



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

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March 25, 2014

Ms. Barbara Byrd-Bennett
Chief Executive Officer
Chicago Public Schools District # 299
125 South Clark Street
Chicago, Illinois 60603-2317

Re: OCR Docket #05-13-1379, Ogden School

Dear Ms. Byrd-Bennett:

On September 9, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint of disability discrimination and retaliation against Chicago Public Schools District #299 (the District) alleging discrimination on the basis of disability and alleging retaliation.

Specifically, the complaint alleged that:

1. The District discriminated against Student A on the basis of disability when staff at the Ogden Elementary School (the School) (a) failed to implement Student A's Section 504 Plan during the 2012-2013 school year; and (b) harassed Student A based on his disability.
2. Because on June 26, 2012, the Complainant asserted that the District was denying Student A special education services, District and School staff retaliated against the Complainant and Student A when:
 - a. the School failed to implement Student A's Section 504 Plan during the 2012-2013 school year;
 - b. the Complainant's February 5, 2013, phone call to the District's Office of Diverse Learner Services and Supports went unanswered; and
 - c. the Complainant's June 11, 2013, request for a meeting with the School principal went unanswered.
3. The District retaliated against Student A on September 4, 2013, when it removed him from the School's enrollment list because a few weeks earlier the Complainant informed the District that he intended to file a complaint with OCR.

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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. In addition, OCR is also responsible for enforcing Title II of the Americans with

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

Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Both of these laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 and Title II.

During its investigation, OCR reviewed documentation provided by the Complainant and the District, and interviewed the Complainant, Student A and pertinent District employees. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving allegation 1(a) as well as a compliance concern identified by OCR during its investigation. In accordance with Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the District. The District subsequently signed the enclosed agreement, which, when fully implemented, will resolve allegation 1(a). OCR looks forward to receiving the District's first monitoring report, which is due on April 30, 2014.

OCR completed its investigation of allegations 1(b), 2(a), (b), and (c) and 3. Based on the information obtained during its investigation, OCR finds by a preponderance of the evidence that there is insufficient information to conclude that the District discriminated or retaliated as alleged. The bases for these determinations follow.

Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 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.

FAPE

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 free and 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 Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to

meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of a Section 504 Plan is one means by which FAPE may be provided.

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 should know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

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 program 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. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the alleged victim of harassment. 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 learns that disability harassment may have occurred, 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.

In considering whether the recipient had notice of harassment, OCR considers whether the alleged harasser is an agent or employee of the district, acting within the scope of his or her official duties. If so, then the recipient will be deemed to have constructive knowledge of the

harassment. If a teacher or staff member is acting (or reasonably appears to be acting) in the context of carrying out his or her official duties over students, OCR will consider a variety of factors in determining whether or not the harassment has taken place in this context. The factors include the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place; where and when the harassment occurred; the age and educational level of the student involved; and as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

In cases involving allegations of harassment of elementary and secondary school-age students by a teacher during any school activity, consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services. Even if the student is not in any of the teacher's classes, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Retaliation

The prohibition against retaliation in the implementing regulation for Title VI at 34 C.F.R. § 100.7(e) provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI. The Section 504 regulation at 34 C.F.R. § 104.61 adopts and incorporates the anti-retaliation provision of the Title VI implementing regulation.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed discrimination prohibited by the laws OCR enforces, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action.

If all of these elements are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person

was inconsistent with the treatment of similarly situated individuals or established policy or practice.

Allegation #1(a) – Facts

The School created two Section 504 Plans for Student A, one in May 2012 and another in May 2013. The May 2012 Plan was supported by a letter from Student A’s treating psychologist who recommended services to assist him with “moderate to mild symptoms related to ... PTSD.” The two plans were substantially similar and required the School to provide Student A with the following:

1. Extend time on task for completion of class assignments by 25%
2. Extend time on task for completion of homework assignments by 100%
3. Extra time for classroom and standardized tests by 50% (small group setting for tests)
4. Seat student in separate area of classroom for less distraction
5. Provide motivation and verbal rewards on a daily basis
6. Social worker will provide direct services to Student A for 120 minutes monthly and social worker will consult and collaborate with the classroom teachers regarding positive behavioral interventions for 15 minutes per month.

According to the Complainant, several provisions in Student A’s Section 504 Plan were not implemented during the 2012-13 year. He asserted that not all teachers provided Student A with extra time on tests and homework and that social work services were not fully implemented. The Complainant also asserted that Student A’s homework assignments were not always posted online, although this was not a provision required by the Plan.

