



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

May 15, 2015

Jeff Eakins, Acting Superintendent
Hillsborough County School District
901 E Kennedy Boulevard
P.O. Box 3408
Tampa, Florida 33601

Re: Complaint #04-15-1023

Dear Mr. Eakins:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that the Complainant filed against the Hillsborough County School District (District), on October 20, 2014, alleging discrimination against the Complainant's daughter (Student) on the basis of disability and retaliation. Specifically, the Complainant alleged that staff at Mulrennan Middle School (School) discriminated against the Student in the following manner:

1. On the basis of disability (Asperger's syndrome), the Student was bullied and intimidated by the Language Arts Teacher (Teacher 1) and the District failed to take action reasonably calculated to stop the harassment; and
2. The Math Teacher (Teacher 2) retaliated against the Student when she chastised the Student, insinuated that the Student was a liar, and failed to unlock the Student's computerized math quiz because the Student filed a grievance against Teacher 1 during the 2014-2015 school year.

As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of 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. As a public entity, the District is subject to 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. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following issues:

1. Whether the Student was subjected to a hostile environment as a result of disability-based harassment by Teacher 1 and the District failed to take prompt and equitable steps to investigate and respond to the alleged harassment, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130;
2. Whether the District subjected the Student to retaliation when Teacher 2 chastised the Student, insinuated that the Student was a liar, and failed to unlock the Student's computerized math quiz

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

www.ed.gov

because the Student filed a grievance against Teacher 1, in noncompliance with the Section 504 implementing regulation at §104.61 and the Title II implementing regulation at 28 C.F.R. §35.134.

During the complaint resolution process, OCR reviewed documents provided by the District and the Complainant and conducted interviews with the Complainant and District staff. Based upon the available evidence, OCR found sufficient evidence to support a finding that the District was in noncompliance with the regulations implementing Section 504 and Title II with regard to these complaint allegations. Additionally, OCR found unalleged compliance concerns. Set forth below is a summary of OCR's findings.

Applicable Regulatory Standards

Disability Discrimination

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified individual 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 that receives Federal financial assistance.

Disability harassment under Section 504 and Title II is defined as intimidation or abusive conduct 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 institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal conduct, 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 the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program.

Upon notice of possible harassment based on disability a District must conduct an investigation or otherwise determine what occurred. In responding to alleged incidents of harassment, a district has an obligation to take prompt steps that are reasonably calculated to both end the harassment and prevent its recurrence and where appropriate, remedy the effects on the student who was harassed. OCR policy describes several measures a district may take to prevent and eliminate harassment, including publicizing anti-harassment statements and procedures for handling complaints, providing training to staff and students, and counseling both persons who have been harmed by, and who have been responsible for, harassment.

The regulation implementing Section 504 at 34 C.F.R. §104.7(a) requires that a recipient designate at least one person to coordinate its efforts to comply with Section 504. The regulation implementing Title II at 28 C.F.R. 35.107(a) contains a similar provision that applies only to public entities.

The Section 504 regulation at 34 C.F.R. § 104.7(b) requires a recipient 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(b) contains a similar provision for public entities. In evaluating whether a recipient's grievance procedures satisfy the foregoing requirements, OCR reviews all aspects of a recipient's policies and practices, including whether the procedures include the following elements:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;

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

www.ed.gov

2. application of the grievance procedures to complaints filed by students or on their behalf alleging discrimination, including 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 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.

The Section 504 implementing regulation at 34 C.F.R. §104.8 (a) provides that a recipient shall take initial and continuing steps to notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of disability. The notification shall also include an identification of the employee designated pursuant to the regulation at 34 C.F.R. §104.7(a). Additionally, the Section 504 implementing regulation at 34 C.F.R. §104.8(b) provides that if a recipient publishes or uses materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in the regulation at 34 C.F.R. §104.8(a). The Title II implementing regulation at 28 C.F.R. § 35.106 contains a similar provision for public entities.

