



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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April 13, 2015

Keith Jacobus, Ph.D.
Superintendent
South Washington County Schools
Independent School District 833
7362 East Point Douglas Road South
Cottage Grove, MN 55016

RE: OCR # 05-13-1375

Dear Dr. Jacobus:

This is to notify you of the disposition of the referenced complaint filed on August 28, 2013 with the U.S. Department of Education, Office for Civil Rights (OCR), against South Washington County Schools Independent School District 833 (District) alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District discriminated against an 8th grade student at Woodbury Middle School (Student) on the basis of disability when:

1. From January through May 2013, Woodbury Middle School (School) students harassed the Student on the basis of disability and the District failed to respond effectively to the harassment when it was reported.
2. From February 2013 through May 2013, the School failed to evaluate the Student to determine if the Student qualified for special education and related services.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Since the District receives Federal financial assistance from the Department and is a public entity, the District is subject to Section 504 and Title II, and OCR has jurisdiction over this complaint.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the District, and interviewed the Complainant, the Student, the District's Special Education Director (Director), the Student's science teacher (Teacher A), social studies teacher (Teacher B), math teacher (Teacher C), school counselor (Counselor) and the School's Principal (Principal). OCR has determined that there is insufficient evidence to establish that the District discriminated against the Student as alleged in Allegation # 1.

OCR determined, however, that the evidence is sufficient to establish that the District fails to provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability and that the District does not publish an anti-disability discrimination notice, in violation of Section 504 and Title II. OCR also has determined that the evidence is sufficient to establish that the District discriminated against the Student in violation of Section 504 and Title II, as alleged in Allegation # 2. The reasons for these determinations are set forth below.

Background

During the 2012-2013 school year, a total of 912 students were enrolled in grades 6, 7 or 8 in the School. Of those students, 106 (or 11.6%) students were receiving special education or related services. During the 2012-13 school year, 187,465 children were enrolled in public middle schools (grades 6, 7, or 8) throughout the State of Minnesota. Of those students, 27,029 (or 14.4%) were receiving special education or related services pursuant to a Section 504 Plan or IEP.

District Policies and Procedures

Anti-Harassment Policies

The District's Student Rights and Responsibilities Handbook (Handbook)¹ includes a summary of District Policy 525.1: Harassment and Violence. The Handbook indicates that Policy 525.1 is available on the District website.² The summary of Policy 525.1, which appears in the Handbook, states that it prohibits harassment on the basis of race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, disability, sexual orientation or age. Policy 525.1 itself, however, states only that harassment based on religion, race, and sex, is prohibited. It does not state that the policy prohibits harassment based on disability, color, creed, national origin, marital status, public assistance status, or sexual orientation (as the Handbook implies).

The District Handbook also contains a summary of District Policy 514: Bullying Prohibition Policy.³ Policy 514 states that "upon receipt of a report or complaint that alleges bullying, the building principal/designee shall undertake an investigation." Policy 514 does not establish timeframes for the completion of investigative stages nor does it require that the District provide the complainant and the accused written notice of the outcome of the investigation.

¹ <http://www.sowashco.k12.mn.us/DistrictInfo/FormsPoliciesProcedures/R&R13-14.pdf>

² <http://www.sowashco.k12.mn.us/files/policies/500/525.1%20Harassment%20and%20Violence.pdf>

³ <http://www.sowashco.k12.mn.us/DistrictInfo/FormsPoliciesProcedures/Policies/DistrictPolicy/500/514%20Bullying%20Prohibition%20Policy.pdf>

District Policy 521: Student Disability Nondiscrimination⁴, states, “The purpose of this policy is to protect disabled students from discrimination on the basis of disability and to identify and evaluate learners who, within the intent of Section 504 . . . need special services, accommodations, or programs in order that such learners may receive a free appropriate public education.” Policy 521 defines an individual with a disability, indicates that it is the District’s responsibility to identify and evaluate students to determine their eligibility for special education and related services, and identifies the District’s Section 504 coordinator by title and phone number; the notice does not provide an email or a building address for the Section 504 coordinator. Policy 521 does not provide guidelines for the process for filing complaints of disability discrimination. Policy 521 does not designate timeframes for major stages of the investigation and does not require District staff to provide a written notification to the parties about the outcome of the investigation.

