



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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October 15, 2014

XXXXXXXXXXXXXXXXXX

Superintendent
Sevier County School System
226 Cedar Street
Sevierville, TN 37862

Re: OCR Complaint # 04-13-1304

Dear XXXXXXXX:

On April 30, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability and retaliation by Sevier County Schools (District). Specifically, the Complainant alleged the following:

1. On February 13, 2013, the District discriminated against her son (Student), who was a student at Pigeon Forge Middle School (School), when Teacher #1 humiliated and ridiculed the Student by making demeaning statements regarding his disability in a hostile manner. Teacher #2 witnessed this incident and failed to stop or report it.
2. In December 2012, Teacher #1 intimidated and ridiculed the Student for accidentally soiling his pants and threatened to not allow him to participate in a field trip in retaliation for her previous advocacy regarding the implementation the Student's 504 Plan. Teacher #3 witnessed this incident but did not stop or report it.¹

OCR investigated the complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (FFA); 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 FFA from the Department and a public entity, the District is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issues:

¹ The evidence gathered during OCR's investigation revealed that this alleged incident actually occurred on October 31, 2012.

1. Whether the District discriminated against the Student on the basis of his disability by subjecting him to a hostile environment and by failing to promptly and equitably respond to the Complainant's disability harassment grievance, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), (b)(1)(i)-(iv) and 104.7(b), and the Title II implementing regulation at 28 C.F.R. §§ 35.130(a), (b)(1)(i)-(ii) and 35.107.
2. Whether the District retaliated against the Student, in noncompliance with 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's investigation of the complaint included an analysis of the data provided by both parties and interviews with the Complainant and District staff. OCR reviewed the evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the District failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

After a thorough review of all of the evidence, OCR has determined that based on a preponderance of the evidence there is sufficient evidence to support a finding of noncompliance with Section 504 and Title II.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity that receives Federal financial assistance.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(i)-(iv) states that in providing any aid, benefit, or service, a recipient may not on the basis of disability: (i) deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or (iv) provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others. The regulation implementing Title II is interpreted consistent with the regulation implementing Section 504 as it relates to the provision of different treatment and disability harassment.

Pursuant to the Section 504 implementing regulation at 34 C.F.R. § 104.7(a), a recipient that employs 15 or more people shall designate at least one person to coordinate its efforts to comply with Section 504. The regulation at 34 C.F.R. § 104.7(b) requires a recipient that employs 15 or more people to adopt grievance procedures that incorporate appropriate due process standards

and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II implementing regulations at 28 C.F.R. § 35.107 (a) and (b) contain similar provisions for public entities with 50 or more employees. In evaluating whether a recipient's grievance procedures satisfy the Section 504/Title II requirements, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are necessary to achieve compliance with Section 504/Title II:

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 harassment carried out by employees, other student, or third parties;
3. Provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and 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 alleged perpetrator of the outcome of the complaint; and
6. 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.

In accordance with the Section 504 implementing regulation at 34 C.F.R. § 104.8(a), a recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). Title II has a similar notification provision. The Section 504 regulation at 34 C.F.R. § 104.8(b), provides that a notice of nondiscrimination should be included in a recipient's recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees.

The Section 504 implementing regulation at 34 C.F.R. § 104.61 adopts the anti-retaliation provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, et seq., and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI anti-retaliation regulation, as incorporated by Section 504, 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 a law enforced by OCR, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. The Title II implementing regulation at 28 C.F.R. § 35.134 similarly prohibits retaliation by public entities.

To establish whether retaliation has occurred, OCR uses a five-step analysis which examines: (1) whether the Complainant engaged in a protected activity; (2) whether the recipient was aware of the protected activity; (3) whether the recipient took adverse action against the Complainant subsequent to participation in a protected activity; (4) whether there is a causal connection between the adverse action and the protected activity; and (5) whether the recipient can show legitimate, non-retaliatory reasons for its actions that are not a pretext for discrimination.