Student A told OCR that aside from state testing, no teacher ever provided him with extra time for tests. As for extra time on homework, he reported that “no teacher would allow me that unless my parents wrote a strongly worded email.” When asked if his teachers provided him with seating intended to reduce distraction, Student A said “to set me up, maybe.” He explained that he was not placed away from distracting or disruptive students. In fact, he asked the World Language Teacher to be moved away from disruptive students and the teacher said he didn’t need to be moved, and encouraged Student A to “tune it out.” Student A reported similar concerns with the Social Science teacher.

Each teacher OCR interviewed reported that Student A was provided the accommodations contained with his Section 504 Plan, including extra time for classroom assignments, tests and homework, preferential seating and motivation and verbal rewards. More specifically, the World Language teacher told OCR he would either provide Student A extra time for tests, or provide the same amount of time as the rest of the class but assign fewer questions to Student A. This teacher also reported that several times he scanned homework assignments to Student A’s mother so he knew she was aware of what the homework was. The Social Science Teacher told OCR, “I went above and beyond to implement this plan. I was meticulous in the record keeping. I gave [Student A] more than extra time [for assignments,

tests and homework].” The Social Worker told OCR she did not consistently provide the required 120 minutes per month in direct services to Student A.

Allegation #1(a) - Analysis

Prior to the conclusion of OCR’s investigation, the District requested to resolve allegation #1(a). The provisions of the Agreement are aligned with this allegation and the information obtained during OCR’s investigation and are consistent with the applicable regulations.

Allegation #1(b) – Facts

The Complainant alleged that the District discriminated against Student A when School staff harassed him based on his disability. The Complainant told OCR that in 2013, in the presence of Student A, the Case Manager and the Social Worker told the World Language Teacher that Student A “did not need additional time for work [and] that he was not showing signs of anxiety or difficulties concentrating...” The Complainant also alleged that School teachers “have verbally torn down” Student A.

The Complainant complained in a letter to the District on September 3, 2013, that he had witnessed the Social Science Teacher “laughing, humiliating and bullying (sic) [Student A] in front of his peers in the classroom and at classroom dismissal time, as well as during a parent-teacher-student meeting.” He also complained that the Social Science teacher “humiliated and bullied” Student A when he exhibited disorganized or agitated behavior due to his disability. The Complainant also asserted that Student A was “harassed, shamed and mocked” by School staff.

In an interview with OCR, Student A recalled comments made during the 2012-2013 school year by the Social Science Teacher and the World Language Teacher. For example, Student A said the Social Science Teacher told him he would not give Student A extra time to complete work despite what his Section 504 Plan called for because the Social Science Teacher did not believe that Student A required additional time. Student A also recalled the Social Science Teacher told him that Student A’s disorganization “baffled” him, that it was inexcusable for a student his age to “be that disorganized,” and once said “Get it together! Why are you so disorganized?” Student A asserted that his World Language Teacher told him that someone Student A’s age shouldn’t be as disorganized as Student A was. Student A did not recall hearing either teacher make such comments to other students. Student A told OCR he did not miss any school because of these alleged statements by his teachers. Student A did, however, recall feeling “devastated” and “nervous” by his teachers’ statements.

OCR interviewed Student A’s Social Science and World Language Teacher, each of whom denied ever making the comments attributed to them by Student A or engaging in the conduct attributed to them by the Complainant.

Student A also reported harassment from peers in his World Language classroom. He told OCR that a group of students “toyed” with his emotions. Student A reported that some of

these students said “Do you get extra time because you’re special? I wish I were special. I wish I had a 504 plan.” Student A said these comments occurred at least once a week. Student A said he reported this “harassment” to his World Language Teacher who in response simply told him to “Sit down.” He said he complained to the World Language teacher at least twice about these types of comments. Student A also reported to OCR and to the School that he had been bitten and stabbed with a pen by his peers.

The World Language teacher denied that Student A ever complained of bullying or harassment by his peers. Furthermore, the Social Worker informed OCR that toward the end of the 2012-13 school year, the Complainant informed her that Student A had been bullied by his peers. According to the Social Worker, the Complainant did not provide her with the names of any students who had allegedly bullied Student A. She further asserted that when she asked Student A whether he had been bullied by his peers, Student A denied feeling bullied. The Social Worker confirmed that there were no records of students being disciplined for having bullied or harassed Student A.

