



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

November 27, 2015

Mr. Jackie Pons
Superintendent
Leon County School District
2757 West Pensacola Street
Tallahassee, Florida 32304

Re: OCR Complaint #04-15-1158

Dear Mr. Pons:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint which was filed on January 13, 2015, against the Leon County School District (District), alleging discrimination on the bases of disability and retaliation.

Specifically, X (Complainant) alleged that the District discriminated against his son, X (Student), as follows:

1. The District failed to provide the Student with a free appropriate public education (FAPE) because Raa Middle School (School) did not implement all the services in the Student's IEP during the 2014-2015 school year. Specifically, teachers were not signing off on the Student's agenda book, not providing extended time on tests and assignments, and not giving auditory presentation during tests.
2. The District failed to reevaluate the Student for special education services after he transferred into the District in January 2014. The Student's last evaluation was conducted when the Student was in kindergarten or 1st grade in another school district.
3. The District discriminated against the Student during the 2014-2015 school year on the basis of disability by prohibiting him from taking elective classes, due to his low FCAT scores.
4. The District retaliated against the Student when, after the Complainant advocated for the Student during a November 2014 IEP meeting, the Student was told to leave basketball tryouts, in front of all the boys, because his GPA was too low.

OCR investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §

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12131, and its implementing regulation, 28 C.F.R. Part 35. The District is a recipient of FFA from the Department and a public entity. Accordingly, OCR had jurisdiction over this complaint.

OCR investigated the following legal issues:

- 1) Whether the District failed to provide the Student with a FAPE during the 2014-2015 school year, when it failed to implement services in the Student's IEP (signing off on the Student's agenda book, not providing extended time on tests and assignments, and not giving auditory presentation during tests), in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. §§ 104.33, and the Title II implementing regulation, at 28 C.F.R. § 35.130.
- 2) Whether the District failed to reevaluate the Student for special education services after he transferred into the District in January 2014, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. §§ 104.35(d), and the Title II implementing regulation, at 28 C.F.R. § 35.130.
- 3) Whether the District discriminated against the Student during the 2014-2015 school year on the basis of disability by prohibiting him from taking elective classes, due to his low FCAT scores, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. §§ 104.4(b)(1)(iv), and the Title II implementing regulation, at 28 C.F.R. § 35.130.
- 4) Whether the District retaliated against the Student when, after the Complainant advocated for the Student during a November 2014 IEP meeting, the Student was told to leave basketball tryouts, in front of all the boys, because his GPA was too low, in noncompliance with the Section 504 implementing regulation, at 34 C.F.R. §104.61 and Title II and its implementing regulation at 28 C.F.R. §35.134.

In reaching a determination, OCR reviewed and analyzed documents pertinent to the complaint issues and interviewed the Complainant and School staff and District administration. 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 failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Based on the investigation, OCR found sufficient evidence to support a finding that the District discriminated against the Student, in noncompliance with Section 504 and Title II, as alleged in Allegation 1. With regards to Allegations 2 thru 4, OCR found insufficient evidence of noncompliance. Set forth below is a summary of OCR's factual findings and conclusions.

Legal Standards

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

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1) provides that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (iv) provide different or separate aid, benefits, or services to students with disabilities or to any class of student with a disability unless such action is necessary to provide the student with a disability with aid, benefits, or services that are as effective as those provided to others. The Title II implementing regulation at 28 C.F.R. § 35.130(a) provides no greater protection than the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and (b), thus OCR analyzes alleged violations under the Section 504 implementing regulation.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as regular or special education and related aids and services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). Implementation of an individualized education program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard. 34 C.F.R. § 104.33(b)(2).

The Section 504 implementing regulation at 34 C.F.R. § 104.35(a) states that a recipient shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. OCR interprets Section 504 to require, when a child's doctor or parent has provided information indicating that a child is "regarded" as having a disability, recipients to determine whether there is a "reason to believe" that the child, because of an actual disability, may need special education or related services, and thus would need to be evaluated. The opinion of the doctor or parent triggers the recipient's duty to evaluate the student and is a piece of information to be considered in that decision making process.

Although the Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation, a recipient should conduct an evaluation within a reasonable period of time after it has reason to suspect that a student, because of disability, may need special education or related services. OCR may consider state law when determining whether a district has conducted a timely evaluation of a student.