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the school's educational program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. When harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights under Section 504 and Title II. In evaluating whether conduct constitutes a hostile environment OCR examines alleged harassing conduct in light of the totality of the circumstances. This examination includes a consideration of whether the disability harassment is severe, pervasive, or persistent. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, and relationships of the persons involved. In addition, as with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim. For example, the age and maturity of the students involved must be considered. Under OCR policy, the harassment must, in most cases, consist of more than casual or isolated incidents to constitute a hostile environment on the basis of disability.

Schools have a legal responsibility to prevent and respond to disability harassment. Once a school learns that disability harassment may have occurred, the school must investigate the incident promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed. If a school employee engages in harassment that interferes with or denies a student's ability to participate in or benefit from a school program based on disability, the school is responsible for the discriminatory conduct. The school is therefore also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the school has received "notice" of the harassment. A school is deemed to have notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.

Background

For the 2012-2013 school year, the Student was a XXXXXXXX at Pigeon Forge Middle School (School). He had a Section 504 Plan in place based on his XXXXXXXXXXXX. At the end of the 2012-2013 school year, the Student's family XXXXXXXXXXXX.

ISSUE 1: Disability Harassment

Factual Findings

District's Disability Policies and Procedures

OCR reviewed the District's policies and procedures regarding discrimination and harassment based on disability.

Notice of Non-discrimination

The District's website contains a Notice of Non-discrimination (Notice), which states that the District does not discriminate on the bases of race, color, national origin, disability, and sex, among other bases in the provision of educational opportunities, programs, activities or employment opportunities or benefits. The Notice also includes the title and office address of the person(s) responsible for coordinating the District's compliance with Section 504 and Title II. However, no telephone number or email address is provided for the coordinators. The notice was not included in other publications provided to OCR by the District.

Designation of Section 504/Title II Coordinators

The District has designated the XXXXXXXX of Student Services to serve as the Section 504 Coordinator. As stated above, the District's Notice identifies the Section 504/Title II Coordinator by name and title and lists the office address for the designated individual, but does not provide a telephone number or email address for that individual. Also, this information is not published in the Student Handbook or in the District's Section 504/Title II policies and procedures.

District's Disability Harassment Policy

The District's anti-harassment policy (Policy BP 648) and the Student Handbook both prohibit harassment and discrimination on several bases, but fail to mention harassment and discrimination on the basis of disability.

Grievance Procedures

The District's Policy Manual contains a "Grievance and Hearing Procedure for 504." The grievance procedures may be used by any person who believes the District or its staff has "inadequately applied the principles and regulations of Section 504" and contains an informal resolution process. The informal process includes an investigation by the 504 Officer. If the informal process is unsuccessful, a written, formal grievance has to be submitted within five working days. After an investigation, the Section 504 "Officer" provides a formal, written reply. The complainant can appeal this decision to the Superintendent, who will provide a response within ten days. The Superintendent's decision can be appealed to the Board, who will attempt to solve the grievance within 40 working days and provide a written response within ten days. The procedures make no reference to harassment, presentation of witnesses or evidence, time

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frames for investigation, prevention of recurrence of harassment or remedies for individuals who have been subjected to harassment.

Alleged Harassment of Student and District's Response to Internal Complaint

The Complainant alleged that on February 13, 2013, Teacher #1 told the Student that other students with ADHD learned to “deal with it”, asked him why it took him so long to complete his work and said that he could not go through life using ADHD as an excuse. According to the Complainant, the Student was humiliated and upset because of the Teacher’s actions. She added that the incident made him feel like a failure and feel it was his responsibility to “fix” his ADHD. She also alleged that in December 2012, the Student was afraid to ask Teacher #1 to allow him to use the restroom and he soiled his pants; Teacher #1 ridiculed the Student about soiling his pants². Finally, in various documents included in District files, the Complainant contended that Teacher # 1 appeared to not want to work with the Student.

Reports to District of Harassment

In an email dated March 20, 2013, the Complainant requested that District administrators investigate the following two incidents which she characterized as “bullying and intimidation” by two of the Student’s former teachers: in December 2012³, Teacher #1 allegedly ridiculed the Student about soiling his pants; and, on February 13, 2013, Teacher #1 told the Student he could not go through life using ADHD as an excuse. The email also alleged that over a seven month period the teachers had unfairly graded the Student without recommending or offering “further accommodations to his 504 plan.” The Complainant’s email also stated that the Student is flourishing under his new teachers. According to the XXXXXX, he instructed the Complainant to contact the School administrators regarding her allegations, which she did on March 21, 2013.

