6. assurance that the school will take steps to prevent recurrence of any disability-based discrimination or harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Section 504 – Prohibition of Disability-Based Discrimination

The Section 504 implementing regulation at 34 C.F.R. § 104.4 provides that no qualified student 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 under any program or activity which receives Federal financial assistance.

A violation of Section 504 may be found if a recipient has created or is responsible for harassment. Disability-based harassing conduct (e.g., physical, verbal, graphic, or written) creates a hostile environment when it is sufficiently serious so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or opportunities offered by the school or district.

If a District employee who is acting (or who reasonably appears to be acting) in the context of carrying out his or her responsibilities over students (i.e., such that the employee has actual or apparent authority over the students involved), then the employee will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of any disability-based harassment of a student and, therefore, must remedy any effects of the disability-based harassment on the victim, end the harassment and prevent its recurrence.

When responding to harassment, a school must take prompt and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, and the size and administrative structure of the school and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (e.g., not requiring the target to change his or her class schedule).

Moreover, for the student with a disability who is receiving FAPE services, harassment on *any* basis can result in a denial of FAPE that must be remedied under Section 504. Accordingly, a school's investigation should include determining whether that student's receipt of appropriate services may have been affected by the harassment. If the school's investigation reveals that the harassment created a hostile environment and there is reason to believe that the student's FAPE services may have been affected by the harassment, the school has an obligation to remedy those effects on the student's receipt of FAPE. Even if the school finds that the harassment did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the harassment may have had some impact on the student's receipt of FAPE services.

The Section 504 regulation at 34 C.F.R. §104.7(a) requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation, including any investigation of any complaint communicated to such recipient alleging its noncompliance or alleging any actions that would be prohibited by the Section 504 or Title II regulations. The recipient must notify all of its students and employees of the name, office address and telephone number of the appointed employee or employees.

Section 504 – Prohibition of Retaliation

The regulation implementing Section 504 at 34 C.F.R. § 104.61, provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation or other matter in connection with a complaint.

Background

During the time relevant to the complaint, the Student was XX years old and attended XXth grade at XXXXXXXX School (School). She was last enrolled in the School in XXXX 2013. The Student's most recent Individualized Education Program (IEP) from XXXX 2011 through March 2013 lists her as having an "XXXXXXXX." The Complainant asserted that the Student has XXXXX and experiences dizziness when above ground level, with any rapid head movements, or in the presence of flashing lights; however, the IEP during the relevant time frame contains no references to XXXXX. The School was formally aware of the Student's dizziness as described by her physician as early as XXXXXX, 2012. Additionally, Teacher 1 understood the Student to have XXXXX, despite the Student not having any record of XXX at school. The Student was in Teacher 1's class from XXXX school through the 2011-2012 school year. She was transferred to Teacher 2's classroom for the 2012-2013 school year.

Issue One: Disability Harassment

OCR's investigation of Issue One included a review of the following: (1) applicable procedural requirements (the District's notice of nondiscrimination; designation of a Section 504 Coordinator; and the District's grievance procedures); (2) the handling of internal reports of harassment of the Student; (3) whether the Student was allowed to remain in a hostile environment because the District failed to provide a prompt and equitable response to an internal report of harassment; and (4) whether the District addressed the possible impact of the alleged incidents upon the Student's receipt of a free appropriate public education.

1. District's Applicable Procedures

The District's nondiscrimination statement (Policy SLT-A001) in the 2014-2015 student/parent calendar states that the District does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access. The nondiscrimination provision is also included in the Student Code of Conduct (Code). The District's Section 504 Coordinator is identified by name, title and contact information in the nondiscrimination statement, which was updated subsequent to the alleged harassing incidents. However, the statement does not designate an Age Discrimination Act Compliance Coordinator as required by 34 C.F.R. § 110.25.

The District's Discrimination Complaints Procedure (HUM-P010)² outlines the process for filing allegations of discrimination. The procedures do not specify that they apply to complaints of harassment, or direct the reader to a separate document that covers reports of harassment. The District also stated it does not have a separate harassment policy or procedure for disability based harassment. The District states through its attorney that Parents of students who have a 504 plan or are being considered for a 504 plan contact the Section 504 Coordinator's office with complaints. The 504 Coordinator investigates the complaint and proposes a solution to everyone

² The District's applicable discrimination grievance procedure at the time of the alleged incidents in the complaint was the Title VI and other Discrimination Complaints Procedure, Policy HUM-P010. The procedure has been updated since the filing of the complaint. OCR's discussion is based on a review of the current policy.

involved. If a resolution cannot be agreed upon and the complaint falls into one of the three categories listed above, then a due process hearing is scheduled as set forth in the procedure. If the complaint does not fall into one of the three categories, and a resolution that satisfies all parties cannot be reached then the parents are advised that they have the option of filing a complaint with OCR.