The regulation implementing Title II is interpreted consistent with the regulation implementing Section 504. OCR interprets the regulation implementing Title II to require school districts to provide a FAPE to qualified individuals with a disability to the same extent required by the regulation implementing Section 504.

Retaliation is prohibited under the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of 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) prohibits retaliation for engaging in a protected activity. The regulation implementing Title II at 28 C.F.R. § 35.134 contains a similar prohibition against retaliation.

To establish a prima facie case of retaliation, OCR uses a four step analysis: (1) whether the Complainant engaged in a protected activity protected by the laws OCR enforces; (2) whether the District was aware of the protected activity; (3) whether the District took adverse action against the Complainant contemporaneous with or subsequent to participation in a protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, OCR finds insufficient evidence of a violation. If all of the above elements are established, OCR then determines whether the recipient has a legitimate, non-discriminatory explanation for the adverse action. If such an explanation is proffered, OCR examines whether the reason given is merely a pretext for retaliation.

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.

Background

During the 2014-2015 school year, the Student was an 8th grader at Raa Middle School (School). In January 2014, when the Student was a 7th grader, he transferred from Miami-Dade County Schools to the District. He is described as “Specific Learning Disabled.”

Issue #1

Whether the District failed to provide the Student with a FAPE during the 2014-2015 school year, when it failed to implement services in the Student’s IEP (signing off on the Student’s agenda book, not providing extended time on tests and assignments, and not giving auditory presentation during tests), in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.

The Student transferred into the District in January 2014 from the Miami-Dade County Public Schools (Miami-Dade). An Interim IEP had been developed by Miami-Dade on April 2, 2013. The District submitted to OCR a Telephone Verification log completed by the Exceptional Student Education Office showing that they had begun gathering information regarding the Student on January 21, 2014. A parent’s Notice and Consent for Re-Evaluation form, Invitation to Participate, and Procedural Safeguards were sent on January 24, 2014, and were signed by the Complainant on January 25, 2014.

The Re-Evaluation Report that was sent to the Complainant on January 24, 2014 stated that “No Formal Assessment” was recommended and Procedural Safeguards were described at the bottom of the form. The District also sent the Complainant “Considerations and Parent Input Request Concerning Re-Evaluation” which provided the Complainant with space to provide input on the Student’s re-evaluation. The Complainant did not provide any input.

The Complainant participated in the development of a new IEP for the Student on January 30, 2014. The auxiliary aids and services to be provided to the Student were:

- For Student Assessments (FCAT Writing, Reading, Math, Science; Class and End-of-Course assessments, Norm Referenced Tests), the Student should have “scheduling, flexible setting, auditory presentation, and flexible timing.”
- In his classes, he should be given preferential seating, have visual and/or auditory distracting stimuli minimized; have specific behaviors praised; be cued to stay on task; receive auditory presentation for assignments and tests; receive extended time to complete assignments and tests; have a flexible schedule and seating; and be permitted to use manipulatives in math.

This IEP was signed by the Complainant, an Exceptional Education teacher, a regular education teacher, and an LEA administrator.

On February 20, 2014, an addendum was created to the January 30th IEP. The Complainant consented to having the changes occur without a formal meeting. The only change that occurred on the IEP was a notation that the IEP team “is proposing to implement the following actions: Change in frequency of special education services; Change in description of special education services to decrease services.”

On November 10, 2014, another addendum was made to the Student’s IEP. Again, the Complainant consented to the changes without a formal meeting. The form describes the minor changes that will be made and cites the IDEA Part B regulation at 34 C.F.R. § 300.324 which allows changes to an existing IEP to be made, if the parent agrees. The duration of this updated IEP was to last from November 19, 2014 thru January 29, 2015.

The auxiliary aids and services to be provided to the Student were:

- Preferential seating and praising specific behaviors
- Teacher initialing that Student has written in agenda book under appropriate subject area
- Using manipulatives to solve math problems
- Give extra cues and prompts during assignments and assessment.