On March 28, 2013, the XXXXXXXXXXX met with the Complainant to clarify the allegations contained in her internal grievance. After this meeting, the XXXXXXXXXXX followed up with an email, requesting the Complainant to forward a complete copy of the documentation she submitted during the meeting for the file and investigation. The XXXXXXXXXXX informed OCR that the District fully investigated the Complainant’s internal grievance. The XXXXXXXXXXX stated that she interviewed the alleged harasser (Teacher #1), the witnesses (Teacher #2 and Teacher #3), the Complainant and the Student and she took notes during the interviews. She also met with the XXXXXXXX regarding the allegations. The Complainant informed OCR that she did not provide the XXXXXXXXXXX with the names of any additional witnesses—beyond the teachers interviewed by the XXXXXXXXXXX—because there were no other witnesses to the alleged incidents.

The XXXXXXXXXXX explained the District’s investigation of the pants soiling incident (Incident #1) as follows: She met with the XXXXXXXX regarding the Complainant’s allegations. The XXXXXXXX informed her that he had already dealt with the pants-soiling incident when it

² The Complainant also contends that the ridicule of the Student was an act of retaliation. (See Issue 2)

³ In regards to Incident #1, the witnesses interviewed by OCR and the data submitted by the District established that the Student soiled his pants on October 31, 2012, and not in December 2012 as alleged by the Complainant.

occurred on October 31, 2012. The XXXXXXXX further informed the XXXXXXXXXXXX that he had not received any complaints from the Complainant regarding the incident, and the Complainant had complimented the teachers on how they handled the incident. The XXXXXXXXXXXX stated that she interviewed Teacher #1 and Teacher #3, and they both denied that Teacher #1 had ridiculed or embarrassed the Student, or threatened to not let him go on the school trip. The XXXXXXXXXXXX stated, and the XXXXXXXX confirmed, the District found nothing to support the Complainant's allegation that Teacher #1 harassed or threatened the Student for soiling his pants.

The XXXXXXXX informed OCR that she determined that Teacher #1 and Teacher #3 helped the Student clean himself after he soiled his pants, and then Teacher #3 reported to him what had occurred. He also stated that the teachers wanted to clean the Student before his classmates found out about the incident. The XXXXXXXX stated that after the incident, the Complainant sent the teachers an email, thanking them for how they handled the incident. The XXXXXXXX also stated that the Complainant did not mention anything about Teacher #1 threatening or ridiculing the Student. OCR reviewed an email dated November 1, 2012, from the Complainant to Teacher #1. In the email, the Complainant thanked the teachers for taking care of the Student; she also told the teachers that they made a very traumatic event easier on the Student, and she could tell "when talking with him that he felt secure and cared for during the clean-up and the process."

OCR interviewed Teacher #1 and Teacher #3, regarding this incident. Teacher #3 stated that the Student told her that he did not ask Teacher #1 to go to the restroom because the class had just returned from a bathroom break. Both teachers denied that Teacher #1 ridiculed or humiliated the Student. They also denied that Teacher #1 told the Student he could not go on the field trip as punishment for soiling his pants. Teacher #3 stated that they informed the XXXXXXXX and the Student's mother of the incident after they helped the Student clean himself and obtain a clean pair of pants.

Regarding Incident #2, the XXXXXXXXXXXX explained the District's investigation as follows: The XXXXXXXXXXXX interviewed the staff members identified by the Complainant and Student as the one who either engaged in or witnessed the alleged incidents. The School administration also obtained written statements from two staff members. The teachers believed that the Student was not putting forth an effort to complete his assignments or tests. The Student would complete a few of the questions, and then inquire as to whether he needed to complete anymore. Teacher #1 told the Student that he could not use ADHD as an excuse in life. The only witness to this statement was another teacher, who informed the XXXXXXXXXXXX about Teacher #1's statement. Teacher #1 stated she was trying to motivate the Student. Teacher #1 knew the Student was bright, but she believed he did not apply himself. According to the XXXXXXXXXXXX, in explaining her actions Teacher #1 described the Student as "bright but lazy."

