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April 17, 2020

Via Email ([ramona\\_tyson@dekalbschoolsga.org](mailto:ramona_tyson@dekalbschoolsga.org))

Ms. Ramona Tyson  
Interim Superintendent  
DeKalb County School District  
1701 Mountain Industrial Blvd  
Stone Mountain, GA 30083

Re: Complaint # 04-18-1486

Dear Ms. Tyson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on May 3, 2018, against the DeKalb County School District (District). The Complainant alleged that the District discriminated against his son (Student), who attended XXXXXXXXXXXX XXXX School (School) during the 2017-18 school year, and other School students when, during the fall 2017 semester, students with disabilities, including the Student, were removed from their World Literature and Composition (World Literature) class and educated in a separate classroom. The Complainant also alleged that the District failed to provide related aids and services in the Student's Individualized Education Program (IEP) in the World Literature class during the fall 2017 semester. Finally, the Complainant alleged that, after he advocated on behalf of the Student, the District retaliated against the Student in February 2018 when it failed to implement his remediation plan for the World Literature class.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. These laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. The District receives Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over this complaint.

Based upon the Complainant's allegations, OCR investigated the following legal issues:

1. Whether, during the fall 2017 semester, the District denied the Student and other students with disabilities in the Student's World Literature class a free appropriate public

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education (FAPE) by failing to educate them with students without disabilities to the maximum extent appropriate, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.34, and the Title II implementing regulation at 28 C.F.R. § 35.130;

2. Whether, during the fall 2017 semester, the District discriminated against the Student on the basis of disability when it denied him a FAPE by failing to implement related aids and services in his IEP, 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; and
3. Whether, in February 2018, the District retaliated against the Student after the Complainant advocated for special educational services for the Student in January 2018 when it failed to implement his remediation plan, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.

During the course of its investigation, OCR reviewed evidence submitted by the District, including the IEPs of students in the Student's World Literature class, as well as correspondence between the Complainant's spouse and District staff pertaining to the complaint allegations. OCR also reviewed evidence submitted by the Complainant's spouse. Additionally, OCR interviewed the Complainant, the Complainant's spouse, and seven District staff members, including the Student's two World Literature teachers, a School Assistant Principal, the School Principal, a special education teacher, and a District Region Coordinator. OCR also interviewed two students who were enrolled in the Student's World Literature course along with their parents.

A finding that a recipient violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). At the conclusion of this investigation, OCR determined there is sufficient evidence to support a conclusion that the District is in noncompliance with Section 504 and Title II as alleged with respect to Issue 1. However, OCR determined that there is insufficient evidence to support a conclusion that the District is in noncompliance with Section 504 and Title II with regard to Issues 2 and 3. Provided below is a summary of OCR's investigation of the legal issues.

## **Legal Standards**

### *FAPE*

The regulation implementing Section 504 at 34 C.F.R. Section 104.33(a) and (b) requires a recipient 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. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of Sections 104.34, 104.35, and 104.36. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standard established above. Although

the Title II regulations do not contain provisions specifically pertaining to the provision of a FAPE, as in the case of the Section 504 regulations, OCR interprets the Title II regulation's general prohibition against discrimination (at 28 C.F.R. § 35.130) to incorporate the relevant provisions of the Section 504 regulations.

### *Least Restrictive Environment (LRE)*

The Section 504 regulations, at 34 C.F.R. §104.34(a), require that a student with a disability be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. School districts must place students with disabilities in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily. If a school district places a student in a setting other than the regular education program, it must take into account the proximity of the alternate setting to the student's home. Under 34 C.F.R §104.34(b), in providing or arranging nonacademic and extracurricular activities, including meals, recess periods and counseling, recreational athletics, transportation, or other recreational activities, school districts must ensure that students with disabilities participate with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.

The regulation at 34 C.F.R. §104.35(c) states that in making placement decisions, a recipient shall: (1) draw upon information from a variety of sources; (2) establish procedures to ensure that information obtained from all sources is documented and carefully considered; (3) ensure that the placement is made by a group of persons that include persons knowledgeable about the child, the meaning of evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with LRE requirements.