The District's Discrimination Complaints Procedure (HUM-P010) must be revised to: (i) specify that the procedure applies to complaints of harassment or direct the reader to a separate document that covers reports of harassment; (ii) provide for complaints to be filed by third parties; (iii) designate an alternate official to accept appeals where the allegations are against the Director of Schools or Title VI Coordinator; (iv) to provide written notice of the outcome of complaints and opportunity for appeal to all parties; and (v) provide an assurance that the District will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

The District's Harassment Policy (INS-A016)³ is a general harassment policy, captioned "Harassment, Intimidation, Bullying and Hazing," which states that the District prohibits acts of harassment, intimidation, bullying, and hazing by students, district personnel, and volunteers.⁴ It does not state that it is applicable to bullying or harassment based on disability (or any other basis protected under a statute enforced by OCR). The District's Harassment Policy must be revised to: (i) state that it is applicable to bullying or harassment based on disability and other basis protected under statutes enforced by OCR; (ii) reflect that the policy also prohibits harassment and bullying by third parties, (iii) define harassment as any conduct that is sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school; (iv) provide written notice of the outcome of investigations to all parties; (v) provide for possibility of discipline on harassment complaints regardless of whether it was filed anonymously; (vi) provide designated, reasonably prompt timeframes for all stages of the investigation including issuance of a decision; (vii) add an assurance that "the investigation will be conducted in an impartial manner, including an impartial decision maker; (viii) allow the parties to present witnesses and other evidence relevant to the complaint; and (ix) provide an assurance that "the school will take steps to prevent recurrence of any disability-based harassment and remedy discriminatory effects on the complainant and others, if appropriate."

2. Harassment Allegations and District's Response

The Complainant alleged the XXXXXXXXXXXX Teacher (Teacher 1) harassed the Student based on her disability from XXXXXX, 2011, through XXXX, 2012.⁵ The Complainant asserted that on an almost daily basis the Student came home and appeared to be in distress

³ The District's applicable harassment policy, Policy Number INS-A016, at the time of the alleged incidents in the complaint was dated January 2, 2006 (revised July 11, 2011). There were three revisions to the policy since that time. OCR's discussion is based on a review of the current policy.

⁴ The District has a separate sexual harassment policy; this discussion does not pertain to that policy.

⁵ Earlier incidents cited by the Complainant were deemed untimely during evaluation; however, evidence developed during the investigation shows that the earlier incidents were part of an ongoing pattern of alleged harassing incidents.

because of interactions with Teacher 1. Specific incidents cited by the Complainant include the following:

1. On XXXXXXXX, 2011, Teacher 1 cursed at the Student while she was at school;
2. On XXXXXXXX, 2011, Teacher 1 left the Student by herself in lunch;
3. On XXXXXXXX, 2011, Teacher 1 told the Student that she was tired of her and her mom;
4. On XXXXXXXX, 2011, Teacher 1 told the Student to go to the restroom alone despite the Student requiring supervision;
5. On XXXXXXXX, 2011, Teacher 1 told the Student she didn't care that she was hurting and "you better be scared of me;"
6. On XXXXXXXX, 2012, Teacher 1 forced the student to go up the stairs in the gym by pushing her by the buttocks up the steps while telling her "I don't f**king care. I am pissed"
7. On XXXXXXXX, 2012, Teacher 1 told the Student "I'm sick of Justin Bieber," grabbed her Justin Bieber back pack, and broke the zipper on the pack;
8. On XXXXXXXX, 2012, the fluorescent light bulbs in class were flickering and disturbing the Student, but Teacher 1 told her "tough," and that she did not care;
9. Teacher 1 does not let the Student do many things she allows other students to do, such as, work on the computer, listen to music, take breaks, sleep, or hug her classmates;
10. On XXXXXX, 2012, the Student said she was scared and wanted to go speak with the Principal during class, but Teacher 1 would not let her go, and blocked the doorway to prevent the Student from going to the office; and
11. On XXXXXX, 2012, Teacher 1 held the Student out of the Special Olympics because she could not go up the stairs in the gym to do time trials for the event.

While OCR opened the complaint to investigate harassment allegedly occurring subsequent to XXXXXX, 2011, there is evidence of a continuing pattern of reports of harassing incidents dating back to at least spring of the 2010-2011 school year. During an OCR interview, the Principal acknowledged that the Complainant had expressed multiple concerns about how Teacher 1 treated the Student. He stated that when the Student started at the School, Teacher 1, who was her teacher in XXXXXX school, was XXXXXX to the XXX school and came with the Student to the School. He stated that the Complainant's allegations "have gone on since" the Student's XXXXXX to XXXX school.⁶ He reported that he investigated every complaint that the Complainant raised while the Student was at his school.

OCR's investigation addresses the following: (a) the District's response to specific documented concerns raised prior to XXXXXXXX, 2011; (b) the District's responses to those items enumerated above for which there is documented notice to the District or for which the Principal acknowledged notice; (c) notice concerning the environment for the Student subsequent to XXX 2012; and (d) documentation of District responses to the Complainant's concerns.

⁶ He also stated that it is his understanding that complaints started while the Student was in XXXX school; however, he was not involved in handling those complaints. As noted above, the Student was in XXXX grade in XXX 2012, when the original OCR complaint was filed.

(a) Concerns regarding harassment raised prior to XXXXXXXX, 2011

The Principal informed OCR that the first incident that he investigated was a XXX 2011 incident. He stated that the Complainant alleged that during a field trip to XXXXXXXXXXXX restaurant, Teacher 1 yelled at the Student when she wanted to get french fries instead of pizza. He stated that the Complainant alleged Teacher 1 told the Student “No, sit your a ** down” in front of other students in the class.

