



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

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September 29, 2017

Dr. Julie Morris
Superintendent
Harlem Unit School District #122
8605 N. 2nd St.
Machesney Park, Illinois 61115

Re: OCR #05-14-1350

Dear Dr. Morris:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its investigation of the complaint filed with OCR against Harlem Unit School District #122 (District) on September 18, 2014, alleging discrimination on the bases of disability.

Specifically, the complaint alleges the District subjected Student A to discrimination based on disability (XXXXXXXXXXXXXXXXXXXX) when:

1. In XXXX 2014, the District failed to reevaluate Student A;
2. In XXXXX 2014, the District repeatedly suspended Student A for behavior related to her disability; and
3. On XXXXXX, 2014, District staff placed Student A in a seclusion room, denied her permission to use the restroom and left her in wet clothing after she lost control of her bladder.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits retaliation by recipients of Federal financial assistance and Title II prohibits retaliation by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

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

OCR investigated the complaint in accordance with its *Case Processing Manual (CPM)*. During its investigation process, OCR conducted interviews of Student A's mother (Complainant), District staff and administrators, reviewed documents provided by the Complainant and the District, including photographs of the intervention room. For the reasons set forth herein, OCR finds insufficient evidence to establish that the District failed to comply with applicable regulations with regard to Allegations 1 and 2. Prior to the conclusion of OCR's investigation of Allegation 3, the District expressed interest in resolving the complaint allegation. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in Allegation 3.

Policies and Procedures

The District's School Board Policies, including nondiscrimination policies, grievance procedures, disciplinary policies, and special education policies are available online.¹

Policy 7:10, Equal Educational Opportunities, provides that equal educational and extracurricular opportunities shall be available for all students without regard to physical or mental disability. A student may file a discrimination complaint by using Board policy 2:260, Uniform Grievance Procedure.

Policy 7:190, Student Discipline, and the Student Code of Conduct provide for the discipline of students for gross disobedience or misconduct, including: disobeying rules of student conduct or directives from staff members or school officials; causing or attempting to cause damage to school property or another person's personal property; engaging in any activity, that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member, or (b) endanger the health or safety of students, staff, or school property. Policy 7:190 provides for disciplinary sanctions ranging from disciplinary conferences to a 10-day out-of-school suspension (OSS). Consequences listed in each category are subject to the administrator's discretion and may be based on frequency, and/or individual student circumstances. The Student Code of Conduct provides that profanity and class disruption can result in 1-3 days in-school suspension (ISS) or OSS, and destruction of property can result in 1-2 day ISS or OSS. Parents(s) and guardian(s) are to be contacted by telephone in addition to the referral being mailed home for level two or greater offenses.

Policy 6:120, Education of Children with Disabilities, states that the District will provide a free appropriate public education in the least restrictive environment and any necessary related services to all children with disabilities as required by Section 504 and the Individuals with Disabilities Act (IDEA). For students eligible for services under IDEA, the District follows the procedures for identification, evaluation and placement, and delivery of services to children with disabilities provided in the Illinois State Board of Education's *Special Education Rules*.

¹<http://boardpolicyonline.com/?b=harlem>

Policy 7:230, Behavioral Interventions and Discipline, provides that behavioral interventions will be used with students with disabilities and requires that any behavior intervention plan (BIP) be based on a functional behavior assessment (FBA) and include positive behavior intervention strategies and supports to address the inappropriate behavior. Policy 7:230-AP provides that the first time a student with a disability is suspended for more than ten (10) cumulative days during the school year, the District will, within ten (10) business days, convene an Individual Education Plan (IEP) meeting to review and, if appropriate, modify the student's behavior intervention plan, as necessary, to address the student's behavior.

Policy 7:230, which only applies to students with disabilities, authorizes the use of isolated time out and physical restraint as “a means of maintaining a safe and orderly environment for learning and only to the extent that their use is necessary to preserve the safety of students and others.” Isolated time out is defined as “the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted.” Physical restraint is defined as “holding a student or otherwise restricting his or her movements...[with] the use of specific planned techniques and does not include momentary periods of physical redirection by direct person-to-person contact without the aid of material or mechanical devices, accomplished with limited force and designed to: (i) prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or (ii) remove a disruptive student who is unwilling to leave the area voluntarily.” For any special education student with a BIP that includes the use of isolated time out and/or physical restraint, the policy provides that the BIP must be developed by the student's IEP team, including the student's parent(s), at a duly convened IEP meeting and in accordance with the needs of the student.

Policy 7:230 expressly forbids the use of isolated time out or physical restraint to discipline (*i.e.*, punish) individual students, and states that isolated time out and physical restraint should be used only “in emergency situations and when less restrictive interventions have been attempted and failed.” The policy includes detailed procedures for using isolated time out and physical restraint which specify the manner in which these measures may be utilized, including the requirement that only trained staff can apply restraint, requirements for supervising isolated time out, consideration of alternative strategies, documentation required for each episode of isolated time out or physical restraint, parental notification procedures, the process for evaluating injuries, and an annual review of the school's use of isolated time out and physical restraint. As for time limits, the policy provides that a student “must be released from physical restraint immediately upon the determination by the staff person administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others” and “staff shall not keep a student in isolated time out for more than 30 minutes after he or she ceases presenting the

specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention.”²

Facts

Student A, XXXXXXXXXXXXXXXXXXXXXXXXXX, has been diagnosed with XXXXXXXXXXXXXXXXXXXXXXXXXX. Student A’s IEP identifies her primary disability as Other Health Impairment and her secondary disability as Autism.

