



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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April 21, 2016

Dr. Walt Griffin  
Superintendent  
Seminole County School District  
400 E. Lake Mary Boulevard  
Sanford, FL 32773

**Re: Complaint #04-14-1658**

Dear Dr. Griffin:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Seminole County School District (District) on July 3, 2014, alleging disability discrimination and retaliation.

Specifically, the Complainant made the following allegations:

1. On January 14, 2014, the Student's math teacher (Teacher) retaliated against the Student by subjecting her to negative treatment during class, because the Student and the Complainant advocated for the Student's rights under Section 504 and Title II.
2. On February 3, 2014, Student A and Student B subjected the Student to harassment on the basis of disability by calling her names, including stupid, useless and ugly, and teasing her about having a low grade point average (GPA), and the District failed to respond appropriately to the harassment.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 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 as amended, 42 U.S.C. §§ 12131 *et seq.* (Title II), and its implementing regulation at 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 elementary and secondary education system, the District is subject to these laws.

OCR investigated the following issues:

1. Whether on January 14, 2014, the Teacher retaliated against the Student because the Student and the Complainant advocated for the Student's rights, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.61, and Title II and its implementing regulation at 28 C.F.R. § 35.134.
2. Whether on February 3, 2014, the Student was subjected to a hostile environment on the basis of disability by Student A and Student B and the District failed to respond appropriately to the allegations of harassment, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4 and

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

104.7, and Title II and its implementing regulation at 28 C.F.R. §§ 35.130 and 35.107.

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 a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the District. OCR also interviewed the Complainant and four members of the District staff (Assistant Principal, Dean, Substitute Teacher and Teacher). Based on its investigation, OCR has determined that the evidence is insufficient to support a finding that the District failed to comply with Section 504 or Title II with respect to the allegations of the complaint. However, OCR determined that the evidence is sufficient to support a finding of noncompliance with respect to the District's procedures for nondiscrimination under Section 504 and Title II.

### **Legal Standards**

#### *Different Treatment/Harassment*

The regulation implementing Section 504 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 be 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 consistently with the regulation implementing Section 504 as it relates to different treatment and disability harassment.

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that is sufficiently serious to create a hostile environment by interfering with or limiting 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. 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.

The regulation implementing Section 504 at 34 C.F.R. § 104.7(a), states that 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 regulation at 28 C.F.R. § 35.107 (a) and (b) contain similar provisions for public entities with 50 or more employees.

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). The Title II implementing regulation at 28 C.F.R. § 35.106 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.

### *Grievance Procedures*

In evaluating whether a recipient's grievance procedures comply with the regulations cited above, OCR reviews all aspects of a recipient's policies and practices, including whether the following elements are contained in the procedures:

1. Notice 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 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 discrimination/ harassment and remedy discriminatory effects on the complainant and others, if appropriate.

### *Retaliation*

Retaliation is prohibited under the regulation implementing Section 504 at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of the regulation implementing Title VI. The regulation implementing Title VI at 34 C.F.R. § 100.7(e) provides that a recipient shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws enforced by OCR, or because he or she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing. The regulation implementing Title II at 28 C.F.R. § 35.134 similarly prohibits retaliation by public entities.

To determine whether retaliation has occurred, OCR examines (1) whether the Complainant engaged in a protected activity; (2) whether the recipient had knowledge of the protected activity; (3) whether the recipient took an adverse action contemporaneous with or subsequent to the protected activity; (4) whether there is a causal connection between the protected activity and the adverse action; and, (5) whether the recipient can show legitimate, non-retaliatory reasons for its actions that are not a pretext for discrimination.

## **Factual Findings and Analysis**

### **A. Retaliation**

The Complainant alleged that on January 14, 2014, the Student's math Teacher retaliated against the Student by subjecting her to negative treatment during class because the Student and the Complainant advocated for the Student's rights under Section 504 and Title II. Specifically, the Complainant alleged that on January 13, 2014, the Student advocated for her rights by informing the math substitute teacher (Substitute) that her IEP allowed her the use of a laptop during class and to have extra time on assignments. The Complainant further alleged that on January 14, 2014, the Complainant sent a message via Skyward (a parental internet access portal with a messaging