The Principal informed OCR that he interviewed the students identified by the Complainant as witnesses, and the allegations concerning the XXXXXXXXXXXX incident were unsubstantiated. However, during OCR’s investigation an adult witness, who reported that she was not interviewed by the Principal, informed OCR that the Student approached her at XXXXXXXXXXXX, physically shaking and looking over both of her shoulders glancing around as if she were terrified and looking for Teacher 1. In addition, in a XXX , 2011, email, the XXXXXXXXXXXXXXXXXXXX (Director) informed the Principal and XXXXXXXXXXXXXXXXXXXX (Coordinator) that a representative with the Student’s home care agency contacted the Director by phone and stated the Student was crying and fearful because Teacher 1 had yelled at her on one occasion, and also told her to “sit her [a**] down” at XXXXXXXX. In the email, the Director also stated -- “Whether it is right or wrong, we have 2 parents that are VERY upset with [Teacher 1].” (emphasis in original). Additionally, a student witness present that day observed Teacher 1 yelling at the Student, causing all students to stop and watch, and the Student began crying, but the witness could not recall what Teacher 1 said.

In an XXXXXXX, 2011, email, the XXXXXXXXXXXX stated he was contacted by the Complainant, who alleged that Teacher 1 continually “cussed” at the Student and that the latest was a directive for her to “get to the f...ing cafeteria.” The XXXXXXXXXXXX requested that the School investigate the matter and contact the Complainant with the results of the investigation. The District’s evidence included an email reflecting an inquiry concerning this allegation. The email stated the Principal spoke with Teacher 1, an aide, and “others,” but there was no evidence to substantiate this allegation.

On XXXXXXXX, 2011, in connection with a request to have the Student transfer to a new school, the Complainant alleged that Teacher 1 bullied and cursed at the Student. It is unclear whether this referred to the prior XXXXXXXXXXXX incident, or a new incident. The District did respond to these claims in a transfer request and appeal decisions. In an email, the Principal stated that he has “consistently looked into the problems and they have all been unsubstantiated,” and a response from the XXXXXXXX Coordinator that the transfer committee reviewed the evidence, including the XXXXXXXXXXXX incident and other name calling or cursing incidents, and it did not support a transfer.

(b) Incidents allegedly occurring between XXXXXXXX, 2011 and XXXXXXX, 2012

OCR examined the District’s response to the incidents that the Complainant contends occurred between XXXXXXX, 2011, and XXX 2012, for which there was either documented notice to the District or an acknowledgement of notice during the interview with the Principal.⁷ The

⁷ During a follow up interview the Complainant did not recall reporting the incident described in item j.

Complainant alleged to OCR that on XXXXXXXX, 2011, the Teacher cursed at the Student while she was at School.

The Complainant raised similar allegations regarding cursing by Teacher 1 in a disability discrimination complaint which she filed with the Tennessee Department of Education, Division of Special Education (TN DOE) on XXXXXXXX, 2011, and forwarded to the Principal, the Director, and the Coordinator.⁸ The Principal alleges he took steps to speak with Teacher 1, the Student, the classroom aides, and other students regarding alleged verbal harassment incidents. He concluded that the allegations were not substantiated during his investigation and he reported back to the Complainant.

The Complainant also alleged that on XXXXXXXX, 2011, Teacher 1 left the Student by herself during lunch. The evidence shows that on XXXXXXXX, 2012, the Complainant raised this allegation with a District official in an email appealing the denial of a school transfer request. The Complainant alleged that Teacher 1 left the Student alone intentionally, which frightened the Student. In a XXXXXX, 2012, letter from the XXXXXXXX Coordinator regarding a transfer request from the Complainant, the Complainant was informed that the Principal viewed the video footage of the Student at lunch and found no evidence of her being left alone. The District's information did not include any other documentation concerning investigation of this incident. The video footage on the School's hard drive is overwritten and deleted every 30 days, and was therefore unavailable to OCR.

The Complainant alleged that on XXXXXXXX, 2011, the Teacher told the Student that she was tired of her and her mom. The Principal informed OCR he remembered the Complainant raising this allegation. He further recalled Teacher 1 denying the allegation, and recalled asking the Student about it. The Principal asserted that when he would ask the Student a question in the presence of the Complainant, the Student would begin to answer but the Complainant would often finish the response. The Principal could not recall if he spoke to anybody else regarding this allegation.

The Complainant alleged that on XXXXXX, 2012, Teacher 1 forced the Student upstairs by pushing her buttocks up the steps, then grabbing her from behind and above her elbows while forcing her up the steps and saying she needed to get her a** upstairs. According to the Complainant, the Student protested going upstairs and Teacher 1 allegedly told her "I don't f***king care... I am pissed." The Complainant stated the Student has difficulties going up stairs, gets dizzy and is afraid of heights [Complainant alleges this is related to XXXXXX]. The Complainant explained further that "going upstairs in the gym messes with the Student because she cannot tell if the floor is moving or not especially if someone is jumping." The Complainant also reported that she filed an assault charge regarding this allegation in connection with the gym stairs incident.

The Principal stated that he was not aware of the Student having XXXXXX, but that he was aware that the Student did not like going upstairs to the track in the gym and he instructed Teacher 1 to let her walk around downstairs. Emails between the Principal and the Complainant beginning on

⁸ TN DOE later closed the complaint for lack of jurisdiction.

XXXXXXX, 2012, corroborate that after receiving an allegation by the Complainant regarding the Student's "stress level, dizziness, fear of heights & nauseousness [sic] she is under when having to go upstairs," the Principal stated that he would see if Teacher 1 could find an alternative assignment for her. The Principal also stated they did not have video in the stairwell, but that they shared the video from the classroom to the gym with the Complainant to show that the Student did not appear upset in the video either going to or from gym. He stated that he remembers seeing video of the Student sitting on the bleachers in the gym while everyone else was upstairs. He reported further that he interviewed Teacher 1, who said she was not with the Student during the alleged incident; he stated the Teacher told him she was upstairs in the gym and the Student was downstairs. An aide who was in the gym with Teacher 1 at the time reported nothing happened that day. Finally, the Principal stated that he did not believe the Student was forced to go up the stairs after the complaint was addressed because he recalls seeing video footage of her sitting downstairs in the gym. The Complainant informed OCR that she never saw the video footage from the gym.