### *Retaliation*

The regulation implementing Section 504 at 34 C.F.R. § 104.61 incorporates by reference the Title VI implementing regulation at 34 C.F.R. § 100.7(e), which states that intimidating or retaliatory acts are prohibited and 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 Section 504, or because she/he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the Section 504 regulation.

In determining whether there is a *prima facie* case of retaliation, OCR examines, among other things, whether an individual experienced an adverse action caused by the recipient.

## **Findings of Fact**

### *Background*

During the 2017-18 school year, the Student attended tenth grade at the School and received services pursuant to an IEP, dated May 15, 2017, which identified the Student's primary exceptionality as Specific Learning Disability and his secondary exceptionality as Other Health Impaired. The Student's IEP provided for the following instructional accommodations: (1) allow extra time for processing and responding, (2) small group with instructional support, (3) present material in small chunks, (4) pre-teach vocabulary, (5) gain [the Student's] attention before

speaking, (5) simplify/restate/paraphrase directions, (6) use chunking and chaining concepts for presenting long/difficult information, (7) provide a scaffold, (8) seat away from distractions, and (9) use teacher proximity. In addition, the IEP provides for the following classroom testing accommodations: (1) extended time for completion of test exams, (2) explain or paraphrase test directions for clarity, (3) test in small group, and (4) oral reading of test questions in English only by reader or assistive technology. The IEP also included the following provision under Supports for School Personnel: “Special education teacher consults with general education teacher.” Further, under Instruction/Related Services in General Education Classroom/Early Childhood Setting, the IEP provided that the Student was to receive co-teaching by a special education teacher in the general education classroom for his core academic courses. The IEP did not include any provisions related to Instruction/Related Services outside of the general education classroom.

At the conclusion of the fall 2017 semester, the Student failed his World Literature course. In response to a grade appeal the Complainant’s spouse filed, School staff placed the Student on a remediation plan which allowed him to re-take certain exams and assignments he failed during the semester. However, upon completion of the remediation plan, the Student still failed the course.

**Issue 1: Whether, during the fall 2017 semester, the District denied the Student and other students with disabilities in the Student’s World Literature class a FAPE by failing to educate them with students without disabilities to the maximum extent appropriate.**

The Complainant alleged that students in the World Literature class with IEPs, including the Student, were removed from the general education classroom and taught in a separate classroom during the fall 2017 semester. The Complainant’s spouse clarified to OCR that the Student had informed her of this information and that, while she was not certain of the frequency or duration students with IEPs were educated in a different classroom, she believed it happened “frequently.”

Two teachers taught the Student in the World Literature class: Teacher 1, a general education teacher, and Teacher 2, a special education teacher, who served as the co-teacher in the classroom. The evidence shows that 29 students were enrolled in the course during the 2017 semester; of these students, 9 students, including the Student, received related aids and services under IEPs.<sup>1</sup> OCR reviewed eight of the IEPs of students in the World Literature class submitted by the District, including the Student’s, to determine the extent to which each IEP designated each student would participate with peers without disabilities in the regular education classroom.<sup>2</sup> OCR determined that seven of the IEPs, including the Student’s, did not denote any instruction or any related aids and services to be administered outside of the general education classroom. One student’s IEP provided for all instruction and related aids and services in the general education classroom, with the exception of speech language therapy, which was to be administered in a different classroom. In addition, OCR noted that: six IEPs, including the Student’s, include a provision for co-teaching in the general education classroom; every IEP includes a provision for small-group testing; and six of the IEPs include a provision for small-group instruction. For two students, the IEPs additionally stated as follows: “The special education and general education teacher provide service to students with disabilities and share teaching responsibilities for all students in the general education

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<sup>1</sup> Additionally, 3 students received services under Section 504 plans. However, District staff and student witnesses confirmed during interviews that only students with IEPs were removed from the general education classroom.

<sup>2</sup> The District did not produce one student’s IEP.

classroom. The special education teacher is in the general education class for the full instructional segment.”

After the Student failed the World Literature course, on January 22, 2018, the Complainant’s spouse filed a written appeal of the Student’s grade. The Complainant’s spouse included the following statement on the appeal form:

In World Literature, [the Student] was not accommodated in class as outlined in his IEP. [Teacher 1] isolated the students with disabilities by sending them to the co-teacher’s classroom to complete all work. During that time, there was little if any instruction. The grades were not updated regularly and doesn’t [*sic*] meet [the District’s] policy of the number of required grade entries. The students were not afforded an opportunity to make corrections to work to ensure understanding. There were no modifications made to any assignments.