component) to the Teacher to alert her of what transpired the previous day between the Substitute and the Student. The Complainant, however, does not have a copy of the message. The Complainant alleges that on the same day she sent the message to the Teacher, January 14, 2014, the Teacher retaliated against the Student during class. She explained that the Teacher subjected the Student to retaliation by instructing the Student to orally answer a math problem, knowing that the Student would probably not be able to solve the problem correctly, and when the Student answered the problem incorrectly, the Teacher continued to ask the Student to orally solve a series of additional problems until the Student refused to respond due to frustration and embarrassment. She added that the Teacher wrote the Student up for “being off task,” essentially punishing her for not understanding the work. The Complainant further alleged that on January 16, 2014, she attended a parent conference at the School, and during the conference the Teacher mentioned having received a note from the Substitute indicating that the Student failed to do her classwork on January 13, 2014. The Complainant believes that this note said something negative about the Student, which could have also prompted the Teacher’s retaliation.

In an interview with OCR, the Substitute explained that she typically walks around the class after giving the assignment for the day. She stated that she walked by the Student several times, who was working on her laptop. She observed the Student using the laptop for work unrelated to the assignment, and she asked the Student to get on task. The Student remained off task so she made her close the laptop. The Substitute stated that at no time did the Student mention that she needed the use of a laptop per her IEP nor did she request extra time for assignments. When OCR asked the Substitute whether she left a note for the Teacher about the Student, the Substitute stated she did not remember leaving a note. She stated that if she wanted to communicate something to a teacher she would do so via email and she does not recall sending an email to the Teacher. She stated that her interaction with the Student would not have prompted an email to the teacher because the Student closed the laptop when instructed.

The Teacher informed OCR that she did not recall the Substitute leaving a note about the Student. She stated that she reviewed emails from that time period in question and confirmed that the Substitute did not send her an email about the Student. Furthermore, she informed OCR that she did not remember receiving a Skyward message from the Complainant either. She explained that Skyward is relatively new software that has various functions. She stated that it is utilized as a grade book to record grades and attendance. The Teacher acknowledged that Skyward does have a messaging component; however, she informed OCR that she did not use it at all during the 2013-14 school year and only used it during the 2014-15 school year for sending mass messages. She added that she does not know how to retrieve messages from it and that it is not linked to her school email account. Moreover, she emphasized that she instructs her students and parents to communicate with her through her school issued email account. She stated that she checks her email at the end of the day and she always responds. Finally, she informed OCR that the Complainant has her email address and has utilized it to communicate with her regarding the Student on other matters.

#### *Protected Activity and Knowledge of Protected Activity*

To engage in a protected activity, an individual must have opposed an act or policy that is believed to be unlawful under any of the laws enforced by OCR; made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted under any of the laws enforced by OCR; or asserted or exercised a right or rights under any of the laws enforced by OCR that the recipient had active or constructive knowledge of.

As noted above, the Complainant alleged that she and the Student engaged in a protected activity by asserting the Student’s rights to the Substitute and the Teacher, which resulted in the Student being subjected to retaliation by the Teacher. Specifically, the Complainant alleged that the Student advocated for her rights by verbally informing the Substitute that her IEP allowed her the use of a laptop and extra time on assignments. The Complainant also alleged that she sent a Skyward message to the Teacher notifying her about the Student’s advocacy. During interviews with OCR, the Substitute denied that the Student mentioned she needed the use of a laptop per her IEP or that she requested extra time for assignments; she also did not recall leaving a note for the Teacher. Similarly, the Teacher did not recall receiving a note from the Substitute or a Skyward message from the Complainant. The evidence is inconclusive as to whether the Student and the Complainant engaged in a protected activity of which the District had constructive knowledge. OCR will, therefore, continue to the next step in the retaliation analysis.

### Adverse Action

OCR next examined whether the District took an adverse action against the Student contemporaneous with or subsequent to the protected activity. In order to determine whether an action is adverse, OCR must determine whether the recipient's action significantly disadvantaged the student in her ability to gain the benefits of the recipient's program. Even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's educational opportunities, the action could be considered to be retaliatory if the challenged action could reasonably be considered to have acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing her discrimination claims.

The Complainant stated that the day after the Student advocated for her rights and subsequent to the Complainant sending the Teacher a note regarding the same, the Teacher subjected the Student to retaliation by instructing the Student to orally answer a math problem, knowing that the Student would not be able to solve the problem correctly, and when the Student answered the problem incorrectly, the Teacher continued to probe the Student with additional questions. Finally, the Complainant stated that the Teacher gave the Student a reflection note for "being off task." In determining whether the District took an adverse action against the Student, OCR examined the impact of the alleged actions on the Student. As alleged, the series of questions posed by the Teacher caused the Student to shut down due to feeling frustrated and embarrassed, and receipt of the reflection note communicated to the Student that she was being punished for not understanding the work. Accordingly, OCR finds that based on a preponderance of the evidence, the investigation supports that the District took adverse actions against the Student subsequent to the protected activity.