Total Special Education System Plan

The District follows the Total Special Education System Plan (TSES) which details the procedures used to identify students who may need special education and related services. Appendix A of the TSES describes the District’s plan to identify a child with a specific learning disability. The referral process for students ages 5-21 begins with a parent or teacher identifying a “concern.” The TSES does not define “concern.”

Effective Learning Teams

The District’s Effective Learning Teams Manual (Manual) provides details on various teams available within each school. The Manual describes three “tiers” of interventions. Tier I provides “primary intervention and general screening for ALL students.” At this stage, “[a] teacher may recognize that a student is either struggling to learn the standard curriculum, working beyond the standard curriculum or having difficulty maintaining appropriate behavior in the regular education classroom.” Classroom-based interventions are used during this tier.

If the student “demonstrate[s] little or no positive response to the teacher’s interventions or accommodations,” Tier II services begin. Tier II services consist of targeted individual interventions or specialized school programs/courses that include small group instruction. Tier II services are provided in conjunction with Tier I services. According to the Manual, Tier II services could be short term or last the entire school year; however, these services are provided for a minimum of six weeks to assess progress. If a student fails to “demonstrate a significant and positive response to intervention” at Tier II, Tier III services are considered for the student.

⁴<http://www.sowashco.k12.mn.us/DistrictInfo/FormsPoliciesProcedures/Policies/DistrictPolicy/500/521%20Student%20Disability%20Nondiscrimination.pdf>

Tier III services consist of “intensive program[s] to meet [a student’s] learning and behavioral needs. Special education teachers, related service providers, and regular education teachers provide Tier III interventions.” Tier III services are “highly focused and prescriptive to student need” and may include one-to-one instruction or small group instruction.

The Manual defines the School-Wide Consultation Team as “a school-based group of people whose purpose is to provide additional Tier II support for students who are experiencing difficulties that are preventing them from benefiting from general education or the first round of intervention.” The Manual states that the Consultation Team is not part of the special education process. Members of the Consultation Team include administrators, the school psychologist, general or special education teachers, intervention specialists, and the school readiness coordinator.

The Manual explains that Building Mental Health Teams are expected “to work as a collaborative group in effort to identify students with mental health needs and develop an action plan for meeting these needs (i.e. building/district mental health interventions and/or through a referral for outside assessment/therapeutic services).” Members of the Mental Health Teams include the school nurse, school psychologist, school social worker and/or counselor and administration. The Manual states that the Mental Health Team “may . . . refer [a student] to special ed if mental health issues do not improve and [they] significantly impede [a student’s] academic functioning.”

According to the Principal, counselors attend team meetings with teachers once a week to discuss student concerns. Counselors track the concerns and talk about interventions, which are then implemented for four to six weeks. After four to six weeks, if the intervention is not working, the issue will move to the Consultation Team, which will then offer suggestions to the counselor on alternative interventions to try. The second set of interventions will then be implemented for four to six weeks and if not successful, the counselor will discuss with the Consultation Team moving the student to a formal special education evaluation.

According to the Director and the Counselor, the Consultation Team keep interventions in place for three to six weeks (instead of the four to six weeks the Principal identified) and use at least two pre-referral interventions before moving on to a special education evaluation. If a student is still experiencing difficulties after two interventions, the team refers the student for a special education evaluation. When asked to clarify the different timeframes administrators identified, District staff explained that it does not dictate a specific length of time for interventions and individual buildings set their own limits.

Staff Training

The Counselor explained that, during the fall of 2013, he received District training on Section 504 Plans and modifications that could be used. The Counselor does not recall receiving training on these issues prior to the fall of 2013, and does not recall receiving training on how to identify a student with a disability who may be in need of special education or related services. The Principal reported that each year a psychologist delivers a presentation to staff on identifying students who may be in need of special education and related services. Teacher A recalled receiving training on an observable problem matrix, which is a series of steps to follow based on a student's needs. Teacher B did not recall receiving any training. Teacher C recalled instruction on identifying struggling students who may be in need of special education and related services, but could not remember when the training occurred.