In response to these allegations, Teacher 1 wrote the following statement:

Students were never “isolated.” All students were given instruction by me the entire semester. At times, [Teacher 2] and I did break the class into a small group to complete assignments, which [the Complainant’s spouse] insisted that [the Student] not be excluded from when we met with her in September. At that meeting, we informed [the Complainant’s spouse] of our class routine and explained that [the Student] does not have to work with the small group. As previously stated, [the Complainant’s spouse] insisted that [the Student] leaves and goes to work in the small group.

Grades were regularly updated according to [School] grading protocol.

The grades on assignments match the rubric for the assigned task.

The modification of assignments is not listed on [the Student’s] IEP; however, [Teacher 2] and I consistently followed his IEP and abided by all accommodations that he was entitled to receive. [The Student] was given the opportunity to correct and complete work which he either declined to do or simply did not do.

Teacher 2 responded with the following statement:

[The Student] received instruction in whole group with [Teacher 1] and in the small group with me. In the small group, I reiterated the instructions that were given to the students in the whole group. I also provided them with paraphrased instructions.

Additionally, [the Student] was given extended time to complete all assignments. Assignments were presented to him in small chunks. I consistently monitored [the Student’s] progress and checked for understanding while he was in the classroom. I told him to finish the assignments at home. Since the assignments were not completed at home, we suggested to [the Complainant’s spouse] that she supply [the Student] with an agenda to record his assignments and that we would sign off on [*sic*] daily. This would allow [the Complainant’s spouse] to know what [the Student] should complete at home; unfortunately,

[the Complainant's spouse] did not follow through. I cannot force [the Student] to complete his assignments nor can I do them for him; that would be unethical.

During her interview with OCR, Teacher 1 stated that students with IEPs "always had the option" to not go to Teacher 2's classroom and that "there were a couple" of general education students who "wanted to go with [Teacher 2] also." Teacher 1 recalled a particular student, who "always wanted to go with [Teacher 2]." Teacher 1 explained that students would go with Teacher 2 to a different classroom "as needed" and that whether these students would go to a different classroom depended on what the class was doing. She further stated that students would not go every day or even every week. However, Teacher 1 did not articulate the frequency or duration students went to Teacher 2's classroom beyond these general statements. Teacher 1 also stated that she did not keep a log of which students went to the other classroom or how often they went.

During OCR's interview with Teacher 2, she explained that she would pull every student with an IEP, but no students with Section 504 plans, from the general education classroom to another classroom, where Teacher 2 said she would allow students to work in small groups and ensure that students received extended time on assignments. Teacher 2 stated that, during an average week, she would pull these students to the other classroom on approximately two or three days for an average duration of 40-45 minutes (out of the full class time of 90 minutes) each day. Teacher 2 further stated that general education students were permitted to go to the other classroom with her, while students with IEPs were also allowed to stay with Teacher 1 in the general education classroom. Teacher 2 explained that she and Teacher 1 would ask the students whether they wanted to go with Teacher 2 or stay with Teacher 1. During her interview with OCR, Teacher 2 mentioned a particular general education student who Teacher 1 allowed to go to the classroom with Teacher 2 "two or three times." Additionally, Teacher 2 stated that "sometimes a couple of students with IEPs did stay with [Teacher 1]."

OCR interviewed two students (Students A and B) and their parents (Parents A and B) from the World Literature class. According to Student A, students with IEPs would go to Teacher 2's classroom "almost every day." Student A stated that she was not certain of the approximate duration that students would stay in Teacher 2's classroom on a typical day; however, she stated it was "over 20 minutes." When asked how many students from the general education classroom would also go to a separate classroom with Teacher 2, Student A stated that "it was usually none." However, she stated that sometimes Teacher 1 would allow one student without an IEP to go with Teacher 2, but only that one student. Student A also stated that there was one student with an IEP who Teacher 1 would allow to stay with her instead of going to the separate classroom with Teacher 2. Additionally, Student A stated that students with IEPs were "told we have to go" with Teacher 2 to her classroom.