### Causal Connection

Having established the first three elements of retaliation, OCR must then determine whether there exists a causal connection between the adverse actions and the protected activity. To determine whether a causal connection exists between the protected activity and the adverse actions, OCR considers among other factors, the temporal proximity between the protected activity and the adverse action.

In this case, the protected activity occurred on January 13 and 14, 2014. The adverse actions occurred on January 14, 2014. Accordingly, OCR concludes that the closeness in time between the protected activity and the adverse actions supports a finding of a causal connection between the protected activity and the adverse actions.

### Legitimate Nonpretextual Reason

Once it is established that there is a causal connection between the protected activity and the adverse action, the District must present evidence that there is a legitimate, nonpretextual reason for its actions.

During her interview with OCR, the Teacher acknowledged having called on the Student on January 14, 2014, to solve a math problem. The teacher explained that the teaching strategy she employed that day is one she utilizes regularly with all her students. The strategy focuses on probing incorrect answers in an effort to facilitate learning. The strategy consists of rephrasing the question or breaking it down into smaller, simpler parts so that a student can ultimately correctly solve the problem at hand. She added that if a student shows frustration on the first attempt at solving the problem, she allows the Student some time to observe how another student solves a similar problem, before returning to the student. She indicated that the goal is to ensure that the students know how to solve the problem correctly and to make sure they understand before she moves on to the next task. The Teacher also explained that she relies on this teaching method because she has found it to be very successful in her classroom. OCR's investigation also revealed that on April 16, 2014, in an email response to the Complainant's concern that the Student was subjected to a series of questions by the Teacher, the Principal explained that the Teacher's strategy is a legitimate teaching methodology utilized to facilitate learning from one student to another and/or reinforce learning by students drawing on the understanding of other students. Moreover, the investigation revealed that during a Student Study Team (SST) meeting, on January 23, 2014, the teaching technique in question was discussed and the team agreed to revise the Student's IEP to specify that the technique would not be applied to the Student and, instead, the Student would only be called upon when her hand is raised.

Regarding the reflection note, the Teacher acknowledged that on January 14, 2014, she gave the Student a reflection note. She explained that she gave the Student a reflection note because the Student was off task and refused to complete her work, even after several reminders to stay on task. She explained that the reflection note given to the Student and reflection notes in general are not used to address a student's work performance. She explained that a reflection note is not a disciplinary action. Rather, the School follows a positive behavior support system (PBS). She explained that PBS is a progressive system consisting of the following steps: (1) warning; (2) reflection note/form; (3) parental notification; and, (4) discipline referral. A reflection note is not made part of a student's discipline file and they are discarded at the end of each semester. During the investigation, the School's administration confirmed that a reflection note is not a disciplinary sanction, but rather a tool used to assist students in changing undesirable behavior before receipt of a discipline referral.

Based on the above, OCR concludes that the District had legitimate, nonpretextual reasons for its actions. Specifically, the Teacher engaged the Student utilizing an established teaching technique, which she regularly applies to all her students. The Principal confirmed that the methodology employed by the teacher is a legitimate teaching tool. In addition, during an SST meeting for the Student, the legitimacy of the teaching technique was acknowledged, and the same was revised to better meet the Student's individual needs. Further, the evidence revealed that the School's PBS system utilizes reflections notes as a tool to discourage undesirable behavior and prevent discipline referrals. The Teacher, in accordance with this system, gave the Student a reflection note because she was off task; the evidence did not reveal that the Teacher used the reflection note to punish the Student for not understanding the work. Accordingly, OCR finds, based on a preponderance of the evidence, that the District had legitimate, nonpretextual reasons for its actions. When provided an opportunity to provide further information in rebuttal, the Complainant provided no additional information with respect to this allegation.

### Conclusion

Based upon a preponderance of the foregoing evidence, OCR concludes that there is insufficient evidence that the District engaged in retaliation in noncompliance with Section 504 and Title II with regard to this allegation.