Allegation #1(b) - Analysis

OCR considered the totality of the circumstances and evaluated all of the information gathered during its investigation. After carefully considering this information, OCR determined that the evidence is insufficient to conclude that the District subjected Student A to disability harassment, as alleged.

First, Student A’s Social Science and World Language Teachers denied making the statements or engaging in the conduct attributed to them. However, even assuming for the purposes of this analysis that one or both of these teachers told Student A that he did not appear to require additional time nor did he exhibit symptoms of anxiety, and even if they had expressed to him that he should have been better organized, OCR finds that these comments alone and combined, when considered both from an objective and subjective perspective, are not sufficiently serious to deny or limit Student A the ability to participate in or benefit from the School’s program.

Student A acknowledged that he did not miss any school because of the statements allegedly made by his teachers, although he reported feeling devastated and nervous by the teachers’ comments. Considering the totality of the circumstances OCR concludes that the alleged harassing conduct by Student A’s teachers, if it occurred, was not sufficiently serious to deny or limit Student A’s ability to participate in or benefit from the School’s program based on disability. Therefore, as to allegation 1(b), OCR has determined that the information is insufficient to establish that the School discriminated against Student A as alleged and OCR has closed allegation 1(b) effective the date of this letter.

Prior to the conclusion of OCR’s investigation, the District requested to resolve the compliance concerns identified by OCR during the course of its investigation of allegation 1(b). Specifically, the District agreed to resolve alleged harassment of Student A by his peers based on his disability by inviting the Complainant to submit a written request to the

School to investigate specific instances of alleged disability harassment of Student A by his peers that occurred during the 2012-13 school year. The provisions of the Agreement are aligned with the information obtained during OCR's investigation and are consistent with the applicable regulations.

Allegation #2 – Facts

The Complainant alleged that because on June 26, 2012, he asserted to the District that it was denying Student A special education services, District and School staff retaliated against the Complainant and Student A when (a) the School failed to implement Student A's Section 504 Plan during the 2012-2013 school year; (b) the Complainant's February 5, 2013, phone call to the District's Office of Diverse Learners Supports and Services (ODLSS) went unanswered; and (c) the Complainant's June 11, 2013, request for a meeting with the School principal went unanswered.

On June 26, 2012, the Complainant's attorney wrote a letter to the President of the Chicago Board of Education (President) and the Superintendent of the Chicago Police Department. In this letter the attorney complained of, among other things, the School Principal's "lack of oversight and mismanagement, failure to assign a social worker [in 2010] and failure to appropriately and promptly address the lingering effects of trauma sustained at [the Student's prior school], compounded [the Student's] PTSD symptoms."

As to allegation 2(a), as described above, the Complainant asserted that several provisions in Student A's Section 504 Plan were not implemented during the 2012-13 year and he believed this was because of his June 26, 2012, letter to the District complaining that Student A was being denied special education services.

The District denies that it took any of the alleged adverse actions in retaliation for the Complainant's June 26, 2012, letter to the District. OCR interviewed each of the Student's teachers for the 2012-13 school year. All denied failing to implement Student A's Section 504 Plan. As noted above, only the Social Worker acknowledged not implementing Student A's Section 504 Plan fully as written. In addition, the teachers and the Social Worker each denied knowing about the June 26, 2012 letter to the District advocating on behalf of Student A.

As to allegation 2(b), the Complainant told OCR that on February 5, 2013, he called ODLSS to complain that Student A's Section 504 Plan was not being implemented. OCR interviewed the Special Services Administrator (Administrator), who works in ODLSS. The Administrator told OCR that in 2013, calls to her office were routed through the Central Office, logged in on a template and notification was then generated to her office. She said she did not remember the Complainant, but when asked to search for records found an email from the Central Office, dated February 5, 2013, that noted the Complainant called to complain that his son's Section 504 Plan was not being implemented. The Administrator said, "I have no records that I followed up with him. And that is very unusual for me. I don't recall seeing notification from Central Office, I don't remember following up on it. I

missed it.” She denied that anyone within the District directed her not to respond to the Complainant’s call and said she was not aware of any of the Complainant’s protected activities and did not retaliate against the Complainant by not returning his call.