The Complainant alleged that on XXXXX, 2012, Teacher 1 told the Student "I'm sick of Justin Bieber," grabbed her Justin Bieber backpack, and broke the zipper on the backpack. An email from the Complainant to the Principal dated XXXXX, 2012, refers to this incident. The evidence shows that the Complainant alleged the incident occurred in the classroom, as opposed to the gym. The District investigated the backpack allegation as though it was alleged to have occurred during the alleged XXXXX, 2012 gym stairs incident. The Principal stated that he directed a School Resource Officer to investigate the allegation that Teacher 1 pulled the Student's backpack. He stated that a video was reviewed in connection with the investigation, and they "showed the video to the [Complainant], regarding that [sic] it did not appear that the Student was upset when walking back from gym, and that she was wearing her backpack while walking back." The Principal's discussion of the video, which is no longer available, does not reflect that the video depicted anything that occurred in the classroom, where the alleged incident occurred. The Principal informed OCR that the aide from the bus was interviewed and said there was nothing ripped on the backpack when the Student departed school that day, but when she came back the next day it was ripped.

The Complainant also alleged that Teacher 1 allowed other students to do things, such as, work on the computer, listen to music, take breaks, sleep, or hug classmates, but not the Student. She also stated that Teacher 1 denied other students those privileges on other occasions too. The Complainant did not recall if she made complaints about the Student working on the computer. She alleges she complained to Teacher 1 and the Principal verbally about the Student being denied sleep and not being allowed to hug her classmate, who was a friend. The evidence reflects that the District had actual notice of Teacher 1's exclusion of the Student from unspecified classroom activities as of XXX 2012. The Principal in a memo dated XXXX, 2012, states that Teacher 1 was counseled not to exclude the Student from activities in her class after receiving notice by letter from OCR dated XXXX, 2012, regarding complaint #04-12-1270. There is no evidence that any other remedial or preventative measures were taken.

(c) Notice concerning environment for the Student subsequent to XXX 2012

The Principal stated that during 2012-2013 school year the Student became withdrawn. She did not seem to be as jovial or friendly as when she first arrived. She seemed to avoid employees. On one occasion, he saw that the Student appeared withdrawn, he asked her what was wrong, and she responded only with Teacher 1's name. He reported that when he observed the class, the Student appeared to have fun while in the classroom but outside the classroom she would become withdrawn. He did not describe any steps he took to follow up and assess the environment for the Student in light of his observation that she was withdrawn and appeared to avoid employees. The Student was transferred to another teacher's class (Teacher 2) around XXXXXXXX, 2012.

In addition, the Student's IEP effective on XXXXXXXX, 2012, reflects that during the IEP meeting, the Complainant raised concerns about whether the Student was receiving FAPE in a safe environment. The evidence does not reflect any District response to the concerns raised at the meeting.

Analysis and Conclusion

The documentation of the District's responses to the Complainant's concerns consists of only the few items of correspondence. The file contained no witness statements, summaries of statements, photos from videos purportedly reviewed by the Principal or SRO, findings or other reports, or other documents demonstrating that an investigation had occurred or memorializing the evidence that was gathered, aside from a XXXXXXXX, 2012, letter memorializing evidence gathered for the police department pursuant to the Complainant's police complaint. The Principal reported that generally, the results of investigations were not documented because they were done "on the spot" and he reported back to the Complainant without keeping a record.

The evidence shows that the first complaint the School received from the Complainant was regarding an incident at XXXXXXXXXXXX in XXX 2011. The Principal acknowledged receiving the complaint and investigating the complaint. However, the Principal stated that the Complainant expressed concerns from the outset of the Student's enrollment at the School in 2010-2011 and the evidence shows that the Complainant raised concerns about the Student's stress level at the School during a XXXX 2011 IEP meeting. The evidence shows that generally the Principal made some inquiry in response to the Complainant's specific complaints against Teacher 1. The steps included interviewing Teacher 1 and on occasion aides and student witnesses. With respect to the XXX 2011 incident at XXXXXXXXXXXX, the Principal reportedly interviewed student witnesses and concluded that the allegation was "totally unsubstantiated." The Principal did not identify the students interviewed; however, OCR notes that Teacher 1 stated the Student was the highest functioning student in her class, and several parents contacted by OCR noted that their child was not able to communicate. A student witness and a parent witness, who observed the Student's distress, substantiated the Complainant's allegation. Additionally, the evidence shows that the Principal was aware that Teacher 1 excluded the Student from some class activities, which was addressed after the Complainant filed the original OCR complaint (#04-12-1270). Moreover, while the Principal made an inquiry concerning each matter brought to his attention by the Complainant, there is no evidence that the District made a

comprehensive assessment of the environment for the Student, even after the Principal observed that she had become withdrawn especially around employees at the School. Finally, the Principal did not provide the Complainant or Teacher 1 written notice of the outcome of any of his investigations.

Based on a preponderance of the evidence, the evidence is sufficient to support that the District failed to respond equitably to incidents of disability harassment involving the Student in violation of Section 504 and Title II.