As the Title II implementing regulation contains similar requirements and provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 standards.

Retaliation

The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq. The Title VI regulation at 34 C.F.R. § 100.7(e) 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, proceeding or hearing in connection with a complaint.

The regulation implementing Title II at 28 C.F.R. § 35.134 states that no private or public entity shall: (1) discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title II or (2) coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having aided or encouraged another in the exercise or enjoyment of, any right granted or protected by Title II.

When investigating a complaint of retaliation, OCR determines whether: (1) an individual engaged in a protected activity; (2) the recipient had notice of the protected activity; (3) the recipient took an adverse action against the individual contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation.

If all four elements are established, an initial or *prima facie* case of retaliation exists. OCR then inquires whether the recipient had a legitimate, non-retaliatory reason for taking the adverse action. If so, the evidence is analyzed to determine whether the proffered reason is merely an excuse or pretext for retaliation.

Free and Appropriate Public Education

The regulation implementing Section 504 at 34 C.F.R. §104.33(a), (b)(1) and (2), requires a recipient that operates a public elementary or secondary education program or activity to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. The provision of an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards). Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these standards.

The District's failure to implement aids, services, accommodations, or modifications identified in the 504 plan of a student with a disability may deny the student a FAPE and, thus, violate Section 504 and Title II. Yet, not every failure to implement an aid, service or accommodation/modification in a 504 plan automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and what impact the failure had on the student's ability to participate in or benefit from a school district's services, programs and activities.

As the Title II implementing regulation provides no greater protection than the Section 504 implementing regulation with respect to the complaint allegations, OCR conducted its investigation in accordance with the applicable Section 504 FAPE standards.

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.

Factual Findings

The Student is a twelve (12) year old assigned to a seventh grade general education classroom. She has been identified as a student with a disability (Other Emotional/Mental Health) and has been on a 504 Plan since March 2013. The Student's related aids and services identified in her Plan included preferential seating.

Issue One: Whether the Student was subjected to a hostile environment as a result of disability-based harassment by Teacher 1 and the District failed to take prompt and equitable steps to investigate and respond to the alleged harassment.

Procedural Requirements

The District's written procedures¹, do not fully comply with the legal standards that OCR evaluates in determining whether a District's grievance procedures are prompt and equitable. OCR is currently monitoring the District's revision of its procedures pursuant to OCR complaint (#04121030) where the District entered into a resolution agreement and agreed to revise its notice of nondiscrimination under Section 504 and Title II. The District's designation of a Section 504/Title II Coordinator and grievance procedures for addressing possible

¹ As is addressed more fully in the discussion of unalleged concerns, the District's procedures apply to sex discrimination, including sexual harassment as well. Concerns regarding the procedures applicable to sexual violence and assault are discussed below.

disability-based harassment are also being addressed in connection with the agreement in the previous OCR complaint. OCR will monitor the implementation of that agreement until the District is in compliance with the Section 504 and Title II regulations concerning these procedural requirements.

Factual Background Related to Alleged Harassment

In January 2014, the Student was hospitalized for an attempted suicide. The Complainant alleged that she provided the School with the Student's medical documents, including a diagnosis for Asperger's syndrome (Asperger's), from the treating facility in February 2014 in order to excuse the Student's absence from school. However, the District denied any knowledge of the Asperger's diagnosis during the 2013-2014 school year.

The evidence shows that on September 2, 2014, the Language Arts Teacher (Teacher 1) met with the Guidance Counselor (Counselor) because she was concerned about the Student's classroom behaviors. Specifically Teacher 1 claimed that the Student rolled her eyes at peers and the teacher and was not listening to her. During this meeting, the Counselor reviewed the Student's 504 plan with Teacher 1. On September 3, 2014, the Counselor met with the Student to discuss classroom procedures, homework, and her feelings about her classes². On September 4, 2014, the Counselor spoke with the Complainant; during this conversation the Complainant explained that the Student had been diagnosed with Asperger's during a hospitalization. The Counselor reportedly advised the Complainant that she would need to sign a medical release form to allow the District to obtain documentation of the diagnosis from the medical facility. During an interview with OCR, however, the Complainant alleged that the School never asked her to sign a medical release, but instead asked that she provide a copy of the Student's medical records via e-mail.