### **B. Harassment on the Basis of Disability**

The Complainant informed OCR that during math class on February 3, 2014, Student A and Student B called the Student names, stupid, useless and ugly, and teased her about having a low GPA. She informed OCR that prior to leaving school that day the Student discussed the matter with a teacher. The Complainant did not know the name of the teacher that the Student spoke with. The Complainant informed OCR that on the same date, the Student went to the clinic because she was upset and did not feel well. While at the clinic, the Student completed an incident report regarding the alleged name calling, and subsequent to leaving the clinic the Student reported the incident to the Dean. The Complainant explained that the Student shared having spoken to the Dean about the incident, and the Dean indicated that he would handle the matter and speak to Student A and Student B. Neither the Complainant nor the Student has a copy of the incident report completed by the Student in February. The Complainant stated that sometime thereafter she requested a copy of the incident report but the School could not produce it. She stated that as a result, on March 7, 2014, the Dean had the Student complete a second incident report; however, she never received any information regarding how this report was handled. The Complainant believes that the School failed to address the alleged harassment.

The Dean informed OCR that the only incident report that he received from the Student was on March 7, 2014. He explained that on March 7, 2014, he observed the Complainant, the Student and the Student's aunt collectively completing an incident report. He stated that after they completed the incident report, they gave it to him. He acknowledged the Complainant asking him about a "first" incident report which she alleged the Student had completed on February 3, 2014. The Dean stated that he had not received a previous report regarding the allegations in question. The Dean informed OCR that when he received the incident report completed on March 7, 2014, he discussed the matter with the Student to ascertain that he had all of the relevant details. Subsequently, he summoned both Student A and Student B to his office and questioned them separately about the allegations. The Dean informed OCR that both students denied calling the Student names and neither reported having had any

negative interaction with her. The Dean stated that he cautioned the students about the consequences of inappropriate name calling and behavior and advised them not to discuss the conversation with their peers. The Dean informed OCR that he also questioned other students in the class whom he believed to be neutral parties or students who were not friends with the Student, Student A or Student B. None of the students interviewed by the Dean had any recollection of any exchange between the students. Finally, the Dean stated that he spoke with the Teacher to determine whether there was any known history of name calling or otherwise negative interaction between the Student, Student A and Student B. The Teacher, however, reported no knowledge of negative interaction between the students. In summary, the Dean explained that because his investigation revealed no evidence to support that the alleged name calling had taken place, the matter was closed.

As noted above, schools have a legal responsibility to prevent and respond to disability harassment and once a school learns that disability harassment may have occurred, the school must investigate the incident promptly and respond appropriately. While the Complainant alleges that an incident report was completed by the Student on February 3, 2014, OCR's investigation revealed no evidence to support that the Student had completed an incident report in February. Neither the Complainant nor the Student has a copy of this report, and the Dean denies having received a report in February. OCR's investigation, however, revealed that on March 7, 2014, the Student completed and the Dean received an incident report alleging that Student A and Student B called the Student names. Upon receipt of the report, the Dean immediately questioned Student A and Student B, the Student's Teacher, and other students from the class where the alleged name calling took place. Upon completion of his investigation of the incident report, the Dean found insufficient evidence to proceed.

On rebuttal, the Complainant expressed mistrust of the School's investigation of the alleged harassment. Specifically, she indicated that she did not believe that the Dean conducted a thorough investigation of the Student's claim. Accordingly, she requested that OCR interview the Student and six of the Student's classmates (identified by the Student) that were members of the class in which the alleged harassment occurred. OCR was scheduled to conduct an interview of the Student on January 14, 2014; however, we were unable to reach her by telephone. Thereafter, OCR emailed the Complainant alerting her of the failed attempt to reach her and requested that she contact OCR if she had interest in rescheduling the interview. On January 15, 2014, the Complainant responded to OCR's email and advised that the Student was being hospitalized at the time of the scheduled call and indicated that she would contact OCR when she was discharged to reschedule the interview. The Complainant did not reschedule the interview. As requested, OCR called each of the other six student witnesses provided by the Complainant. OCR left detailed voice mail messages, including contact information. Of the six student witnesses provided by the Complainant, the parents for only two of the students contacted OCR. One of the parents agreed to allow her student to be interviewed and the interview was scheduled for the following day. At the appointed time, OCR called to conduct the interview; however, there was no answer. OCR left a detailed message, requesting a return call. The other parent that OCR spoke with stated that she would discuss the matter with her student and call back if the student agreed to participate in the interview. OCR, however, did not receive a return call from either parent.