Facts

The Student attended the School XXXXXXXXXXXX during the 2012-13 school year. The Student was not being served pursuant to an individualized education plan (IEP) at the beginning of the school year. The Student previously received XXXXXXXXXXXXXXXX pursuant to an IEP during her elementary education XXXXXX. According to the Complainant, these services were provided after an elementary school teacher sent a note home to the Complainant identifying the concern and asking for permission to begin an evaluation of the student. The Complainant did not provide any information to the District about the XXXXXXXXXXXX prior to this evaluation. The Complainant was not aware of any intervention the District imposed on Student A before the evaluation was conducted.

Fall 2012

According to the Counselor, on October 8, 2012, October 29, 2012, and November 6, 2012, he received reports from parents about XXXXXXXXXXXXXXXX Student and observations by peers suggesting that the Student was having severe emotional distress. The Counselor indicated that he discussed each of these reports with the Student and the Complainant. The Student told OCR that the Counselor did not discuss any of these matters with her. The Complainant told OCR that the Counselor discussed the October 29 and November 6 reports with her, but did not discuss the October 8 report. The Complainant acknowledged that she provided explanations for the conduct described in the October 29 report and the students' observations.

According to the Counselor, during teacher team meetings in the fall of 2012, the Student's teachers indicated that she was doing XXXXXXXXX and was overall a XXXXXXXX, which represented a slight decline in the Student's grades. All three teachers reported the Student was seldom absent from School in the fall.

concerns. The District also did not provide any evidence of its having taken any follow-up actions in this regard.

At some point between March 1 and March 3, 2013, XXXXXXXXXXXXXXXXXXXX. Due to XXX XXXXXXXX, the Student did not XXXXXXXXXXXXXXXXXXXX. On March 19, 2013, the Counselor suggested to the Complainant that the Student go to therapy to help process XXXXXXXXXXXX XXXX. The District did not offer therapy to the Student, or discuss evaluating the Student for special education and related services at this time. The Counselor reported the Student was in crisis but felt the supports already enacted (the independent study hall and alternative grading) were sufficient.

According to the Student, XXXXXXXXXXXXXXXXXXXX, the female students started rumors about the Student and XXXXX and called the Student and XXXXX names XXXXXXXXXXXXXXXXXXXX XXXXXXXX. The Student told OCR that she found an offensive note in her locker. The Student said she took the note to the office and gave it to a male secretary who said he would give the note to the Principal. Neither the Student nor the male secretary made a copy of the note. The District did not have a record of this incident being reported to anyone at the School. The Student reported she would go “right away” and report incidents to the Counselor or the Principal and they told her they would speak with the girls and send her back to class.

Teacher C recalled a teachers’ meeting just prior to spring break in mid-March 2013. The meeting’s purpose was to come up with a plan for the Student when she returned to school. Part of the plan involved adding another study hall during the day to help the Student complete work. The team also decided to allow the Student time in the Counselor’s office to work on missing assignments and to take tests without distractions. The Counselor was also supposed to check in with her on a daily basis. The District did not discuss evaluating the Student at this time or advise the Complainant as to the proposed interventions.

On March 26, 2013, the Complainant notified the Counselor that she would be meeting with a doctor and a counselor to work out a treatment plan for the Student. According to the Counselor, the Complainant did not submit a treatment plan. The Principal stated that, in late March 2013, the Complainant arrived at the School, to discuss the Student’s refusal to go to a counselor.

After the Student returned to the School in late March, Teacher C noticed that the Student was struggling with math again and was often tardy to class, withdrawn and not focused on academics. The Student was coming to class unprepared, refusing to complete work, and showing some defiance in class. According to Teacher C, she began daily one-on-one study sessions in math with the Student in late March 2013, which were quite helpful for the Student.

According to the Teacher A, Teacher B and Teacher C, the Student was XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX (early December through early March) because it was difficult

for the Student to focus in school. According to Teacher A, the Student was missing school often during this time period and had lots of “emotional things going on.”