During OCR's interview with Student B, Student B stated that all of the students with IEPs in the class would go with Teacher 2 to a different classroom every day for most of the class period. He stated that all students would start the class with Teachers 1 and 2 in the same classroom, where Teacher 1 would provide the class with an assignment. Student B stated that this portion of the class would last approximately five minutes, and the students with IEPs would then spend the rest of the class in a separate classroom with Teacher 2 completing the assignment. When asked whether all students in the class had the option to go with Teacher 2 to the other classroom or stay with Teacher 1, Student B stated that, sometimes, "if you were a good student," Teacher 1 would allow a student with an IEP to stay with her. However, he stated it was "rare" for a student with an

IEP to stay with Teacher 1. Further, Student B stated that he did not remember an occasion where a student without an IEP went to the classroom with Teacher 2. Additionally, Student B stated that, “most of the time,” Teacher 1 told students with IEPs to go to the other classroom with Teacher 2.

During OCR’s interviews with Parents A and B, both expressed they did not believe, based on the provisions of their students’ IEPs, that their students should have been removed from the general education classroom in the World Literature classroom for any reason. In addition, Parent A stated that Teachers 1 and 2 had informed her that they took the students with IEPs to another classroom because these students “learned differently” than other students.

OCR attempted to contact the Complainant and his spouse on several occasions to request to speak with the Student and to provide a response to the information the District brought forward with respect to this issue. However, as of the date of this letter, they have not responded.

### *Analysis and Conclusion*

The Section 504 regulations, at 34 C.F.R. §104.34(a), require that a student with a disability be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. School districts must place students with disabilities in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily. Under 34 C.F.R. §104.34(b), in providing or arranging nonacademic and extracurricular activities, including meals, recess periods and counseling, recreational athletics, transportation, or other recreational activities, school districts must ensure that students with disabilities participate with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.

The regulation at 34 C.F.R. §104.35(c) states that in making placement decisions, a recipient shall: (1) draw upon information from a variety of sources; (2) establish procedures to ensure that information obtained from all sources is documented and carefully considered; (3) ensure that the placement is made by a group of persons that include persons knowledgeable about the child, the meaning of evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with LRE requirements.

Based upon OCR’s review of the IEPs of eight students in the Student’s World Literature course, no student’s educational team determined that the student would receive instruction or any related aids and services (e.g., co-teaching, small group testing, and small group instruction) outside of the general education classroom, with the exception of one student, whose speech language therapy was to be provided in a separate classroom.

Although Teachers 1 and 2 indicated that they allowed students without IEPs to go to Teacher 2’s classroom and allowed students with IEPs to stay with Teacher 1, there is no indication in any of the students’ IEPs that these students could be given a choice between staying in the general education classroom or that adherence to the LRE provisions of these IEPs was otherwise optional. Further, OCR finds that the alternate educational environment in Teacher 2’s classroom would neither constitute a general education environment nor be sufficient to meet the designated LRE provisions of the students’ IEPs.

With respect to how often students with IEPs were taken to a different classroom in the World Literature class during the fall 2017 semester, Teacher 2 expressed that these students were taken approximately 2-3 times per week for approximately 40-45 minutes on each occasion; Student A stated that students with IEPs were placed in a different classroom “almost every day” for “over 20 minutes” each time; and Student B stated that students with IEPs were placed in a different classroom “every day” for “most of the period.” Although OCR was unable to determine the precise frequency and duration that students with IEPs were removed from the general education World Literature classroom and placed in a different classroom, based upon statements from Teacher 2, Students A and B, as well as OCR’s review of the IEPs of students in the World Literature course, OCR finds the evidence, viewed under preponderance of the evidence, is sufficient to establish that the District failed to educate the Student and his classmates with IEPs with students without disabilities to the maximum extent appropriate, as designated in their IEPs.

In addition, OCR finds that, due to the frequency at which students with IEPs were in a separate classroom with a single teacher instead of in the general education classroom with two teachers, the District also denied these students a FAPE by failing to properly implement the co-teaching provision of their IEPs, which each student’s respective educational team determined was to occur in the general education classroom. Moreover, the failure to provide the co-teaching as specified in students’ IEPs may have impacted the effectiveness of other related aids and services which should have been provided in the general education classroom according to the students’ IEPs.