On March 6, 2015, a new IEP was developed for the Student to last until January 19, 2016. The Complainant and other personnel knowledgeable about the Student participated in the meeting and the Complainant was provided with his Procedural Safeguards. The Auxiliary Aids and Services approved in this IEP included:

- Teachers initialing in the Student's agenda book or daily assignment sheet with classwork or homework.
- Using manipulatives to solve math problems; Breaking down lessons by giving directions (oral and written) in small distinct steps
- Giving extra cues and prompts during assignments and assessments; Providing study guides, outlines, or notes to highlight key concepts
- Allow tests to be taken over multiple periods; Testing in small group setting
- Allow directions and test items be read to Student (unless it is a reading or writing assessment)
- Allow Student to restate directions
- Reduce length of test (but not level or number of skills tested)

Additionally, a Case Conference meeting was held on May 1, 2015 to further discuss updating the Student's testing accommodations and transition plan as he prepares to go to high school. The Complainant received his Procedural Safeguards and any regular education teachers who could not attend submitted their comments regarding the Student's academic performance.

The District submitted data from each of the Student's teachers. There were a variety of attachments ranging from seating charts, to signed agenda book pages and daily assignment sheets, parent communication log entries, email communications with the Complainant, and extended time notations for assignments and tests. OCR interviewed the Student's Language Arts, Comprehensive Science, American History, Intensive Reading, and Math teachers. During OCR's interviews with all of the Student's teachers, it was described how teachers placed the Student either up front or where the teacher could interact with the Student throughout the class period. The math teacher used manipulatives to solve math problems. Cues and prompts were used during assignments and assessments, as well as additional time.

With regards to additional time, the Math, American History, and Language Arts teachers submitted documentation regarding re-take opportunities provided to the Student and logs of additional time given for tests and quizzes, greater than other students received. The Intensive Reading teacher described how there were no deadlines with her assignments, so all the students had additional time. The Guidance Counselor described how the Student had unlimited time for tests and how they sometimes continued a test from one day to the next; they sometimes utilized the reading teacher's class time for when tests ran long; and once, a math exam was completed at home. On February 13, 2015, the Complainant sent an email to the Student's teachers reminding them that the Student needs extra time as well as auditory presentation. He acknowledged that the Student does not advocate for himself but needs additional time and insistence on going to the Guidance Counselor's office to receive additional time.

However, with regard to providing auditory presentation for assignments and tests, the teachers consistently stated that this was difficult to provide if the Student refused to go to the Guidance Counselor's office for his tests. They stated that the Student did not like being singled out for special treatment and sometimes refused to go. Other teachers were more vigilant and disregarded the Student's refusal and made him go. Once there, the Guidance Counselor stated that she would read over questions with the Student. However, in a November 4, 2014 email,

she stated that she did very little reading with the students and made them read aloud to themselves.

Several teachers also told OCR that signing off on the agenda book was occasionally difficult since the Student did not always have his agenda book with him or would not have it out for them to sign. Some teachers implemented a system to ensure they would sign it; others did not pursue it, seeing it as a failure on the Student's responsibility to provide it to them for initialing.

During the Complainant's rebuttal interview, he contended that the teachers generally did a good job in providing additional time and sending the Student down to the Guidance office for auditory presentation on tests, but it was quizzes where he was not consistently sent to the Guidance office. The Complainant pointed to low grades and the Student telling him that he did not go for quizzes. The Complainant stated that at a meeting, the Principal told him the Student would not be sent to Guidance for quizzes since they are only five questions long and it is not worth the time to send the Student down for those. The Complainant stated that if the Student was sent to Guidance, then the Guidance Counselor did a good job in providing auditory presentation for tests. However, he acknowledged that the Student did not like being singled out and sent out of the classroom.

OCR finds that the District is in noncompliance with the IEP with regards to auditory presentation being provided to the Student. In a November 4, 2014 email, the Guidance Counselor stated that she did very little reading to students and made them read aloud. However, based on the three IEP's for the Student during the 2014-2015 school year, auditory presentation was to be provided for assignments and tests and assessments.

With regards to the agenda book and daily assignment sheet, while teachers stated that they could not initial them if they were not presented them by the Student, OCR finds that the teachers should have inquired daily about these tools, in order to implement the IEP. The onus was upon the teachers, instead of the Student, in order to have the agenda book or daily assignment sheet signed.

With regards to receiving additional time on assignments and tests, again, the onus was upon the teachers to offer this instead of the Student having to advocate for himself to receive additional time. OCR found inconsistencies on whether the teachers sent the Student to the Guidance Counselor's office for his assessments/tests in order to receive auditory presentation. Additionally, if he had been sent for auditory presentation, this would also have led to an awareness of whether additional time was required during a test.