Student A’s IEP and BIP

In April 2014, Student A’s IEP team conducted a reevaluation of Student A, which included, among other things, a functional behavioral assessment, behavior rating scales, an updated health history, a social history, and a classroom observation. Members of Student A’s IEP team included staff knowledgeable about Student A including: the Social Worker, School Psychologist, Speech-Language Pathologist, Behavior Consultant, Student A’s special education teachers, Director of Student Support Services, Principal, and Student A’s mother and her advocate.

On April 23, 2014, Student A’s IEP team developed an IEP and BIP for the remainder of the school year and for the 2014-15 school year. Student A’s IEP provided that Student A would participate in general education classes with supplementary aids and services and would receive XXXXXXXX of social work services to address Student A’s inappropriate interactions with others and in managing her off-task behavior. The social work services were intended to develop her social skills and conflict resolution skills. Student A’s parent was provided notice of her due process rights.

Student A’s BIP includes behavior intervention strategies and supports to address non-compliant behaviors (*i.e.*, failing to complete tasks and follow teacher directives when presented with non-preferred tasks). The intervention strategies included modifications to Student A’s environment, changes to her instruction and curriculum, positive behavior supports, and restrictive discipline measures. The positive behavior supports included: use of an incentive chart, two ten minute breaks for preferred activities (XXXXXXXXXX), opportunity to be a classroom/school helper, and school social work services. Student A’s BIP also incorporated the school-wide positive behavior system (*i.e.*, earning coupons) and classroom behavior/reward system with specified opportunities for her to earn additional points toward the reward chart for following directions, completing tasks, and being respectful to others during specified periods in the day. The restrictive disciplinary measures were defined as verbal reminders/prompts, classroom behavior

² These time limits are consistent with the language in Section 1.285 of ISBE’s rules regarding “Requirements for the Use of Isolated Time Out and Physical Restraint,” available online at <https://www.isbe.net/Documents/ONEARK.pdf>

system/flip a card, behavior reflection sheet (*i.e.*, processing behavior and feelings with an adult), and another “card turn” or behavior referral under the Student Code of Conduct, if warranted. The use of restraint or seclusion was not listed among the restrictive measures.

Student A’s BIP also includes a crisis plan that provides: “[i]f Student A becomes a danger to herself, others, or school property, the Safety Crisis Management (SCM) Team³ will be utilized” and “the SCM team will determine appropriate measures... including physical management if necessary.” Although Student A’s BIP does not specifically refer to use of a time out room or the intervention room, District staff stated that the reference to “physical management” in Student A’s BIP contemplates the use of the intervention room for isolated time out when necessary to ensure the safety of Student A. The intervention room is an average-sized classroom that has been cleared of furniture and has padded mats affixed to each of the four cinderblock walls; it has no windows. The door to the intervention room appears to be made of steel and has a glass window approximately 8 inches wide by 24 inches long and has a lever door handle, which appears to have a locking mechanism. The Complainant stated that she did not believe that Student A’s IEP or BIP contemplate the use of the intervention room.

Student A’s Suspensions

Student A began to exhibit negative behaviors shortly after the start of the 2014-15 school year. The Complainant stated that Student A’s behavior issues were the result of a medication change. The Complainant maintains she told the Principal about the medication change and asked the Principal to call her to pick up Student A if she became out of control.

A review of Student A’s educational file indicates that Student A received suspensions on XXXX occasions in XXXXXXXX 2014.⁴ On XXXXXXXX, 2014, Student A received a half-day ISS for inappropriate language, profanity, and dangerous behavior after attempts to redirect or de-escalate her behavior failed. Two days later, XXXXXXXXXXXX, Student A received a 1-day ISS for disruptive behavior after she made sexual gestures in class and on the playground, which were substantiated by witnesses, and refused to complete a reflection sheet consistent with her BIP. On XXXXXXXX, Student A received a 1-day OSS for disobeying rules and staff directives after her misbehavior escalated throughout the day to the point of requiring placement in the intervention room. Lastly, on XXXXXXXX, Student A received a 6-day OSS for gross disobedience and misconduct throughout the day, which included physical aggression to staff, inappropriate language, and dangerous behavior such as climbing up the bathroom stall to do splits with one foot on each of the side walls, kicking chairs and garbage cans, wrapping a phone cord around her neck, doing handstand on a chair, crawling on the floor, throwing rocks at staff, breaking a desk drawer, lifting a large desk off the ground, kicking staff from under the desk, and

³ The members of the Safety Crisis Management Team include the Principal, Assistant Principal, the Social Worker, the Behavior Consultant, and paraprofessionals. All members participate in annual training focused on crisis situations, including safety and de-escalation techniques, physical restraint techniques and time out protocols.