In conclusion, based upon a preponderance of the evidence, OCR found insufficient evidence to conclude that the Student was subjected to disability harassment, as alleged, or harassment on any other basis. Upon learning of the alleged name calling, the Dean conducted an investigation, which included speaking to the Student, Student A, Student B, the Teacher and other students in the class. The Dean's investigation did not substantiate the alleged name calling. In addition, although the Complainant requested that the Student and other specific students be interviewed, the Student and other witnesses failed to provide any information to OCR on the matter. Accordingly, OCR finds insufficient evidence to support that the District failed to respond appropriately to disability harassment as alleged, in noncompliance with Section 504 and Title II.

### **C. Disability Discrimination Policies and Procedures**

#### ***Notice of Nondiscrimination***

The District has a notice of nondiscrimination (Notice), specifically prohibiting discrimination and harassment on the basis of disability, as well as other bases not relevant to this complaint. The Notice includes the title, address

and telephone number for the Educational Equity Administrator, the person responsible for coordinating the District's compliance efforts. (TAB D1b) The Notice is available on the District's website at [www.scps.k12.fl.us](http://www.scps.k12.fl.us) under the Parent and Student tabs in the Student Code of Conduct link, and under the School Board tab in the Policies and Procedures link at Board Policy - Student Nondiscrimination Policy 5.10 (Board Policy 5.10). Additionally, the Notice is published annually, in print format, in the Student Code of Conduct, the Staff Handbook and Calendar, and the Parent Guide. Finally, the Notice is available electronically in a newsletter, *At the Core*, distributed to District staff.

In addition to the Notice prohibiting discrimination and harassment on the basis of disability and other bases, the Student Code of Conduct also includes a separate policy generally prohibiting bullying and harassment. The Student Code of Conduct also includes a specific reference to sexual harassment; it does not, however, include specific references to harassment on the basis of disability.

Accordingly, while the District has a general notice of nondiscrimination on the basis of disability, which includes the name and contact information for the person responsible for enforcing the District's compliance efforts, OCR finds that the District is not in full compliance with the notice of nondiscrimination requirements under Section 504 and Title II. Specifically, the Notice, as contained in the Student Code of Conduct, does not specify application to harassment on the basis of disability.

### ***Grievance Procedures and Harassment Definitions***

In response to OCR's request for the District's Section 504/Title II grievance procedures, the District made reference to the procedures contained in Board Policy 5.10. Scattered throughout Board Policy 5.10 are some of the grievance procedure elements discussed in the legal standards cited above. Specifically, Board Policy 5.10 provides that allegations of discrimination and harassment committed by an employee, student or third party may be reported orally by any student, parent, staff member or other person to the relevant building principal, the school counselor or the Equity Administrator. The policy also provides that formal complaints of discrimination and harassment may be made following the *Student Grievance Procedure* outlined in the policy. The *Student Grievance Procedure* provides that a written complaint may be made with the counselor, the building principal, or the District Equity Administrator. If not originally filed with the Equity Administrator, the school must immediately forward the complaint to the Equity Administrator. The school must schedule a conference within 5 days of the date of filing to find out more details and explore resolutions. If the complaint is not resolved, the Equity Administrator must designate someone to investigate the complaint; the investigation and recommended resolution must be completed within 30 days of the filing of the complaint. The student can appeal this determination in writing to the Equity Administrator, and within 15 days of receipt of the appeal, the Equity Administrator must render a written decision either dismissing the complaint or initiating corrective action. Thereafter, the student may appeal to the Superintendent, and within 30 working days, the Superintendent or designee will render a written decision.

In addition, Board Policy 5.10 provides that all allegations of discrimination or harassment will be addressed promptly. The policy states that the Equity Administrator may appoint an appropriate neutral person to investigate a report of harassment or discrimination. The policy also prohibits retaliation in connection with the reporting or filing of a complaint or participation therein. It provides that confidentiality to the extent possible will be provided and the totality of the circumstances will be taken into consideration to determine if the alleged conduct constitutes prohibited harassment or discrimination. Further, the policy provides that a substantiated charge against a student shall subject the student to disciplinary action, which may include suspension or expulsion, consistent with the Student code of Conduct. A substantiated charge against an employee shall likewise subject the employee to appropriate sanctions, which may include reprimands, reassignment or termination. Third parties found to have engaged in discrimination or harassment shall be subject to sanctions which may include exclusion from further participation in school system events. Finally, the policy provides that the District will take appropriate corrective action to prevent, stop or remedy any substantiated claims of discrimination or harassment.