On September 11, 2014, Teacher 1 sent the Student to the Counselor for playing with hand soap and violating classroom policy by having her backpack on her desk in Language Arts class. During this meeting, the Student reported to the Counselor that she felt targeted by Teacher 1 because Teacher 1 stared at her. Therefore, she placed her backpack on her desk to serve as a barrier to block the teacher's line-of-sight. The Counselor told the Student she should come to guidance if she felt targeted.

In September 2014³, the Complainant contacted the District's 504 Liaison (Liaison) and asked questions regarding the School's procedures, explained the Student's sensitivity based on her disability, and explained that the Student felt she was being stared at by Teacher 1 causing her to place her backpack on her desk in violation of classroom policy.

On Monday, September 15, 2014, the Student violated the classroom policy by placing her backpack on her desk to block Teacher 1's line-of-sight and Teacher 1 directed Student to "get out" intending for the Student to go to the office. However, the Student took the directions literally and stood in the hallway where she was eventually found by the Counselor. The Counselor accompanied the Student to meet with the Assistant Principal and the Social Worker. They called the Complainant and decided to change the Student's seating arrangement in Language Arts, after the Student indicated she felt more comfortable when she was sitting next to Teacher 1, not looking directly at her. The Student's seat, however, was not changed until the next Monday, September 22, 2014. During an interview with OCR, Teacher 1 stated that the delay was because she wanted to change seats for the whole class so that the situation involving the Student was less obvious, but the class was undergoing student testing during this time.

² There is no evidence that the Student mentioned her discomfort with Teacher 1 during this discussion.

³ The evidence did not establish the exact date of this contact; however, it occurred after the Student started placing her backpack on her desk.

On September 16, 2014, the Complainant sent the medical records evidencing the Student's Asperger's diagnosis via e-mail to the Guidance Counselor.

On September 18, 2014, the Student texted the Complainant from Language Arts class that she was uncomfortable because Teacher 1 was staring at her and her seat had not been moved. The Complainant had an issue with the delay in the Student's seat change and came to school to speak with the Counselor. The Counselor met with the Complainant and the Student and asked if they wanted the Student's schedule to be changed to a different Language Arts Teacher. The Student stated that she did not want to change classes. During this meeting, the Student informed the Complainant that she wanted "home-education"⁴ and the Counselor provided them with information on the subject.

On September 22, 2014, the Student's seat was changed to a location where she would not be in the direct line-of-sight of Teacher 1. During an interview with OCR, the Counselor stated that after the seat change the Student was not comfortable with her new seat because she sat next to Teacher 1.

On September 23, 2014, there was a parent-teacher conference with the Complainant, all of the Student's teachers, the Counselor, and the Student. The meeting began with the teachers discussing the Student's poor academic performance, including low grades and missed assignments. The Complainant provided a copy of the paperwork from the medical facility, told the Student's teachers that they needed to be more sensitive, and told Teacher 1 that she needed to go into a new profession. The Complainant alleged that Teacher 1 said, "I can't look at her in the face?"; "Why don't we put her somewhere where she can get the help that she needs?"; and "Nobody wants to sit by your daughter in class because she doesn't talk." Teacher 1 denied making any of these statements. At this meeting, the Complainant expressed a desire to change the Student's Language Arts class. The School changed the Student's schedule. The Student has had no issues with Teacher 1 after her schedule was changed.

In October 2014, the Counselor notified the Student that she should come to the Guidance Office or the School Social Worker if she was feeling uncomfortable at school. The District alleged that this accommodation was going to be added to her 504 plan at her annual 504 plan renewal meeting scheduled for November 7, 2014. According to the Counselor, adding the accommodation to the Student's 504 plan was postponed because a meeting had already been scheduled for November 7th and the school wanted to review everything all at once, including the Asperger's diagnosis.