In an interview with OCR, the XXXXXXXX acknowledged that Teacher #1 told the Student that he could not use his ADHD as an excuse for not completing his classwork, when she gave him extra time to complete his assignments. The XXXXXXXX stated that the Student had a history of

not wanting to complete his assignments in class. Instead, the XXXXXXXX believes that the Student wanted to take the classwork home and have the Complainant help him complete it.

The XXXXXXXXXXXX informed OCR that she concluded that the investigation did not show any discriminatory intent by Teacher #1 in regards to Incident #2. However, she recommended that the District reprimand Teacher #1 due to her poor choice of words. The XXXXXXXXXXXX stated the District's investigation took approximately two weeks to complete, and she reported the results of the investigation to the XXXXXXXX and a District administrator. She also made a recommendation for discipline. By email dated April 18, 2013, the XXXXXXXXXXXX advised the Complainant that her concerns regarding Teacher #1 had "been investigated and dealt with appropriately." The email did not set forth the findings based upon the investigation. The District had already removed the Student from Teacher #1 and Teacher #2's classrooms in mid-February 2013, as requested by the Complainant.

OCR interviewed Teacher #1 and Teacher #2 regarding Incident #2 and reviewed documents related to the second incident. The documentary evidence shows that on the day of the incident the Student was in Teacher #2's class. The class had a timed assignment to write sentences. A document prepared by a third District employee reflects that every five minutes the Student asked how much testing time remained and whether he needed to write any more sentences. During interviews with OCR both teachers stated that the Student had completed only one out of five questions on an assignment despite being provided extended time to complete his work. Teacher #2 called for Teacher #1 to come to the classroom. After Teacher #1 arrived the teachers took the Student into the hallway. The teachers told OCR that they knew the Student was bright, smart and capable of so much more; they believed he was not applying himself. Teacher #2 stated that Teacher #1 spoke to the Student about making excuses. Teacher #1 acknowledged that she told the Student he could not use ADHD as an excuse to not complete his work. She also acknowledged that she asked the Student why it took him so long to complete his work. She said that she asked the question because the Student was not completing his work despite having time and a half to do so. She said that his response was that he has "a hard time paying attention." Neither witness corroborated that the Student was told that other students with ADHD "learn how to deal with it."

Analysis and Conclusion

Whether the District's Notice of Nondiscrimination Complies with the Section 504 and Title II Regulations

Based on a preponderance of the evidence, OCR finds that the District is in noncompliance with Section 504 and Title II with respect to its notice of nondiscrimination. The District's notice of nondiscrimination includes several bases of nondiscrimination, including disability. OCR recognizes the variations among the regulations governing notice requirements and understands that schools and colleges may wish to use one statement to comply with all requirements of the various regulations. OCR encourages one combined nondiscrimination notice, which should contain two basic elements: (1) a statement of nondiscrimination that specifies the basis for nondiscrimination; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts. The regulations do

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not require that a recipient identify the pertinent regulations by name. The District's Notice identifies disability as one of the bases of nondiscrimination and contains the name, title and office address for the Section 504/Title II Coordinator; however, it does not provide a telephone number for this individual. Also, the only place that the District published the Notice is on its website. The Notice does not appear in any of the written publications submitted to OCR by the District; as noted above, the regulation at 34 C.F.R. § 104.8(b) requires inclusion of the notice in publications containing general information that the District made available to participants, beneficiaries, applicants or employees.

Whether the District Has Designated A Section 504/Title II Coordinator

The District has designated a Section 504/Title II Coordinator. However, while the Coordinator is identified on the District's website, he is not identified in other publications providing general information to beneficiaries. Thus the District is not fully in compliance with the applicable regulation.