As to allegation 2(c), the Complainant told OCR that he emailed the School Principal on June 11, 2013, to complain that certain School staff was not implementing Student A’s Section 504 Plan. For reasons unrelated to this complaint, the District administratively transferred the Principal on July 3, 2013, and terminated his employment on August 21, 2013. Thus, OCR was unable to interview the Principal. However, OCR reviewed copies of emails between the Complainant and the Principal. On May 17, 2013, the Complainant emailed the Principal and wrote, “Please assist in seeing cohesion with [all Student A’s] teachers.” The Principal responded on May 20, “I am out ill and not sure when I will return to school . . . [the Case Manager and (another School employee)] can follow-up.” On June 11, 2013, the Complainant emailed the Principal, “We have not had a status from the teachers’ and counselor’s perspective. [The Security Guard] has done a phenomenal job” working with Student A to get caught up with outstanding work but that he still needed “assistance from the teachers’ perspective,” particularly from the World Language Teacher. The Complainant ended the email with, “We have open ended questions that I would like to discuss.”

The Principal emailed the Complainant on June 18, 2013, and wrote, “Has this been resolved? I spoke with staff last week.” The Complainant responded by reporting that the Case Manager “didn’t coordinate or monitor the compliance with [Student A’s] 504 plan” but other teachers were “cooperating.” He also wrote that the Social Worker “started delivering social worker therapeutic services on a regular basis in April 2013, but didn’t assist with the underlying problem – class room disturbances and bullying – . . . ” The Complainant again emailed the Principal on June 20, and wrote, “Thank you for your intervention over the past two months. . . Hope to get a picture of you and [Student A] at graduation [in two days.]” OCR received no other email communication between the Complainant and the Principal.

Allegation #2 – Analysis and Conclusion

OCR determined that the Complainant engaged in an activity protected by Section 504 of which the District was aware when his attorney asserted in a June 2012 letter to the District that Student A’s Section 504 Plan was not being fully implemented.

Regarding allegations 2(a) and 2(b), the District’s alleged failure to implement Student A’s Section 504 Plan during the following school year and the Special Services Administrator’s failure to return the Complainant’s telephone call, are adverse actions that followed the Complainant’s protected activities, and from which a causal connection can be inferred. Therefore, OCR has determined that a *prima facie* case of retaliation was established.

Although a *prima facie* case of retaliation is established based on knowledge at the District level of the Complainant’s protected activities, all School staff who allegedly failed to implement Student A’s Section 504 Plan during the 2012-13 school year and the Special

Services Administrator, denied any knowledge of the Complainant's protected activities. Specifically, Student A's teachers, the School social worker, and the Special Services Administrator each denied any knowledge of the June 26, 2012 letter to the President of the Board of Education advocating on behalf of Student A. Absent prior or contemporaneous knowledge of the Complainant's protected conduct by the individuals responsible for the alleged adverse actions, there is insufficient evidence to conclude that School staff did not implement Student A's Section 504 Plan and the Special Services Administrator did not return the Complainant's telephone call in retaliation for the Complainant's protected activities. Therefore, as to allegations 2(a) and 2(b), OCR has concluded that the information is insufficient to establish that the School retaliated against Student A or the Complainant as alleged and OCR has closed allegations 2(a) and 2(b) effective the date of this letter.

As to allegation 2(c), that the Complainant's June 11, 2013, request for a meeting with the School principal went unanswered, OCR examined whether the District subjected Student A to an adverse action. OCR will consider an action to be adverse if it significantly disadvantaged a student, or might reasonably be expected to deter or preclude a student or complainant from engaging in further protected activities. The Complainant asserts that the Principal's failure to return his call harmed Student A in that it enabled School staff's non-implementation of Student A's Plan to go unchecked. OCR's review of the evidence reveals that the Complainant was in regular communication with several members of the School's staff (including the Principal) about Student A, his outstanding assignments and the alleged non-implementation of his Section 504 Plan. Therefore, OCR finds insufficient evidence that Student A experienced an adverse action as alleged as a result of the Principal's failure to meet with the Complainant.

Alternatively, even if OCR were to consider the Principal's failure to meet with the Complainant an adverse action, the District provided a legitimate, non-retaliatory justification for the Principal's action, namely, the Principal directed several staff members to meet with the Complainant to discuss the implementation of Student A's Section 504 Plan. This conduct on the Principal's part is inconsistent with a retaliatory motive. For all of these reasons, OCR finds insufficient evidence that the Principal did not meet with the Complainant in retaliation for his prior protected conduct, as alleged. Consequently, OCR finds insufficient evidence that the District retaliated against the Complainant as alleged, and has closed allegation 2(c) effective the date of this letter.