#### UNALLEGED COMPLIANCE CONCERN

OCR identified an additional compliance concern regarding this issue during the course of its investigation. Specifically, the regulation at 34 CFR 104.35(a) requires a school district to conduct an evaluation prior to a significant change of placement. In terms of what constitutes a significant change of placement, OCR considers an exclusion from the educational program of more than 10 school days under circumstances that show a pattern of exclusion to be a significant change in placement. OCR also considers transferring a student from one type of program to another or terminating or significantly reducing a related service to be a significant change in placement. Here, in considering the frequency and duration students with IEPs were separated from their general education peers and placed in a different classroom, OCR finds that the District significantly reduced one or more related services (i.e., at a minimum, the co-teaching provision of the IEP) for these students and may have therefore subjected them to a significant change in placement.

Because OCR does not possess sufficient information to make a compliance determination on this issue (e.g., documentation demonstrating whether the District conducted an evaluation of the students with IEPs in the World Literature class prior to placing them in the course), OCR has provided technical assistance to the District regarding what constitutes a significant change in placement (to include a significant reduction of a related service) as well as its responsibility to conduct an evaluation prior to subjecting a student to a significant change in placement.

#### *Resolution Agreement*

To remedy these findings of noncompliance, the Agreement requires the District to provide training to all School employees, staff, and administrators who work with students regarding Section 504 legal standards concerning the provision of FAPE in accordance with the regulation implementing



Section 504 at 34 C.F.R. §104.33(a) and (b) and §104.34(a). The training content should include but not be limited to the requirement to fully implement students' Section 504 plans and IEPs and the requirement to ensure that students' educational plans are implemented in accordance with the LRE provision of the plans.

In addition, the District will identify all students with an IEP who were enrolled in the Student's World Literature class during the fall 2017 semester, and, after providing proper written notice to each student's parent/guardian, for those parents/guardians who notify the District of their interest in convening an IEP meeting, a group of knowledgeable persons will convene to determine whether each student needs compensatory and/or remedial services as a result of the District's failure to educate them with students without disabilities to the maximum extent appropriate and administer any designated aids and services (including, for example, co-teaching and small group testing) in accordance with the LRE provisions of the IEP during the World Literature class. If the team determines the student requires compensatory and/or remedial services, within one (1) week of each IEP team's determination, the group will develop a plan for providing timely compensatory and/or remedial services.

**Issue 2: Whether, during the fall 2017 semester, the District discriminated against the Student on the basis of disability when it denied him a FAPE by failing to implement related aids and services in his IEP.**

The Complainant alleged that that Teachers 1 and 2 failed to implement the following provisions in the Student's IEP during the fall 2017 semester: breaking assignments down into smaller chunks and providing extra time to complete assignments. The Complainant further alleged that Teacher 2 failed to provide these services while implementing the Student's remediation plan. As noted above, the Student's IEP in effect during the fall 2017 semester includes "present material in small chunks" as an accommodation; it does not include a provision for "extra time to complete assignments," as the Complainant alleged. However, the IEP does provide for the related accommodations of "extra time for processing and responding" and "extended time for completion of test/exams." Accordingly, OCR reviewed the evidence to determine whether the District implemented the following provisions on the Student's IEP: present material in small chunks, extra time for processing and responding, and extended time for completion of test exams.

OCR interviewed Teachers 1 and 2 regarding these allegations. Both teachers stated that they received the Student's IEP accommodations prior to the start of the school year, that they were both responsible for implementing its provisions, and that they implemented all of the provisions of the Student's IEP. Teacher 2 further stated that she provided the Student his IEP accommodations while implementing the Student's remediation plan.