Whether the District's Harassment and Grievance Procedures Comply with Section 504 Legal Standards

While the District has policies and procedures on filing grievances under Section 504, Title II and various other laws, none of the policies or procedures standing alone satisfies all of the elements set forth in applicable legal standards. The District's anti-harassment policy does not mention harassment based on disability. As to the District's grievance procedures, they do not contain all of the elements required by Section 504 and Title II. The procedures state that if any person believes that the District or any staff member violated Section 504, that person may file a grievance. However, the procedures do not specify that they apply to complaints filed alleging discrimination by other students, or third parties. The procedures do not specify that they apply to harassment on the basis of disability. Moreover, none of the procedures provides for the opportunity to present witnesses and evidence or completion of the investigation within specified time frames. Further, none of the procedures provide an assurance that the District will take steps to prevent recurrence of any harassment and to correct discriminatory effects.

Whether as Applied, the Recipient's Procedures Provided Prompt and Effective Action to End the Harassment and Prevent it from Recurring and, Where Appropriate, Remedy the Effects on the Student Who was Harassed.

The evidence revealed that the Complainant submitted an email complaint which alleged a FAPE-related concern as well as bullying and intimidation by the Student's former teachers; one of the alleged bullying or intimidation incidents included a comment about the Student's use of his ADHD as an excuse. Although the complaint raised concerns related to Section 504, the administrator who serves as the Section 504 Coordinator did not address the complaint or route it to other District personnel for investigation; instead he directed the Complainant to present her concerns to School administrators. The Complainant then forwarded the email to School administrators. Upon receipt of the internal grievance, the XXXXXXXXXXX met with the Complainant and the Student to clarify their allegations. The XXXXXXXXXXX followed up with the Complainant after the conference and requested documentation that the Complainant

had presented at the conference. The evidence also showed that the XXXXXXXXXXXX interviewed witnesses and obtained written statements from two staff members. The District conducted and completed an investigation of the specific incidents cited in the internal grievance within two weeks of receiving the internal grievance. The District's investigation did not confirm that Teacher #1 humiliated the Student concerning the soiled pants incident but did confirm that she made the comment concerning the Student using ADHD "as an excuse." The District did not conclude that intentional discrimination occurred, but did reprimand the teacher for the inappropriate comment. While the District reported to the Complainant by email that it had completed the investigation and handled the matter, the Complainant was not provided notice of the District's findings. At the Complainant's request, the District had removed the Student from the teachers' classrooms prior to the filing of the internal grievance.

Although the XXXXXXXXXXXX completed her investigation within two weeks and reprimanded Teacher #1, the District's handling of the complaint did not fully comply with OCR's legal standards because the District's Section 504 Coordinator did not handle the initial complaint or route it to other staff for investigation, but instead placed the onus upon the Complainant to resubmit her complaint to other District personnel. Further, the confirmed incident was not evaluated in the context of the Student's relationship with the teachers over the course of the year. Finally, the Complainant was not provided written notice of the findings concerning her complaint; she was merely told that her concerns had been investigated and handled appropriately.

Whether Any Failure by the District to Provide a Prompt and Effective Action Resulted in the Student Continuing to Experience Disability Harassment or a Hostile Environment based on Disability

OCR reviewed the evidence to determine: whether Teacher #1 engaged in harassing conduct that was based on the Student's disability; and if so, whether such harassing acts examined in the totality of the circumstances in which they occurred constituted a hostile environment; and, whether any hostile environment continued to exist because of any failure by the District to provide a prompt and effective response. The Complainant has asserted that Teacher #1 appeared to not want to work with the Student. She also cited two specific incidents of alleged bullying and intimidation of the Student. As to the first alleged incident of harassment, the evidence did not corroborate the allegation that Teacher #1 ridiculed, embarrassed and harassed the Student for soiling his pants. As to Teacher #1's statement, regarding the Student "using his ADHD as an excuse," the preponderance of the evidence showed that Teacher #1 did make the statement. The evidence shows that after the Student wrote only two of five assigned sentences and repeatedly asked how much testing time remained, Teacher #2 called for Teacher #1 to come to the classroom and the two teachers took the Student into the hallway. According to the XXXXXXXXXXXX, in explaining her actions Teacher #1 described the Student as "bright but lazy" and Teacher #1 told OCR that the remark about using ADHD as an excuse occurred during a conversation in which the Student told his teachers that he had trouble paying attention. According to the Complainant, the Student was hurt and humiliated by the incident, and felt that he was a failure. The evidence shows that the Complainant reported the incident more than a month after the District had removed the Student from Teacher #1 and Teacher #2's classroom, and there is no evidence of any subsequent interactions with Teacher #1 or Teacher #2 that were

deemed harassing by the Student or the Complainant. Further, in an email sent to the XXXXXXXX a few days before she sent the internal complaint the Complainant made positive comments about the environment and support the Student was receiving now that he was working with the new teachers. Similarly in her complaint to the District the Complainant stated that the Student was flourishing with his new teacher.