The District's grievance procedures, as contained in Board Policy 5.10, do not provide for adequate, reliable and impartial handling of complaints at every level, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence; do not provide for designated and reasonably prompt time frames for all major stages of the complaint process, most notably the timeframes a student must follow to appeal the various levels of review; and do not include written notice to the complainant and alleged perpetrator of the outcome of the complaint, regardless of the level at which the complaint is resolved.

The *Student Grievance Procedure*, as contained in Board Policy 5.10, is also contained in the Student Code of Conduct; however, the Code of Conduct specifically provides that the *Student Grievance Procedure* applies only to questions and concerns that arise from Title IX or the Florida Equity Act, which prohibits discrimination in public education on the basis of race, national origin, sex, disability, or marital status of a student. Section 504 and Title II are not referenced in that Code section.

OCR also reviewed the District's general definition of harassment as well as the definition of harassment based on disability and other protected bases. The Code of Conduct defines harassment as conduct which substantially interferes with a student's educational performance. Similarly, in defining harassment on the basis of disability and other bases, Board Policy 5.10 refers to conduct that substantially interferes with a student's academic performance.

In sum, based upon the foregoing, OCR finds that the District's relevant definitions of harassment erroneously require "substantial interference" with a student's academic or educational performance. Under OCR's standards, by contrast, harassing acts create a hostile environment if they are sufficiently serious to interfere with a student's ability to participate in or benefit from the District's program and a District's obligation to address harassment is not limited to situations in which there is *substantial* interference or interference with *academic or educational* performance. Moreover, the District's grievance procedures, as discussed in detail above, do not incorporate due process standards, including the opportunity for a grievant or person accused of discrimination to present witnesses and evidence, reasonably prompt timeframes at the appeal level, and written notice to the parties of the outcome of the complaint investigation and appeal. Further, the Student Code of Conduct states that the grievance procedures apply only to Title IX or the Florida Equity Act questions and concerns, without referring to Section 504/Title II and other protected bases. The procedures therefore fail to provide for the prompt and equitable resolution of complaints of discrimination based on disability. Accordingly, OCR finds that the District's grievance procedures are not in compliance with Section 504 or Title II.

## **Conclusion**

Based upon a preponderance of the evidence, OCR finds that there is insufficient evidence to conclude that the District retaliated against the Student because the Student and the Complainant advocated for the Student's rights, or that the District subjected the Student to a hostile environment on the basis of disability by failing to respond appropriately to allegations of harassment. However, OCR finds that the evidence is sufficient to support a finding of noncompliance with respect to the District's notice of nondiscrimination and its grievance procedures under Section 504 and Title II.

The District has agreed to enter into a resolution agreement and take corrective actions that include (1) revising its nondiscrimination procedures, as contained in the Student Code of Conduct, to include a prohibition against harassment on the basis of disability; revising the Student Code of Conduct to specify that the grievance procedures are applicable to complaints of discrimination and harassment on the basis of disability; revising the District's grievance procedures contained in Board Policy 5.10 as necessary to ensure that they include the following elements: (i) notice of the grievance procedures, including where complaints may be filed; (ii) application of the grievance procedures to complaints filed by students or on their behalf alleging discrimination/harassment carried out by employees, other student, or third parties; (iii) provision for adequate, reliable and impartial investigation of oral and written complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence; (iv) designated and reasonably prompt time frames for the major stages of the complaint process; and (v) written notice to the complainant and alleged perpetrator of the outcome of the complaint; and, (vi) assurance that the school will take steps to prevent recurrence of any discrimination/ harassment and remedy discriminatory effects on the complainant and others, if

appropriate; and training all District staff on the revisions made to its nondiscrimination procedures, as contained in Board Policy 5.10 and the Student Code of Conduct.

These corrective actions are outlined in the enclosed resolution agreement which also contains monitoring provisions. When fully implemented, the agreement will resolve the identified compliance issues. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient 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 an investigation in connection with a complaint.

Thank you for working with OCR to resolve this matter. This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact Claudia Campo, Attorney, at (404) 974-9378, or Arthur Manigault, Compliance Team Leader, at (404) 974-9376.

Sincerely,

/s/

Melanie Velez  
Regional Director

Enclosure: Resolution Agreement

cc: Stephanie Stewart, Esq. (via electronic mail to [stewarsk@scps.k12.fl.us](mailto:stewarsk@scps.k12.fl.us))