During an interview, Teacher 1 stated that she would "present material in small chunks" by ensuring to break down any assignments with multiple topics into small portions so that the Student would be better able to understand the material. Teacher 1 provided an example in which students in the World Literature class were assigned to research a tribe. After assigning each student a tribe, Teacher 1 said she provided students with a "guided note sheet" that included various topics and questions about the tribe that students would need to research. Teacher 1 explained that she would go through this worksheet with the Student and provide instruction on each topic (e.g., using credible sources, choosing informational texts to gather relevant information to answer questions about the tribe, etc.) and allow the Student to complete one topic at a time before moving on to the

next topic. In addition, Teacher 1 stated that she implemented the “extra time for processing and responding” provision by providing the Student extra time to process what he was expected to do with an assignment so that the Student had a full understanding of a task before completing it. As an example, Teacher 1 said she would provide instruction to the full class on how to complete an assignment and ensure that the Student understood each part of the directions. Teacher 1 explained that she would paraphrase directions or restate them until the Student expressed that he understood, and that the Student was never expected to respond immediately to a question or task in class. Finally, Teacher 1 explained that she provided the Student unlimited time to complete exams, and that she never collected the Student’s exams before he finished them.

During an interview, Teacher 2 also explained how she implemented the Student’s IEP services in the classroom and with respect to the Student’s remediation plan. In the classroom, Teacher 2 explained that she would provide the Student “extra time for processing and responding” after assigning a task by asking the Student whether he understood the task and if he needed any further explanation. Teacher 2 recalled an instance where she asked students in a small group setting to provide an answer regarding the history of a particular culture. Once a student volunteered an answer, she wrote the response on the board and then asked the Student, “Do you understand how they got that?” If the Student expressed that he understood, Teacher 2 said that would continue to the next task; if the Student did not understand, Teacher 2 said she would provide the Student extra time and additional instruction. Teacher 2 also explained that she implemented this provision as part of the Student’s remediation plan by reading the instructions for each task in the remediation plan and asking the Student, “Do you understand?” and “Do you need further clarification?” Teacher 2 stated that she would watch the Student complete the first two or three questions on a task in the remediation plan to ensure he was completing the work correctly.

Additionally, Teacher 2 explained that she would present material to the Student in small chunks by providing the Student only the first few portions of an assignment rather than the entirety of the assignment at once. Teacher 2 explained that whether she would break down an assignment into smaller chunks depended on the length of the assignment itself; if the assignment was small, it would not necessarily be broken down. Teacher 2 recounted an instance where students were instructed to research an Asian culture’s style of dress and to research a list of topics on the assignment. Teacher 2 stated that, instead of providing the Student the full list of research topics, she provided him only the first three or four topics and would check to make sure the Student was “on the right track” for each topic before having the Student move on to different topics. With respect to how Teacher 2 implemented this provision as part of the remediation plan, she explained that for the Student’s vocabulary tests, she would provide the Student with note cards and ask him to write one word on one side and make sure he understood the definition of that word before moving on to the next. Teacher 2 also explained that she would present material in smaller chunks for the remediation plan just as she did in the class during the fall 2017 semester (i.e., by breaking any longer assignments down).

Finally, Teacher 2 explained how she provided the Student with extra time on exams during the fall 2017 semester. Specifically, she stated that, for example, while general education students might have 45 minutes in a class period to complete an exam, the Student would have the whole class period to finish the exam. Additionally, Teacher 2 stated that, if the Student did not finish the exam during class, he could complete the exam outside of normal classroom hours. Teacher 2 further explained that, with respect to the remediation plan, the Student was to complete his exams during the individualized instruction portion of the remediation plan. If the Student did not complete the

exam, Teacher 2 explained that she permitted him to complete the exam during the following session. However, Teacher 2 stated that the Student completed all of his exams during the remediation sessions and that it was clear to her the Student did not need any additional time to complete his exams outside of the remediation sessions.

OCR attempted to contact the Complainant and his spouse to provide them the opportunity to rebut the information the District has provided with respect to this issue; however, to date, OCR has not received a response.

### *Issue 2: Analysis and Conclusion*

The Complainant and his spouse alleged that the Student's World Literature teachers failed to implement the following accommodations on the Student's IEP: breaking assignments down into smaller chunks and providing extra time to complete assignments. Although extra time to complete assignments was not a provision of the Student's IEP in effect during the fall 2017 semester, OCR reviewed the evidence to determine whether the District failed to implement the related accommodations of "extra time for processing and responding" and "extended time for completion of test exams," in addition to breaking assignments down into smaller chunks. During interviews, the Student's teachers each said they received the Student's accommodations at the beginning of the year, and each explained and provided examples of how they implemented the Student's IEP. The Teachers were consistent in their description of how they implemented these accommodations and OCR encountered no additional evidence that conflict with the Teachers' accounts.