3. Hostile Environment Analysis

Teacher 1 denied ever using curse words towards the Student or in her presence. As noted above, one witness corroborated the Complainant's allegation concerning the incident occurring at XXXXXXXXXXXX and a second witness reported to OCR that during the field trip the Student was shaking physically and appeared to be afraid of Teacher 1. In addition, a home care provider reported to the District that whatever occurred between the Student and Teacher 1 resulted in the Student crying and appearing fearful when she returned to school. Witness interviews did not corroborate that Teacher 1 cursed at the Student on XXXXXXXX, 2011, as alleged.

Teacher 1 also informed OCR that she did not leave the Student alone during lunch on XXXXXXXX, 2011, as alleged. She explained that a typical lunch includes all of the XXXXX class with the teacher and other teaching assistants. Other witnesses present around that time frame, including a student and a parent, did not recall the Student being left alone while at lunch at any time including on the date alleged.

Teacher 1 stated that she did not recall the allegation that on XXXXXXXX, 2011, she told the Student that she was tired of her and her mom, and that she has never made that statement. Teacher 1 further denied the allegation that on XXXXXXXX, 2011, she told the Student she did not care that the Student was hurting and the Student should be afraid of her. She stated further that the Complainant has accused her of not being sensitive to complaints of physical discomfort, but denied she has ever been insensitive to such complaints. Teacher 1 alleges she absolutely did not say she did not care, and the Student has not expressed that she was afraid in front of her.

The Complainant alleged that on XXXXXXXX, 2011, the Student was told to go to the restroom alone.⁹ The Complainant explained that the Student required supervision because some students in the hallways can be cruel. Teacher 1 denied this allegation, stating she did not recall it happening and that if it was in her class, the Student would have gone by herself because she has two restrooms in her classroom. She also stated that the Student did not require assistance and it would not have been out of the ordinary for her to instruct the Student to go by herself since the restrooms are in the classroom.

OCR notes that the Student's IEP at the time contained no specific provisions regarding restroom assistance, but did provide for an aide or peer mentor that would attend the Student for most non-

⁹ The evidence obtained thus far did not establish that there was an internal complaint concerning this incident. Thus, it was not covered in the above discussion.

academic program participation. The Social/Emotional behavior component of the Student's IEP includes a benchmark that states the Student would be given opportunities to promote independence within the school. Additionally, the "Transition" section of the IEP as related to developing skills for independent living did not reference the restroom.

With regard to the allegation that the Student was pushed up the stairs in the gym on XXXXX, 2012, Teacher 1 informed OCR that there were no provisions for XXXXX in the Student's IEP, but the Complainant informed her that going upstairs made the Student dizzy and Teacher 1 believed the Student has XXXXX. Teacher 1 stated that she allowed the Student to remain downstairs in the gym because her mom said she did not have to go upstairs and the Student was refusing. She also stated the video in the gym showed the Student never went towards the stairs. The Principal informed OCR that Teacher 1 told him that she was not with the Student at the time of the alleged stairs incident. A XXXXXX, 2012, journal entry by Teacher 1 reflects that on that date she told the Student that either she had to go upstairs in the gym or the Teacher would "get the Principal."

With respect to the alleged torn book bag incident on XXXXXX, 2012, Teacher 1 stated to OCR that she was not at school earlier in the day, and that the zipper was broken at some point prior to her arrival at school. Teacher 1's journal – provided to OCR by the District – says the video footage shows the Student did not have the book bag either to or from the gym, and that another aide was in the classroom when the Student broke it after trying to show other students her XXXXX gifts. Teacher 1's statement to OCR and journal entry are not consistent with the statement that the aide reportedly gave to the Principal; according to the Principal, the aide said the book bag was torn sometime after the Student left school.

The Complainant alleged that on XXXXXX, 2012, the fluorescent light bulbs in class were flickering and disturbing the Student, but Teacher 1 told her "tough," and that she did not care. The Complainant alleged that she learned of this incident after checking the Student out of school. The Student said Teacher 1 was laughing at her, said she was not sick, and called her a cry baby. During follow-up, the Complainant stated she complained to Teacher 1 orally and had no additional documentation regarding this allegation.¹⁰ Teacher 1 informed OCR she was not aware of this allegation, the Student did not complain about flickering lights, and she did not laugh at the Student or make the statements attributed to her.

With respect to the complaint allegation regarding the Student being excluded from certain activities, Teacher 1 informed OCR that the Student was "never one to really use the computer," but she had never been denied use of the computer. The Complainant contended that other students used the computer, but it was never offered to the Student. OCR notes that Teacher 1 characterized the Student as her highest functioning student.

With respect to music, Teacher 1 stated that they listened to music as they prepared for the buses and students would take turns sharing what they listened to as a class. Teacher 1 asserted they

¹⁰ The evidence shows that the Complainant sent an email to the Director stating that the Student was not to watch movies with flashing lights during XXXX class due to XXXXX, but this concern related to a different teacher and was raised in XXXXXX 2012, which was well after this incident alleged in this complaint.

listened to the Student's music as well. The Complainant contended that she remembered that they shared music, but alleged there were times when the Student came home and said they would not let her play her music. She stated it seemed like it was happening a lot, but she did not recall.

Regarding taking breaks, Teacher 1 stated that the Student was at a higher level and did not need breaks. She alleged the Student was capable of working the entire class period without needing a break. Teacher 1's notes state that she provided the Student breaks, but not as much as others. During follow-up, the Complainant confirmed these facts, but maintained it was harassment because other students were allowed breaks when the Student was not.