Due to the findings of noncompliance, on November 16, 2015, the District signed the attached Resolution Agreement to resolve the noncompliance with regards to the auditory presentation, additional time on assignments and tests, and the signing of the agenda book and/or daily assignment sheet.

Issue 2

Whether the District failed to reevaluate the Student for special education services after he transferred into the District in January 2014, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.35(d), and the Title II implementing regulation at 28 C.F.R. § 35.130.

The District follows the reevaluation procedures described in 34 C.F.R. § 300.303 and § 300.305 in the Individuals with Disabilities Education Act. The Section 504 regulation in 34 C.F.R. § 104.35(d) states that recipients shall establish procedures for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement. The State and District's rules on this are described in the Florida Department of Education's Bureau of Exceptional Education and Student Services' Policies and Procedures. (<http://www2.leon.k12.fl.us/sites/ese/Public%20documents/leon%20county%20schools%20special%20programs%20document%202013-2016.pdf>)

Based on the description on facts laid out in Issue 1, OCR finds that the District did not fail to reevaluate the Student for special education services. When he entered the District in January 2014, the Complainant was sent an invitation to consent and participate in the Student's Re-Evaluation. He also had an opportunity to provide input on the re-evaluation and the District's belief that no formal assessment was required. The Complainant provided no input, however, he did participate in the January 30, 2014 IEP meeting where a new IEP was created by the District. During his rebuttal interview, the Complainant acknowledged that he signed off on the "no formal assessment being required" statement, but stated that he signed a lot of papers without fully understanding them. He informed OCR that the Student recently received a formal assessment.

OCR concludes that the evidence is insufficient to support that the District was in noncompliance with Section 504 and Title II with respect to this allegation.

Issue 3

Whether the District discriminated against the Student during the 2014-2015 school year on the basis of disability by prohibiting him from taking elective classes, due to his low FCAT scores, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(iv), and the Title II implementing regulation at 28 C.F.R. § 35.130.

The District provided documentation which states that Florida Statute 1008.25 requires students to be enrolled in remedial classes when they do not achieve a high enough score in state-wide high stakes tests. With regards to the Student, he achieved a Level 1 on both his 2014 reading and math scores on the Florida Comprehensive Achievement Test (FCAT). In accordance with the District's Pupil Progression Plan, which implements the Florida Statute, the Student was required to take remedial classes in both reading and math. The Principal confirmed that all students who need remediation due to low FCAT scores must take intensive reading and/or math.

On the Student's 7th grade report card, it showed that the Student took the following classes: Intensive Reading, Intensive Math, Language Arts, Comprehensive Science, Civics, and Band.

During the Student's first semester of the 8th grade, he took: Comprehensive Science, Language Arts, Intensive Reading, U.S. History, Band, and Pre-Algebra. During their interviews with OCR, the Principal and the Student's Intensive Reading teacher confirmed that the Student is permitted to take electives and that he was taking Band and Intensive Reading as his electives in Spring 2015.

The District also submitted a January 12, 2015 email from the Principal which stated that the Student could take PE as an elective, if the Complainant wished, and she would coordinate with the Virtual School on credits and classes.

OCR reviewed the Student's report card which shows that he has taken the electives of Intensive Math, Intensive Reading, and Band during the 2014-2015 school year. The Complainant acknowledged that those courses are electives, but contended that remedial classes are not electives and the Student should have time in his schedule to take non-remedial electives. He agreed that Band was an elective that is not remediation-oriented.

OCR finds that the Student was not treated differently, due to his disability, in the creation of his schedule. Therefore, OCR concludes that the evidence is insufficient to support that the District was in noncompliance with Section 504 and Title II with respect to this allegation.

Issue 4

Whether the District retaliated against the Student when, after the Complainant advocated for the Student during a November 2014 IEP meeting, the Student was told to leave basketball tryouts, in front of his peers, because his GPA was too low, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61 and Title II and its implementing regulation at 28 C.F.R. § 35.134.

In order to determine that a prima facie case of retaliation against an individual has occurred, OCR must find that: 1) the individual engaged in a protected activity; 2) the recipient had notice of the individual's protected activity; 3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and 4) there was a causal connection between the protected activity and the adverse action. If all the elements are established, then OCR considers whether the recipient has a legitimate, non-retaliatory reason for its action, or whether the reason is a pretext for retaliation.