On rebuttal, the Complainant offered no new evidence beyond her complaint allegations.

CONCLUSION

Based on the preponderance of the evidence, OCR concludes that the evidence is insufficient to establish that the Student was allowed to continue to experience a hostile environment because of the District's failure to fully comply with applicable legal standards in handling the Complainant's internal complaint. However, the District is in noncompliance with respect to its notice of nondiscrimination, grievance procedures and response to the Complainant's internal complaint.

Issue #2: Retaliation

The Complainant alleged that in December 2012, Teacher #1 intimidated and ridiculed the Student for accidentally soiling his pants and threatened to not allow him to participate in a field trip, because of her previous advocacy regarding the implementation of the Student's Section 504 Plan. She further alleged that Teacher #3 witnessed this incident but did not stop or report it.

Factual Findings and Analysis

The factual findings regarding the alleged retaliatory incident were set forth above.

Protected Activity and Knowledge of Protected Activity

An individual has engaged in a protected activity, and thus is protected from retaliation if: 1) the individual has opposed any act or policy that is unlawful under one of the laws that OCR enforces; or 2) the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, or proceeding or hearing conducted under the laws that OCR enforces.

The alleged harassing conduct took place during the 2012-2013 year. The Complainant alleged that her advocacy took place throughout the 2012-2013 school year. The evidence shows that the Complainant engaged in advocacy concerning the Student's Section 504 services as early as October 2012. Further, mediation between the District and the Complainant took place in February 2013, and the Complainant filed her internal grievance in March 2013. Therefore, the District had knowledge of the protected activity. Accordingly, OCR has determined that the evidence is sufficient to support a conclusion that the Complainant engaged in a protected activity and that the District had knowledge of the protected activity. Therefore, we will proceed to the next step of the analysis.

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Adverse Action

OCR next determined whether the District took the alleged adverse action against the Student contemporaneous with or subsequent to the protected activity. To determine whether an action is adverse, OCR must determine whether the District's action significantly disadvantaged the Complainant's ability to gain the benefits of the recipient's program. The evidence showed that the Student did go on the field trip in question. Further, the evidence is insufficient to support the Complainant's allegations that Teacher #1 threatened to not allow the Student to go on the field trip or that she ridiculed and humiliated the Student for soiling his pants. Further the Complainant's own email to the teachers who assisted the Student expressed appreciation for the way that the teachers handled the incident. Accordingly, OCR finds that the evidence is insufficient to establish that the alleged adverse action occurred and will not proceed to the next step of the analysis.

Proposed Resolution

To remedy these noncompliance issues, the District has agreed to implement the provisions of the attached Resolution Agreement (Agreement) which, when fully implemented will resolve the findings. The proposed agreement will require the District to (1) issue a statement to students, parents and staff, regarding harassment and the District's commitment to address harassment; (2) revise its grievance procedures to comply with the requirements of Section 504 and Title II; (3) initiate annual training of: a) all District staff on Section 504 and Title II legal standards related to harassment, and its revised grievance procedures, and b) staff responsible for responding to complaints of disability discrimination or harassment on how to respond to such complaints; and, (4) publish its notice of nondiscrimination in its student handbook and on its website; and revised its anti-harassment policy to include disability harassment.

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation, and are consistent with applicable regulations. Based on the above, the CRT recommends requiring the District to sign the attached Resolution Agreement.

Pursuant to OCR procedures, the District is reminded that no public entity may 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 one has made a complaint, or participated in any manner in connection with a complaint.

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

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

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the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact XXXXXX, Compliance Team Leader, at XXXXXXXX.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director