On May 6, 2013, the Student discussed the comments made by the female students back in February with the Counselor. According to the Counselor, during this conversation, the Student was very angry and blamed the School in part XXXXXXXXXXXXXXXXXXXX. The Counselor did not take additional steps regarding the comments because he felt he had already addressed the situation and there were no new allegations. The Student indicated that she did not raise any new issues of her classmates harassing her during this meeting. The Counselor wrote in his notes that day that the Student “opened up about feelings XXXXXXXXXXXXXXXXXXXX (*sic*) Blames school; blames government; extremely angry at situation (*sic*) First time doing this with me (*sic*).”

On May 17, 2013, the Complainant emailed the District to request that the Student be enrolled in summer classes. The Complainant wrote that she “did contact her counselor but had not heard back.” On May 22, 2013, the Counselor provided, by email, the Complainant information on enrolling the Student in summer school or providing her home bound instruction for the summer.

The Principal also reported that in early June 2013 the Complainant called to discuss the Student’s emotional problems and to explain that she could not convince the Student to go to school regularly. On June 3, 2013, the Counselor wrote in his log that he discussed the February incident with the Complainant and the Student. The Counselor wrote “[The Student] was unable to bring up any additional incidents in which the girls talked to her or “bullied her.” Neither the Principal nor the counselor questioned the Student to determine whether her refusal to attend school was related to her emotional well-being or the conduct of her classmates.

The Student estimated that between January 30, 2013, and the end of the school year, she reported an incident almost every day. She did not identify witnesses to the incidents, or witnesses to her reporting the incidents or provide the identities of the persons to whom she reported. According to the Complainant, from February 28, 2013, to the end of the school year, the Student was reluctant to go to school, had trouble sleeping, was very embarrassed and humiliated.

On July 18, 2013, the Complainant submitted a written complaint to the District including several statements made by students XXXXXXXXXXXXXXXXXXXX. The Complainant asserted in the complaint that the Counselor and Principal were well aware of the incidents because the Student reported them to School staff. According to the District, the Principal arranged to meet with the Complainant to discuss her complaint on July 30, 2013. The Complainant canceled the meeting because she decided to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The District did not process the complaint any further because the Student left the District, the District heard nothing further from the Complainant about the harassment complaint, and

depression, angry outburst or withdrawal are all possible behaviors that could trigger an evaluation of emotional disorders or emotional behavior disorders. The Director reported that the disorder must be evident for six months prior to being considered a disabling condition under the standards set by the Minnesota Department of Education, and show evidence in at least two educational settings. The Director defined an “educational setting” to be two different classes, lunchroom, hallways, behavioral reports or across any educational setting at the school. According to the Counselor, the evaluation process for an emotional disorder might be triggered when a student exhibits overt behaviors such as screaming, yelling, continual office referrals, emotionally shutting down, refusing to do work or isolating him or herself.

The Counselor reported that interventions such as changes in the Student’s schedule were made to allow the Student’s “emotional distress time to stabilize.” The District did not assert that they were following the procedures contained in the Manual when trying to address the Student’s difficulties. The Counselor asserts the supports in place met the Student’s needs without a formal evaluation. According to the Principal, the Student was not evaluated because the School did not receive a diagnosis for a disability, the Complainant did not request an evaluation, an IEP or Section 504 plan, and it did not occur to the School to evaluate the Student. Instead, the School focused on a short term approach addressing the Student’s response to her problematic family situation.

The Complainant reported she did not request an evaluation of the Student because she did not know it was an option. The Complainant would have requested an evaluation if she had been aware to do so because she wanted help from the District.

According to the Counselor, there were no students who receive services under Section 504 plans for depression or anxiety at the School. The Counselor was unsure if any students receive services under IEPs for depression or anxiety since he does not monitor those cases. The majority of students on Section 504 plans at the School are on them for attention deficit hyperactivity disorder.

Applicable Regulations and Legal Standards

Discrimination Generally

The regulation implementing Section 504 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 or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the

services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Disability Harassment

Disability harassment can constitute a form of discrimination prohibited by Section 504 and Title II. Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

In analyzing claims of disability harassment, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.* whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's programs, activities or services based on disability. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights.

School districts have a legal responsibility to prevent and respond to disability harassment. When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution has actual or constructive notice of disability harassment the institution must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating the hostile environment if one has been created, preventing it from recurring and, where appropriate, remedying the effects on the student who was harassed.