On November 1, 2014, the Complainant withdrew the Student to educate her at home.

Analysis and Conclusion

Response to internal complaint

On September 11, 2014 the Student reported to the Counselor that she felt targeted by Teacher 1 because Teacher 1 stared at her. Shortly thereafter, the Complainant notified the Counselor that the Student felt harassed based on her disability, Asperger's. The Counselor's response was to notify the Complainant that she needed to submit medical evidence of the Asperger's diagnosis. The evidence shows that neither School nor District level staff conducted an investigation or took steps to determine what was occurring in Teacher 1's class. Also there was no assessment of the climate for the Student and there were no written findings about whether harassment occurred. While there were meetings to discuss the Student's performance and conduct, those meetings did not focus on information which would enable the District to determine what occurred with

⁴ The evidence shows that the Student was referring to homeschooling, rather than homebound services to be provided by the District.
*The Department of Education's mission is to promote student achievement and preparation for global competitiveness
by fostering educational excellence and ensuring equal access.*
www.ed.gov

respect to the alleged harassment of the Student. Furthermore, when the Complainant and school staff informally identified a possible solution for the Student's concern that Teacher 1 was staring at her, the solution was not immediately implemented by Teacher 1.

Assessment of whether inadequate response resulted in continuation of hostile environment

As noted above, the harassing conduct must be sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by the school, in order to violate a student's rights under Section 504. The evidence shows that the Student never felt comfortable in Teacher 1's class. Further, after the Complainant provided notice that the Student had been diagnosed with Asperger's and submitted the requested documentation the District did not conduct a re-evaluation or hold a 504 meeting to determine whether the Student's behavior, including placement of her bookbag on her desk, necessitated related aids and services to allow the Student to participate in or benefit from the services, activities, or opportunities offered by the school. Instead, on numerous occasions, the Student was sent to the Counselor's office, which further denied her the ability to participate in the services offered by the school. Ultimately, the Student asked to be homeschooled and was moved from Teacher 1's class at the Complainant's request.

Based upon the foregoing, OCR concludes that there is sufficient evidence to support a finding that the District was in noncompliance with Section 504 or Title II, with respect to this issue.

Issue Two: Whether the District subjected the Student to retaliation when Teacher 2 chastised the Student, insinuated that the Student was a liar, and failed to unlock the Student's computerized math quiz because the Student filed a grievance against Teacher 1.

1. Summary of the Allegation

The Complainant alleged that the Math Teacher (Teacher 2) retaliated against the Student when Teacher 2 insinuated that the Student was a liar, and failed to unlock the Student's computerized math quiz, because the Student filed a grievance against Teacher 1.

Protected Activity/Knowledge of Protected Activity

In September 2014, the Complainant and the Student complained to the School Counselor and District Liaison that because of her disability, the Student felt targeted by Teacher 1 staring at her during class. During an interview with OCR, Teacher 2 admitted that she was aware that there was a conflict and that a class change was required. It is also undisputed that other District personnel including the Counselor, Liaison, and Teacher 2 were aware of the protected activity.

2. Adverse Actions

In determining whether an action is adverse, OCR examines whether the recipient's action significantly disadvantaged the student in his or 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 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 his or her discrimination claims. OCR investigated the two alleged adverse actions identified by the Complainant

a. Adverse Action 1

The Complainant alleged that on October 15, 2014, Teacher 2 called the Student and other students to the front of the classroom and notified them that their academic performance was lower than the other students in the class. During this conversation, the Complainant alleged that Teacher 2 told Student, “I bet you will go home and lie and tell your mom something different. It wasn’t [Teacher 1’s] fault.” During an interview with OCR, Teacher 2 denied making this statement. During a follow-up interview with OCR, the Complainant was unable to identify any witnesses to corroborate this statement.