Therefore, based upon a preponderance of the evidence, OCR found insufficient evidence to establish that the Teachers failed to provide chunking of assignments, extra time for processing and responding, or extra time for completion of tests or exams. OCR notes, however, that the evidence discussed with respect to Issue 1 establishes that these services were sometimes provided outside of the general education classroom, rather than as a part of co-teaching in the general education classroom as specified in the Student's IEP.

### **Whether, in February 2018, the District retaliated against the Student after the Complainant advocated for special educational services for the Student in January 2018 when it failed to implement his remediation plan.**

The Complainant alleged that the District engaged in retaliation after he advocated on behalf of the Student when, in February 2018, Teacher 2 failed to implement the Student's remediation plan.

### *Adverse Action*

In determining whether an action is adverse, OCR examines whether the recipient's action significantly disadvantaged an individual 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.

The Student’s remediation plan consisted of the following components: the Student was to redo 12 assignments that he failed during the semester, and the Teachers would calculate a new semester grade for the Student, replacing the original grades the Student received with the grades he received pursuant to the remediation plan; and throughout January and February 2018, the Student would meet with Teacher 2 twice a week from 3:20pm-4:00pm for instruction and guidance on completing the assignments as well as to turn in assignments and complete exams. District staff advised OCR that no other students enrolled in the World Literature class during the 2017-18 school year were issued a remediation plan similar to the Student’s that allowed for redoing assignments on which the student performed poorly.

Documentation shows the Student attended eight instructional sessions with Teacher 2 on the following dates: January 22, 25, and 29, 2018; and February 1, 5, 8, 20, and 22, 2018. The Student arrived for the session within 10 minutes of 3:20pm and departed within 15 minutes of 4:00pm; the average session duration was 40 minutes and 32 seconds.

The District provided a chart detailing the remediation plan assignments, the grade the Student originally received during the fall 2017 semester, and the grade the Student received after completing the assignment under the remediation plan. The chart (including an associated footnote) is reproduced below:

# of Assignments	Original Assignment	Grade	Re-done Assignment	Grade	Final
1	Vocabulary Test 1	31	Vocabulary Test 1	65	65
2	Vocabulary Test 2	50	Vocabulary Test 2	12	50
3	Vocabulary Test 3	4	Vocabulary Test 3	79	79
4	Vocabulary Test 4	65	Vocabulary Test 4	15	65
5	Graphic Organizer	21	Graphic Organizer	100	100
6	Cultural Fact Sheet	36	Cultural	0	36
7	Timeline	0	Timeline	33	33
8	Cultural Analysis	31.25	Cultural Analysis	75	75
9	Short Story	0	Short Story	71	71
10	Critical Analysis	7	Critical Analysis	93	93
11	Cultural Investigation (Latin America)	30	Cultural Investigation (Latin America)	*Wrong assignment turned in	30
12	Final Exam	33	Final Exam	28.3	33
13*	Unit 3 Task 1	40	Unit 3 Task 1	47.2*	47.2

\*Although [the Student] was instructed to complete assignment 11, he did not complete assignment 11. He turned in assignment 13 instead of assignment 11. We accepted assignment 13.

The District provided OCR with the following graded work the Student completed as part of the remediation plan: Assignments 1-4 (vocabulary exams), 5 (graphic organizer), 6 (cultural fact sheet), 7 (timeline), 8 (cultural analysis), 9 (short story), 11 (cultural investigation), and 12 (final exam grading sheet). Based upon OCR’s review of the Student’s four vocabulary exams, the work was graded appropriately and in accordance with available grading rubrics. For example, OCR

confirmed that the grades the Student received on the 4 vocabulary tests reflect the number of questions the Student answered correctly on each test. In addition, the Student's testing sheet for the final exam reflects that the Student incorrectly answered 43 out of 60 questions, for a score of 33.3%. According to email correspondence between District staff and the Complainant's spouse, the Student received a grade of 0% on the cultural fact sheet (Assignment 6) because the Teachers determined that the Student plagiarized this assignment. OCR reviewed the Student's submission for this assignment and determined that several passages appear verbatim on internet sites (e.g., Wikipedia) and did not include citations to the source material.<sup>3</sup>

During an interview, Teacher 2 explained that she was responsible for implementing the Student's remediation plan and that she provided instruction to the Student on each of the assignments in the plan. Specifically, during her meetings with the Student, Teacher 2 explained that she would provide the Student with the assignment, read over the instructions with him, and have the Student begin the assignment. She stated that, for example, if the assignment entailed answering questions about a tribe, Teacher 2 would make sure he completed the first two or three questions correctly, and he would often finish the rest of the questions at home.