Regarding sleep, Teacher 1 stated that the Student did not need sleep and she would not allow the Student to sleep in school due to her capabilities as one of the highest functioning students. She alleged that the lower functioning students were allowed to sleep due to their disabilities or due to medication drowsiness. The Complainant contended that the Student's XXXXX medicine caused drowsiness and dizziness, but she was not allowed to sleep. There is no evidence to support that the District was specifically aware of the potential side effect of the Student's medication.

Regarding hugging other classmates, Teacher 1 stated that the Student was not permitted to hug one other student by request of that student's mother that no staff or students hug her due to XXXXXXXXXXXX. The Complainant stated that she was aware that they did not want anybody kissing on that one student rather than hugging, but Teacher 1 would not allow hugging even though the other student and the Student were best friends. The other student's mother stated that at one point, Teacher 1 sent her a note regarding limiting interactions between the Student and her daughter. This witness stated she specifically told the Principal that interactions between the Student and her daughter were okay, but she asserts that Teacher 1 was trying to break off their communication. The Teacher's XXXXXX, 2011, notes show that the Principal spoke with Teacher 1 about contact with this student and setting up a schedule of times that the Student could push the other student's wheelchair. The mother signed an agreement on XXXX, 2011, about the students' contact, thus permitting them to have contact, but it did not address hugging.

The Complainant contended that the School continued telling the Student she could not hug her friend, but that she does not recall whether they did anything on the music allegation, she does not know if there were changes after her complaints regarding taking breaks, and that the Student was never allowed to sleep and was kept awake even if her head was hurting. In response to the allegation that she would not let the Student leave to speak with the Principal when she was frightened, Teacher 1 informed OCR that she did not recall this allegation and that she did not recall the Student ever requesting to go to the office for any reason. With regard to the allegation that the Student was not allowed to participate in Special Olympics in XXXX 2012 because it was held upstairs in the gym, Teacher 1 told OCR that for that year, she did not recall the Student being withheld from participation for any reason. She confirmed that they held time trials upstairs in the gym at times, but trials were also held outside on the track.

Analysis and Conclusion

In sum, there is corroborating evidence concerning the XXXXXXXXXXXX incident and while the Teacher attributed any differences in treatment of the Student to her higher level of functioning,¹¹ the District counseled her concerning exclusion of the Student from any activities after the initial OCR complaint (#04-12-1270) was filed. With respect to the book bag incident there is inconsistent evidence from District witnesses. The Principal reported that during his investigation an aide told him that the book bag was torn after the Student left school. However, Teacher 1's journal reflects that the book bag was torn during the school day. While this discrepancy may not be sufficient to establish that the incident occurred as alleged by the Complainant, it potentially impacts the overall credibility of District witnesses. While the Principal told OCR that he believed the Student was not required to go upstairs in the gym after the Complainant raised her concerns, Teacher 1's journal shows that a few days after the XXXXXX, incident she told the Student that she would call the Principal if the Student did not go upstairs.

In addition, one witness informed OCR that Teacher 1 was harsher with the Student than with other students. The witness said that Teacher 1 was generally impatient with students in the Student's class, but did not display similar impatience with regular education students. She also said that Teacher 1 yelled at the Student more than she yelled at other students and was "meaner" to the Student than to other students. Also, the evidence shows that during the 2012-2013 school year, the Student became withdrawn and only said Teacher 1's name when the Principal asked her what was wrong. Finally, the Director described Teacher 1 as "rough" in an email concerning one of the Complainant's allegations.

Based on the preponderance of the evidence standard, the evidence establishes that the conduct the Student was subjected to by the District was sufficiently serious so as to interfere with or limit her ability to participate in and benefit from the services, activities or opportunities offered by the District. Therefore, the evidence is sufficient to support that the Student was subjected to a hostile environment in violation of Section 504 and Title II.

4. Free Appropriate Public Education (FAPE) Impact

The evidence shows that the Complainant raised concerns about the climate for the Student at both the XXXX 2011 and XXXX 2012 IEP meetings, the Principal was aware that the Student had been excluded from some activities and the Principal personally observed that at some point the Student became withdrawn and appeared to avoid adults. Nevertheless, there is no evidence that the District considered the impact of any potentially harassing incidents upon the Student's ability to receive a FAPE. Consequently, the evidence is sufficient to support that the District violated Section 504 and Title when it failed to assess the impact of the harassing incidents on the Student's ability to receive a FAPE.

¹¹ Teacher 1 acknowledged that her decisions about breaks and naps were not based on the IEP of any student but instead were based on her observations.

Issue Two: Retaliation

The Complainant alleged that Teacher 2 and her Aide subjected the Student to retaliation when: (a) during the 2012-2013 school year, the Aide and the Student's new XXXXXX Teacher (Teacher 2) did not permit the Student to go to gym as the rest of her class and did not permit her to do chores with all of the other students in class; (b) on occasion and also on XXXXXX, 2012, the Aide and Teacher 2 gave the Student conflicting instructions in class; (c) on XXXXXX, 2013, Teacher 2 and the Aide asserted the Student was in violation of the dress code for bringing a purse and wearing boots to School; and (d) in or around XXXXXX 2013, during skating for Special Olympics the Aide told the Student that she needed to go home and should not be at Special Olympics because she was not on the list and that she should not return for Olympic basketball either. Finally, the Complainant also requested a school transfer in or around this time period that was denied, which OCR examined as an un-alleged incident of potential retaliation.