Complainant alleged that she contacted the Liaison and asked for advice regarding the incident and was instructed to notify the Principal of the incident and if it was not resolved to call the Liaison back. Complainant stated that she never notified the School of this incident. During an interview with OCR, the Liaison did not recall or have any record of this conversation.

The Complainant was unable to identify any witnesses to support this allegation. OCR could not corroborate that this adverse action occurred. Accordingly, based upon all of the available evidence and utilizing the preponderance standard, OCR concludes that there is insufficient evidence to prove that the alleged adverse action occurred and that the Student was subjected to retaliation as alleged.

b. Adverse Action 2

The Complainant alleged that on October 17, 2014, the Student was taking a computerized math quiz and was locked out. Teacher 2 came by and asked the Student why she was not doing the quiz. The Student advised Teacher 2 that she was locked out. Teacher 2 sat down at her desk; the Student thought Teacher 2 was unlocking the quiz but the quiz was not unlocked. Teacher 2 returned ten (10) minutes later and chastised the Student. As a result, the Student failed the quiz.

Complainant alleged that she contacted the Liaison and asked for advice regarding the incident and was instructed to notify the Principal of the incident and if it was not resolved to call the Liaison back. The Complainant stated that she never notified the School of this incident. During an interview with OCR the Liaison stated that she did not recall this conversation and stated that she did not have any record of the conversation. The Liaison said that she only spoke to the Complainant in September, 2014.

During an interview with OCR, Teacher 2 reported two occasions on which the Student was locked out of her math quiz and Teacher 2 refused to unlock the quiz after the Student refused to comply with the classroom protocol. The reported instances occurred subsequent to the protected activity. Based upon the preponderance of the evidence OCR finds that this alleged adverse action occurred.

Causal Connection

OCR finds that a causal connection between the adverse action of refusing to unlock the Student’s math quiz and the protected activity of the Student complaining about Teacher 1 can reasonably be inferred.

Legitimate, Non-Discriminatory Reason

Teacher 2 explained that her class is based on an online curriculum and each day the students come in, sit down, log in, and begin their lesson, classwork, or quiz online. If a student does not achieve a score of 70% or higher on a quiz the program automatically locks the student out. If a student gets locked out of the program for not getting a passing score, classroom policy requires the student to raise his or her hand to ask for Teacher 2's assistance so she can ensure the student is taking notes during the lesson portion and conference with the student on any misconceptions. According to Teacher 2, the Student complied with classroom policy until mid-October 2014 when the Student began not working and not notifying Teacher 2 if she was locked out of a quiz.

Teacher 2 explained that on October 14, 2014 when she recognized the Student was not communicating that she was locked out, she sent a message to the Student on the computer and went up to the student and said, "You're locked out, what do we need to do?" The Student responded by saying, "I don't talk to adults." Teacher 2 then gave the Student the opportunity to proceed with the proper classroom procedure to get the quiz unlocked and advised her that if she opted not to proceed, have the quiz unlocked and resume work she would need to leave the class. The Student chose to leave class and Teacher 2 notified the Student that she would be contacting the Complainant. Teacher 2 left a voice message with the Complainant, but did not receive a return phone call. Teacher 2 then left a message for the Complainant on the Edsby program, a parent communication portal, but received no response.

On October 16, 2014, the Student had another day where she opted to leave the class rather than proceed with the protocol for having the program unlocked. On this day, Teacher 2 again called the Complainant and posted a message on Edsby, but again received no response.

Pretext for Discrimination

If OCR finds that the recipient has offered a legitimate nondiscriminatory reason for the adverse action, OCR further investigates to determine if the reason provided is a pretext for discrimination. Pretext may be shown by evidence that: (1) the explanation for the adverse action is not credible or believable; (2) the individual was treated differently than other individuals who were similarly situated but had not engaged in a protected activity; or (3) the treatment of the individual was inconsistent with established practice or policy.