Allegation #3 – Facts

The Complainant asserts that the District retaliated against Student A on September 4, 2013, when it removed him from the School's enrollment list because a few weeks earlier the Complainant informed the District that he intended to file a complaint with OCR. In an August 19, 2013, letter to the District's General Counsel (General Counsel) and President of the Board of Education, the Complainant voiced his frustration that issues raised in his attorney's June 2012 letter to the President had not been addressed. The Complainant provided OCR with a copy of an additional letter that he wrote to the General Counsel on September 3, 2013. In that letter the Complainant recounted the history of Student A's

enrollment in CPS schools and indicated his intention to file a complaint with OCR. On September 6, 2013, the Complainant wrote another letter to the District's General Counsel as well as the President of the Chicago Board of Education. In that letter he wrote that he learned that the District had unenrolled Student A on September 4, 2013, and asserted he considered the District's actions retaliatory. The Complainant also wrote that "[the Student] cannot return to CPS school." The Complainant then asked CPS to pay for a private school placement for Student A.

The last day of classes in the 2012-13 year was June 24, 2013. Documents that the District provided to OCR show that on June 19, 2013, the Complainant submitted to the School paperwork asking the School to transfer Student A's records to several out of state high schools. The Complainant reported that he spoke to a School clerk on the morning of August 27, 2013, the first day of the school year, and notified the School that Student A was under medical care, would be absent from school and would bring a medical doctor's letter upon his return.

The District's Deputy General Counsel wrote the Complainant a letter dated September 11, 2013, and informed him that Student A was welcome to return to the School and advised the Complainant to contact the School's Administrator in Charge to arrange for him to do so. The letter ends by acknowledging the Complainant's stated intent to file a complaint with OCR. The Complainant told OCR he tried several times to contact the Administrator in Charge but that the Administrator was unavailable. The Complainant asserted that the District did not offer Student A homebound services until September 11, 2013, and that while a School staff member told him it would mail homebound forms and instructions, none ever arrived.

The Complainant said that on September 23, 2013, a District employee called him and said if Student A was not in school that day "he would lose his seat [at the School]."

The School explained that because Student A was enrolled in the School for the 2012-13 year and because, early in 2013, the Complainant completed a form indicating Student A would return, the District placed Student A on the master roll for the School for the 2013-14 year. Being placed on the master roll means a locker is reserved for a student, and plans are made to create a class schedule for the following school year.

The District said that a list of parents whose children are absent on the first few days of school is generated automatically through an electronic system. The District asserts that it made no changes to that system and denied adding the Complainant's name to the list of parents to be called because of the Complainant's September 3, 2013, letter or because he indicated his intention to file a complaint with OCR. The District denies that its actions were retaliatory.

Allegation #3 – Analysis and Conclusion

OCR finds that the Complainant engaged in a protected activity of which the District was aware when he sent several letters to the District in the summer and fall of 2013 advocating on behalf of Student A. Although the circumstances surrounding why Student A did not return to the School in the fall of 2013 are disputed, OCR assumes that if the District had disenrolled Student A from the School as alleged, doing so would have subjected him to an adverse action that closely followed the Complainant's protected conduct. Therefore, OCR assumes for the purposes of this analysis that a *prima facie case* of retaliation exists.

However, the District presented a legitimate, non-retaliatory justification for its actions that OCR determined is not a pretext for retaliation. Specifically, the District explained that it informs the parent of any student who fails to attend the first few days of schools that his/her child will be removed from the School's roster if he or she does not attend school. Furthermore, in a letter dated September 11, 2013, the District's Deputy General Counsel explained that Student A was welcome to return to the School. Although the Complainant asserts that he was unable to make arrangements for Student A to return to the School, he provided conflicting testimony as to whether he in fact sought to return Student A to the School – indicating both that he wished to pursue home bound instruction for Student A and asking the District to pay for private school tuition for Student A. Accordingly, although it is undisputed that Student A did not return to the School after June 2013, OCR found no evidence that the School or the District prevented him from returning to the School or removed him from the School's enrollment list in retaliation for the Complainant's protected activities. Therefore, OCR has concluded that there is insufficient evidence that the District retaliated against the Complainant as alleged and OCR has closed allegation 3 effective the date of this letter.

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 file a private suit in federal court whether or not OCR found a violation

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.

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.

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We wish to thank the District for the cooperation extended to OCR staff during the course of our investigation. Specifically, we thank Ms. Dalila Bentley for her assistance. If you have any questions, please contact me or Susan Johlie, Regional Attorney, at (312) 730-1586.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Dalila Bentley, EOCO Administrator