Grievance Procedures

The regulation implementing Section 504, at 34 C.F.R. § 104.7 and the regulation implementing Title II, 28 C.F.R. § 35.107(b), provide that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited under the regulations. The regulation, at 34 C.F.R. § 104.8 states that a recipient that employs fifteen or more persons shall take appropriate continuing steps to notify participants, beneficiaries, applicants, and employees, that it does not discriminate on the basis of disability in violation of Section 504. The notification

shall also include an identification of the responsible employee designated to coordinate its efforts to comply with Section 504.

Free Appropriate Public Education

The regulation implementing Section 504 at 34 C.F.R. § 104.32 requires a recipient that operates a public elementary or secondary education program or activity to annually undertake to identify and locate every qualified student with a disability residing in the recipient's jurisdiction who is not receiving a public education; and take appropriate steps to notify students with disabilities and their parents or guardians of the recipient's duty.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a) provides that a recipient that operates a public elementary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation at 34 C.F.R. § 104.33(b) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of nondisabled students are met, and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 – 104.36. The implementation of an IEP is one means of providing FAPE.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(b) requires, in relevant part, that a recipient shall establish standards and procedures for the evaluation and placement of persons who, because of a disability, need or are believed to need special education or related services. The regulation further requires a recipient to ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

While disability harassment must involve the bullying or harassing of a student "on the basis of" disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefits constitutes a denial of FAPE that must be remedied, regardless of the nature of the bullying or harassment. Section 504 imposes on a recipient an ongoing obligation to provide FAPE to students with disabilities, and that obligation exists whether or not school officials know or reasonably know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues of alleged disability discrimination raised in this complaint do not provide greater protection than the applicable Section 504 regulations. OCR has, therefore, applied the Section 504 standards in analyzing these issues.

Analysis

Allegation 1: Disability Harassment

The Complainant alleged that between January and May 2013, the School subjected the Student to discrimination on the basis of disability when other students harassed the Student on the basis of disability and the District failed to respond effectively to the harassment when it was reported.

The evidence confirmed that there was one incident in February 2013 when two female students made negative comments to the Student XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Once the Student reported the incident, the District took appropriate action by discussing the incident with the two female students (who acknowledged XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX but denied making comments about the Student) and warning them that future conduct would result in discipline. Although the one confirmed incident was upsetting to the Student and Complainant, standing alone it is insufficient to establish a hostile environment based on disability for the Student.

There is conflicting evidence regarding whether additional incidents occurred and were reported. The Student reports that she consistently reported incidents throughout the year; however, the District has no confirmed reports of any additional incidents. OCR found no evidence corroborating that the Student reported such harassment to school staff. The Principal, Counselor and the three teachers OCR interviewed reported receiving no complaints from the Student. OCR found these reports credible because they were bolstered by Teacher C's testimony. Teacher C, who developed a good relationship with the Student during the 2012-13 school year by working one-on-one with the Student, stated that she believed the Student was comfortable talking with her about various issues and that given their relationship, Student would have complained to her about harassment from classmates. Teacher C told OCR that the Student did not raise any concerns or issues about other students during the school year. The Complainant filed a written complaint on July 18, 2013 but then cancelled the July 30 meeting scheduled by the District to discuss the complaint, withdrew the Student from the school and did not follow up concerning the disability harassment complaint thereafter.⁵

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. Based on a thorough review of this conflicting evidence, OCR has determined that there is insufficient evidence to conclude that a hostile environment based on disability existed for the Student.

⁵ OCR notes that the Resolution Agreement requires that the District to schedule a Section 504 meeting to determine whether compensatory services should be offered to the Student based on the denial of FAPE discussed below.

Therefore, the evidence is insufficient to establish that the District subjected the Student to harassment as alleged or that the District failed to respond effectively to notice of possible harassment when it was reported. Accordingly, OCR cannot conclude that the District violated Section 504 or Title II as alleged.

Grievance Procedures

OCR considered whether the District has adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging disability discrimination.

The District's policies addressing the discrimination and/or harassment of students with disabilities are (1) District Policy 525.1: Harassment and Violence, (2) District Policy 521: Student Disability Nondiscrimination, and (3) District Policy 514: Bullying Prohibition Policy.