OCR found no evidence that the explanation for the adverse action was incredible and noted that the Teacher's explanation is supported by documented contemporaneous notes in Edsby. Further, there was no evidence that Teacher 2's actions were inconsistent with the classroom policy or practice, which includes notification by students that they are locked out and dialogue with the Teacher 2 concerning the work before the quiz is unlocked. Therefore, OCR finds that the evidence does not demonstrate pretext with respect to the District's asserted reason for taking the adverse action.

Based on the preponderance of the evidence standard, OCR finds insufficient evidence that the Student was subjected to retaliation as alleged.

Other Issues Identified

Failure to Implement

The Student's 504 plan allows preferential seating as an accommodation. The Student expressed discomfort with being in Teacher 1's line of sight beginning at least September 11, 2014. On September 15, 2014, it was determined by school staff, including the Counselor, and the Complainant that the Student would benefit from

changing the location of her seat. The evidence shows that the modification to meet the Student's stated preference was intended to take effect immediately. The Student's seat was not changed until September 22, 2014.

Accordingly, OCR concludes that there is sufficient evidence to support a finding that the District was in noncompliance with Section 504 or Title II, with respect to this issue.

Failure to Evaluate

After multiple classroom incidents, the Complainant provided the District notice of the Student's Asperger's diagnosis on September 4, 2014 and on September 16, 2014, the Complainant provided the School with documentation evidencing the Student's Asperger's diagnosis. However, the School failed to conduct a re-evaluation of the Student's needs based on the classroom incidents, the Complainant's notice of the diagnosis or documentation of this new medical diagnosis. Additionally, during an interview with OCR, Teacher 2 stated that prior to October 2014, the Student followed the class hand-raising policy to have quizzes unlocked without issue. In October 2014, Teacher 2 experienced a change in the Student's behavior -- a refusal to comply with the classroom policy. Based upon the foregoing factors the District was on notice of a need to further evaluate the Student to determine how to provide her FAPE. The District failed to conduct a re-evaluation of the Student.

Additional Procedural Concern

The District procedures used to address complaints of discrimination based on disability also apply to complaints of sex discrimination, including sexual harassment. OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The Title IX implementing regulation at 34 C.F.R. § 106.8(b) contains a grievance procedure requirement. In evaluating grievance procedures used to address complaints of sex discrimination, including harassment, OCR considers the elements listed in the legal standards above. Additionally when procedures apply to complaints of sexual violence or assault, OCR considers the following factors as well; (1) a statement of the school's jurisdiction over Title IX complaints; (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment; (3) reporting policies and protocols, including provisions for confidential reporting; (4) identification of the employee or employees responsible for evaluating requests for confidentiality; (5) notice that Title IX prohibits retaliation; (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously; (7) notice of available interim measures that may be taken to protect the student in the educational setting; (8) the evidentiary standard that must be used (preponderance of the evidence) (i.e., more likely than not that sexual violence occurred) in resolving a complaint; (9) notice of potential remedies for students; (10) notice of potential sanctions against perpetrators; and, (11) sources of counseling, advocacy, and support. The District's procedures do not contain all of the elements that should be included in procedures used to address reports of sexual violence.

Accordingly, OCR concludes that there is sufficient evidence to support a finding that the District was in noncompliance with Section 504 or Title II, with respect to the issue opened in this complaint. In addition the procedures used to cover complaints of discrimination on the basis of disability and complaints of sex discrimination, including sexual violence or assault, fail to include some elements that should be included in procedures used to address reports of sexual violence.

On May 11, 2015, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. When fully implemented, the Agreement entered into by the District will resolve the issues of noncompliance. OCR will

monitor the implementation of the agreement until the District is in compliance with the statutes and regulations at issue in the case.

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. 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. 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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

If you have any questions regarding this matter, please contact Adrienne Harris, at (404) 974-9370, or Andrea de Vries, at 404-974-9314.

Sincerely,

/s/

Deborah Floyd
Acting Office Director