To determine whether there is a *prima facie* case of retaliation, OCR must find: (1) that the Complainant engaged in a protected activity; (2) that the recipient was aware of the protected activity; (3) that the recipient took adverse action against the Complainant contemporaneous with or subsequent to the participation in a protected activity; and (4) that there is a causal connection between the adverse action and the protected activity. If a *prima facie* case of retaliation is established, OCR proceeds to determine whether the recipient has legitimate, nondiscriminatory reasons for its actions that are not a pretext for retaliation.

1. Protected Activity and Notice of Protected Activity

The Complainant filed a complaint with OCR on the aforementioned allegations in complaint #04-12-1270. That complaint was settled through an ECR Agreement signed on XXXXXX, 2012, which permitted the Student to transfer from Teacher 1's room to a class with Teacher 2 and the Aide, and it disallowed contact or communication between the Student and Teacher 1. The District had knowledge of the complaint when it received OCR's notification letter, and the District entered into an ECR Agreement with the Complainant. Therefore, OCR has determined that the Complainant engaged in a protected activity and the District had knowledge of it.

2. Adverse Action

There is insufficient evidence to substantiate that an adverse action occurred with respect to the conflicting instructions in class, dress code violations, and Special Olympics retaliation allegations. OCR finds that based on a preponderance of the evidence the alleged adverse actions of not permitting the Student to participate in laundry based chores or attend gym occurred. The Complainant alleged the following adverse actions after the ECR Agreement in OCR complaint #04-12-1270:

The Complainant contended that the Student was not permitted to perform any chores. The Aide asserted that they permitted the Student to perform all chores. However, the District admitted in its response to the complaint that the Student was not allowed to perform the chores of washing or drying clothes, and thus denied the Student an opportunity provided to other students. Therefore, there is sufficient evidence to show that this alleged adverse action occurred.

The Complainant alleged that the Student was no longer allowed to go to gym with her classmates because Teacher 1 and her class were also in the gym at the same time. The District confirms that the Student did not attend Adaptive PE, but stayed in the classroom with Teacher 2 and some other students who could not attend PE for medical reasons. Therefore, there is sufficient evidence to show that this alleged adverse action occurred.

The Complainant alleged that the Aide and Teacher 2 gave the Student conflicting instructions in class to confuse and upset her. The Aide stated that Teacher 2 gave instructions and when she had to step out the Aide took over instruction, but she did not recall conflicting instructions. During follow up, the Complainant maintained her allegation, stating the Student would come home confused, and that she did not know who to listen to. Based on the preponderance of the evidence, there was insufficient evidence to establish this adverse action occurred.

During clarification, the Complainant stated that Teacher 2 told the Student she should not wear boots, and the Aide told the Student not to bring her purse to school either, despite that she had always brought her purse to school previously. When questioned about this, the Aide alleged the Student was never referred for dress code issues and was not told she could not bring a purse. She also reported that she has “never said a word to the Student” about her boots. The Principal stated he asked Teacher 2 and the Aide about this allegation, and they said they “never questioned her about the dress code,” and that it was a warm and sunny day so they asked why the Student was wearing rain boots without referencing her purse. The evidence does not reflect any discipline entries in the Student’s educational file for dress code violations or other directives not to bring her purse. During follow up, the Complainant stated that when she reported this to the Principal, he did not investigate but merely stated that how the Student was dressed was fine. Based on a preponderance of the evidence, there is insufficient evidence to establish an adverse action that the Student was told not to bring her purse or wear her boots.

On XXXXXX, 2013, the Student was withdrawn from the District due to 10 consecutive absences. The Complainant alleged that on or around XXXXXX, 2013, at the Special Olympics, the Aide told the Student that she needed to go home and should not be at the Special Olympics because she was not on the list. The Complainant alleged that the Aide also told the Student not to come back for Olympic basketball either. During an OCR interview, the Aide did not recall the Student’s having attempted to attend the Special Olympics. The Aide stated that she was unsure of whether other students who were not enrolled were permitted to attend the Special Olympics. While the Complainant reported that she and the Student were told that the Student could not participate in Special Olympics and the Student was told to go home and not return for basketball, the alleged statements were not corroborated by the Aide. Therefore, there is insufficient evidence to show that the alleged adverse action occurred.

3. Causal Connection

The District admitted a connection between disallowing the Student from performing laundry chores or attending gym and the prior OCR complaint, stating that these actions were done with the intent of honoring the ECR Agreement in the prior OCR complaint. Therefore, OCR finds that there is a causal connection between these actions and the prior OCR complaint.

4. *Legitimate Nondiscriminatory Reasons for the Recipient's Actions and Pretext*

The District alleged that prohibiting the Student from performing laundry related chores and attending gym were done to prevent contact between the Student and Teacher 1 in compliance with the ECR Agreement. The District asserts that the washer and dryer were in Teacher 1's classroom and Teacher 1 was not permitted to be in the vicinity of the Student per the ECR Agreement. The District provided no evidence, however that alternatives to barring the Student from performing washing or drying laundry related chores were unavailable.¹² Furthermore, the District alleged the decision to keep the Student from Adaptive PE was supported from a letter from the Student's medical provider dated XXXXXX, 2012, stating she had problems with dizziness associated with sudden movements of her head and she should not participate in activities that require rapid head movements or spinning in circles. The District provided no evidence, however, that it was unable to provide the Student Adaptive PE services that were within the parameters specified by the physician. Moreover, pursuant to the regulation at 34 C.F.R. Section 104.37, the District is required to provide the Student nonacademic services in such manner as is necessary to afford her an equal opportunity to participate in such services.