The regulation implementing Section 504 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 under Section 504. The District's policies neither incorporate appropriate due process standards nor provide for the prompt and equitable resolution of complaints of disability discrimination or harassment.

Policy 525.1 prohibits harassment based on religion, race, and sex, only. It does not prohibit harassment based on disability, color, creed, national origin, marital status, public assistance status, sexual orientation or disability (as the Handbook implies). Policy 521 sets forth the District's general duties to students with or believed to have disabilities under Section 504. Policy 521 does not establish a process for filing complaints of disability discrimination or disability harassment. And finally, both Policy 521 and Policy 514 do not establish timeframes for the completion of stages of an investigation and they do not require District staff to provide written notification to the complaint and to the accused about the outcome of the investigation.

OCR has determined that while there is insufficient evidence to establish that the District failed to respond effectively to the disability harassment of Student A, the evidence is sufficient for OCR to conclude that the District's policies prohibiting disability discrimination and harassment fail to comply with the requirements of Section 504 at 34 C.F.R. § 104.7 because they do not incorporate appropriate due process protections, they do not provide for prompt and equitable resolution of disability discrimination or harassment complaints, and they fail to identify the District's Section 504 Coordinator. Additionally, the District's anti-discrimination notice does not adequately notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504.

Allegation # 2: Failure to Evaluate the Student

OCR determined that the District's action in failing to evaluate the Student to determine whether she qualified for special education and related services constitutes discrimination on the basis of disability. The District is required to identify, locate and evaluate all children who are suspected of being a child with a disability and in need of special education and related services. The evidence shows there was sufficient evidence to indicate that the Student may be a student with a disability in need of related aids and services as early as fall 2012 based on the Student's Facebook postings and low grades. Teacher C raised concerns that warranted a meeting with the Student's parents in November 2012 because of the Student's behavior, low grades and Teacher C's concerns that the Student had "social and emotional issues." Despite the asserted concerns, the District did not consider evaluating the Student in the fall of 2012. At this point, the Student had been in school for approximately eight weeks.

The Student's parent and the teachers raised similar concerns at the beginning of 2013. It was at this time that the Student shared with the Counselor and Principal the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. Although the Counselor identified the Student again beginning to struggle in her classes, and identified the cause as "emotional stress," the Counselor did not take steps to begin a formal evaluation of the Student for related aids and services as a result of a disability or notify the Complainant of her right to request an evaluation for special education or related services. Instead, the Student was given an independent study hall and her grading system was modified. These measures were not effective in alleviating the stresses and related academic difficulties the Student was experiencing.

In February, 2013, in an effort to get help for the Student, the Complainant requested alternative schooling options for the Student. The Counselor reported the Student experiencing both psychological and emotional distress, and Teacher C continued to raise concerns that the Student was XX when she was in class, was disruptive. At no time did the Counselor suggest that the Student be evaluated or indicate that an evaluation was an option afforded to the parent.

In March 2013, XXXXXXXXXXXXXXXXXXXXXXXX, the Counselor suggested the Student attend therapy but did not offer any District assistance. In mid-March, 2013, the teachers added an additional study hall to the Student's schedule and added designated time to go to the Counselor's office to work on missing assignments in an effort to address the Student's failing grades, but did not try other interventions to address concerns identified by the Student's teachers. Teacher C, of her own volition, offered to provide additional one-on-one assistance to the Student, however there was no discussion regarding whether the Student is in need of special education or related services because of a disability. At this point, over six months had elapsed since concerns were first raised by the Student's teachers.

In May 2013, the Student's grades were consistently low, except for in math where she received one-on-one assistance. Despite the Student's XX

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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.

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. The Complainant may 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.

We wish to thank you and your staff for the cooperation extended to OCR during our interviews. Additionally, we wish to thank John Edison and Mick Waldspurger of Rupp, Anderson, Squires & Waldspurger, P.A., for their cooperation during the investigation. If you have any questions, please do not hesitate to contact me by email at ann.cook-graver@ed.gov or by phone at (312) 730 – 1571.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

cc: Mick Waldspurger
Rupp, Anderson, Squires & Waldspurger, P.A.