A. Protected Activity and the District's Knowledge of the 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, proceeding or hearing conducted under the laws that OCR enforces.

The Complainant advocated on behalf of the Student with regards to special education services since the Student transferred into the District in January 2014. In November 2014, the Complainant attended an IEP meeting and advocated for the Student. The District had

knowledge of the Complainant's advocacy efforts on behalf of the Student. Hence, OCR has determined that the Complainant was engaged in a protected activity and that the District had knowledge of the protected activity.

B. Adverse Action

OCR next determined whether the District took 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 District'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 educational opportunities, the action could be considered to be retaliatory if it 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.

The Complainant alleges that the adverse action occurred at basketball tryouts in January 2015. During OCR's interviews with the basketball coach, he acknowledged that he told the Student that he had to leave tryouts because his GPA was too low.

The evidence shows that the Student was asked to leave basketball tryouts because his GPA was too low and this action occurred subsequent to the protected activity. OCR finds this action as significantly disadvantaging the Student in his ability to gain the benefits of the District's program. Therefore, OCR has determined that the Student experienced an adverse action.

C. Causal Connection between the Protected Activity and the Adverse Action

The closeness in time of the events may be sufficient to infer a causal connection. The Complainant participated in an IEP meeting in November 2014 and basketball tryouts began in January 2015, which was when the Student was asked to leave. Because the two dates are close in time, it can be inferred that a causal connection exists.

D. Legitimate, Non-retaliatory Reason for the Recipient's Action

Once OCR has established a *prima facie* case of retaliation, the recipient must articulate a legitimate, non-retaliatory reason for its action. OCR then determines whether the recipient's proffered reasons are a pretext for retaliation. The Coach explained that he has to excuse boys from basketball try-outs every year. The two reasons for dismissal are low grades and not having a physical. Once boys show up on the first day of tryouts, he sends the list of boys trying out to the office for them to conduct a GPA check, to ensure students have the necessary, minimum GPA. The minimum GPA required by both the District and the School is a 2.0. By the second day, the office has returned a list back of all the students' GPA's. At this year's try-outs, eleven boys were asked to leave try-outs. The Coach spoke to two groups of boys separately, in order to dismiss them. He spoke to two boys who solely did not meet the GPA requirement, which included the Student. He also spoke to nine boys who did not have a

required physical on file. Some of these boys also did not have the required GPA as well as well as not having a physical.

The Coach stated that he did not announce to the rest of the students the reason why he was speaking to these two groups. He discreetly called over the eleven boys and explained their dismissal. The Coach explained to the boys the reason for their dismissal was in accordance with both the School and District GPA and physical requirement.

Based upon all the available information, OCR has determined that the District's proffered explanation for the Student's try-out dismissal was legitimate and non-retaliatory. While the Student's dismissal may have felt like he was being retaliated against, he was not the only student affected. The Student and one other student were dismissed due to compliance with both School and District GPA requirement. Other boys were dismissed from try-outs for failing to have a physical on file, and several of these boys also did not have the required GPA. One boy who was in the group dismissed for not having a physical also had a Section 504 Plan and did not have the required GPA.

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

OCR finds that the Student's try-out dismissal was not a pretext for retaliation. The District and School policy regarding the minimum required GPA is nondiscriminatory. Students who did not have a required physical were also dismissed from tryouts. The dismissals impacted both disabled and non-disabled students. On January 12, 2015, the Principal sent the Complainant an email explaining that the Student's try-out dismissal was not meant to intentionally hurt him, nor was it due to his disability; it was per the GPA requirement.

Because OCR finds that the District proffered a legitimate, non-retaliatory reason that was not a pretext for retaliation, OCR concludes that there is insufficient information to support a finding that the Student was subjected to retaliation.

OCR received the enclosed signed Resolution Agreement that, when fully implemented, will address the foregoing compliance concerns. OCR will monitor the implementation of the Agreement until the District is in compliance with the statute(s) and regulations at issue in the case. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, 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.

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 a 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 the event 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.

If you have any questions regarding this letter, please contact Sonia Lee, General Attorney, at (404) 974-9371, or Scott Sausser, Esq., Compliance Team Leader, at (404) 974-9354.

Sincerely,

Melanie Velez, Esq.
Regional Director

Enclosure