Conclusion

OCR finds that the District denied the Student an educational opportunity when it excluded the Student from washing and drying activities after entering into the ECR agreement. The District's reliance upon the ECR agreement is not deemed a legitimate nondiscriminatory reason because the existence of the restriction on contact between the Student and Teacher 1 does not explain the failure to make adjustments that would enable the Student to participate without having contact with Teacher 1. Further, the District excluded the Student from Adaptive PE, and its reliance upon the medical documentation does not constitute a legitimate non-retaliatory reason because it does not explain why the District did not make adjustments to meet the needs articulated by her medical provider.

Based on a preponderance of the evidence standard, the evidence is sufficient to support that the District subjected the Student to retaliation in violation of Section 504 and Title II.

Issue 3: Unalleged Denial of Free and Appropriate Public Education

With respect to withholding the Student from gym, the Student's IEP dated XXXXXX, 2012, lists under least restrictive environment and general education that the Student would have gym with the Student's general education peers. Since the IEP provides for the Student to take part in gym, OCR finds sufficient evidence that withholding the Student from gym also constituted a denial of FAPE in violation of Section 504 and Title II.

Issue 4: Unalleged failure to appropriately evaluate for XXXXX

¹² OCR notes that a scheduling adjustment was made to enable the Student to participate in XXX without having contact with Teacher 1. The District provided no evidence that it could not make a scheduling or other adjustment to provide the Student access to the washer/dryer.

OCR's investigation found that the District failed to appropriately evaluate the Student when it reasonably should have known she could have XXXXX. The Student's background information for her IEP Reevaluation Summary Report, dated XXXXXX, 2009, listed XXXX for a XXXX disorder, and her Parent Information for Reevaluation form dated XXXXXX, 2009, states the student takes XXXX as XXXXX medication. The District also had a letter from the Student's doctor dated XXXXXX, 2012, which stated the student had dizziness, and should not participate in activities requiring rapid head movement or spinning in circles. Teacher 1 acknowledged that it was her understanding that the Student had XXXXX. The Student returned to the School in Spring, 2015, she was re-evaluated on XXXXX, 2015, and an IEP was developed. The Student's 2015 IEP noted that in the medical information that the Student's mother reports that she suffers from XXXXX. The new IEP included as attachments some XXXXXX, 2012, IEP Reevaluation Summary Reports and Parent Information for Reevaluation forms similar to the 2009 forms above that note the Student takes XXXX for XXXXX disorder, and also the same 2012 letter from the Student's doctor. The District generated a Medical Alert for the Student stating "XXXXX... Other: XXXXX, CALL 911 IMMEDIATELY... Medications: XXXX [sic]." (emphasis in original). The 2015 IEP re-evaluation documents do not indicate any consideration of needed accommodations occurred.

Based on this information, the District had notice of the Student's additional disability. Yet, there is no evidence indicating the District evaluated whether the Student needed additional related aids and services because of her XXXXX. Although, the District noted the Student's XXXX during her IEP re-evaluation in April 2015, there was no indication in the IEP re-evaluation documentation that the IEP team considered whether the Student was eligible for and required related aids and services for her XXXXX and XXXXX outside of making a note to call 911 if XXXXXX occurs. Therefore, there is sufficient evidence that the District failed to appropriately and timely evaluate the Student for eligibility and possible need for related aids and services for an additional disability in violation of Section 504 and Title II.

CONCLUSION

With respect to the District's policies and procedures, OCR finds that the District's nondiscrimination statement does not designate an Age Act Coordinator and its discrimination complaints procedures fail to include certain provisions to ensure for prompt and equitable responses to complaints of discrimination.

OCR has also determined that: (1) the Student was subjected to harassment that created a hostile environment based on the Student's disability, the District failed to respond equitably to the hostile environment, and the District failed to assess the impact of the harassing incidents on the Student's ability to receive a FAPE; (2) the District subjected the Student to retaliation when it excluded the Student from washing and drying activities and Adaptive PE; (3) the exclusion from Adaptive PE also constituted a denial of FAPE, as the Student's IEP provides for the Student to take part in gym; and (4) despite having notice of the Student's XXXXX, the District failed to appropriately and timely evaluate whether the Student was eligible for and needed additional related aids and services because of her XXXXX.

The District entered into a Resolution Agreement (Agreement), which once implemented, will fully address the issues in this complaint in accordance with the requirements of Section 504 and Title II. The Student received her special education diploma from the District in or around XXXXX 2015. To resolve the remaining outstanding issues, the Agreement requires the District to modify its Non-Discrimination policy (SLT-A001), revise Policy HUM-P010, and revise its Harassment Policy (INS-A016) to specifically address each deficiency detailed above. In addition, the District will develop a system for tracking and responding to disability harassment complaints, and provide training to responsible School officials on responding to and investigating allegations of harassment. OCR will closely monitor the District to ensure that it fully implements the requirements of the Agreement.

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. 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. A complainant may have a 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, 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.

OCR is committed to a high quality resolution of every case. If you have any questions regarding this letter, please contact Michael Bennett, General Attorney, at 404-974-9274, or Wendy Gatlin, Compliance Team Leader, at 404-974-9356.

Sincerely,

Melanie Velez
Regional Director

Enclosure