In correspondence between the Complainant's spouse and District staff, the Complainant's spouse expressed concerns regarding how the District was implementing the remediation plan. Specifically, in an email to District staff dated March 5, 2018, the Complainant's spouse questioned how it was possible the Student submitted the wrong assignment for Assignment 11 (cultural investigation) when Teacher 2 was supposed to be providing the Student each of his assignments during the instruction portion of the remediation plan. During OCR's interview with Teacher 2, she explained that she was unsure why the Student submitted the wrong assignment but stated she had provided the Student the correct assignment and instruction on how to complete it. She stated that she accepted an additional assignment the Student submitted (Unit 3, Task 1) in Assignment 11's place.

In addition, in an email to District staff dated February 1, 2018, the Complainant's spouse raised a concern with respect to Assignment 9 (short story), which required the Student to answer questions about a short story. Specifically, the Complainant's spouse contended that Teacher 2 did not provide the Student with the short story itself, only a summary of it, and that they "did not fully understand the expectations of the assignment." During her interview with OCR, Teacher 2 explained that she provided the Student a copy of the entire short story as well as instruction on how to complete the assignment.

During a rebuttal call, the Complainant's spouse reiterated her belief that the District failed to implement the Student's remediation plan in retaliation for her advocacy efforts on behalf of the Student. She stated that, because the remediation plan included a component of individualized instruction for the Student, the Student should not have failed. However, the Complainant's spouse did not provide any additional information with respect to this allegation. In addition, as noted, neither the Complainant nor his spouse responded to OCR's requests to interview the Student with respect to this complaint.

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<sup>3</sup> Additionally, the class syllabus states: "Plagiarism is the copying or paraphrasing of other people's work or ideas into your work without full acknowledgement . . . . Collusion is another form of plagiarism involving the unauthorized collaboration of students (or others) in a piece of work. Students who plagiarize and/or commit collusion earn a grade of zero."

*Issue 3: Analysis and Conclusion*

Using a preponderance of the evidence standard, OCR determined there was insufficient evidence to establish a *prima facie* case of retaliation. Specifically, under his remediation plan, the Student was to complete 12 assignments and receive individualized instruction from Teacher 2. Based upon OCR's review of the contents of the Student's remediation plan, the Student's work completed as part of the remediation plan, and information provided by District staff during interviews, OCR found no evidence that the District failed to implement the remediation plan or graded the work the Student completed under it inappropriately. Accordingly, because OCR is unable to establish the alleged adverse action (i.e., that the District failed to implement the remediation plan) occurred, OCR concluded that there is insufficient evidence to support a conclusion that the District engaged in unlawful retaliation in violation of Section 504 or Title II, as alleged.

**Conclusion**

In sum, based upon the information gathered during the investigation, OCR found sufficient evidence of noncompliance with Section 504 and Title II with respect to Issue 1. In addition, OCR found insufficient evidence of noncompliance with Section 504 and Title II with respect to Issues 2 and 3.

To resolve OCR's findings of noncompliance, the District signed the enclosed Agreement that, when fully implemented, will resolve the complaint. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented.

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.

The complainant has a right to appeal OCR's determination regarding the allegations for which OCR found insufficient evidence within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

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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.

This concludes OCR's investigation of this complaint. If you have any questions regarding this matter, please contact Ebony Calloway, Compliance Team Leader, at (404) 974-9367, or Daniel Sorbera, Equal Opportunity Specialist, at (404) 974-9466.

Sincerely,

Ebony Calloway, Esq.  
Compliance Team Leader

Enclosure

cc: XXXXX XXXXXX, Esq. (via email)