⁴ Student A received social work support on the day of the incidents and was allowed to complete schoolwork during ISS and OSS suspensions.

putting staples in her mouth. Staff reported, and documentation of the incident indicates, that Student A was subjected to restraint (*i.e.*, CPI children’s control position) by staff members who were trained on appropriate physical restraint techniques when her behavior became unsafe and attempts to de-escalate her behavior failed.⁵

The Complainant reported, and the Principal confirmed, that on XXXXXXXX, Student A’s treating physician provided the District a handwritten note on prescription paper, advising that Student A “needs accommodation, not suspensions” for her behavior. The District acknowledged receipt of the note, but told OCR that documentation did not offer any rationale or recommendations for specific “accommodations.” The District noted staff attempts to apply other intervention techniques designated in Student A’s BIP, such as redirection, prompts, speaking with the Social Worker, and completing a reflection sheet, but given Student A’s response to these efforts, it determined that suspension was appropriate. The Principal told OCR that she could have suspended Student A for more days under the Code of Conduct, but she used her discretion to reduce the number of days Student A was actually suspended. OCR notes that Student A’s BIP includes escalating suspensions as a response to inappropriate behavior.

Based in part on Student A’s escalating behavior, on XXXXXXXX (prior to her return to school), Student A’s IEP team convened a meeting to address Student A’s needs and placement. The team agreed to conduct a social-emotional evaluation of Student A, including a functional behavior assessment. The District provided Student A’s mother with a consent form for evaluation, which she signed on XXXXXXXX. On XXXXXXXX, the IEP team, including Student A’s mother who participated by telephone, reconvened to review Student A’s updated FBA and to revise her BIP to reflect new goals and objectives to decrease her non-compliant behaviors. The team, including Student A’s mother, agreed to an immediate change in placement, and Student A was moved to the School’s Learning Lab, a self-contained classroom with a special education teacher and paraprofessionals for behavioral support.

Use of Seclusion

According to the District, Student A’s behavior on XXXXXXXX escalated throughout the day to the point of requiring that she be placed in the intervention room. Staff testimony and supporting documentation indicate that, Student A became noncompliant, walked out of the classroom without permission, and went to the restroom. Teacher A followed Student A and attempted to explain to her that she must ask for permission to leave, and that she needed to know where Student A was at all times. Teacher A reported that Student A then climbed into her locker. Teacher A called the Social Worker to assist her in coaxing Student A from the locker. When Student A got out of her locker, she was taken to the Principal’s office XXXXXXXX

⁵The Complainant reported that there were no signs of restraint on her daughter and acknowledged that the administration called her and provided her with documentation regarding their use of restraint. The Complainant told OCR that she does not disagree with the District’s use of restraint as a response to Student A’s XXXXXXXX behaviors.

The Social Worker and the Principal told OCR that they attempted to have Student A complete a reflection sheet in the office consistent with her BIP, but Student A refused. Student A's negative behaviors escalated including unsafe behaviors for her and staff. The Principal reported that she tried to explain to Student A why her behavior is unsafe and tried, unsuccessfully, to redirect her behavior. For safety reasons, the Principal had some of the furniture in her office removed.

According to the Principal, Student A asked to use the bathroom XXXXXXXX and was allowed to do so. While in the restroom, Student A engaged in disruptive and destructive behavior. After Student A returned to the office, she refused to sit in a chair, crawled on the floor, tucked her entire body into her shirt, dropped food on the floor and then ate it. Student A used the restroom two more times. During the visit to the bathroom at XXXX, Student A was swinging on the stall door and refused to get down until the Principal walked toward her. On her next visit, at XXXX, Student A was in the stall snapping her shoe laces and then began swinging on stall doors.

Documents provided to OCR indicate that the Principal emailed the Complainant at XXXX to inform her of Student A's misbehavior and advise her that Student A had been in her office XXXX Shortly thereafter, the Principal sent a second email to the Complainant at XXXX asking whether the Complainant spoke with Student A's physician about Student A's behavior and whether it is related to a medication change. The Principal sent a third email asking the Complainant to please call her immediately.

Student A's negative behaviors persisted after she returned to the Principal's office from the restroom. Student A began making inappropriate and threatening comments to staff and destroying papers in the Principal's office. According to the Principal's log and testimony, Student A refused to sit in a chair, pounded on the office door, threw papers that were on the Principal's desk, called the Principal a "bitch," attempted to disconnect cords under the Principal's desk, and ran into the conference room where she lifted the conference room table with her back. The Principal and the Assistant Principal, both of whom are members of the SCM Team, said that they felt that Student A presented a danger to herself when she began lifting the conference room table because the table could have tipped over and injured her or others; therefore, they decided to transport Student A to the intervention room.

In an effort to prevent Student A from harming herself or others, the Assistant Principal and Principal who had been trained on appropriate physical restraint techniques, used the Crisis Prevention Institute (CPI) physical management transport position⁶ to move Student A to the intervention room at XXXX. Shortly thereafter, the Principal left the Complainant a voicemail at XXXX, and spoke with Student A's XXXXXXXX to advise that Student A needed to be picked up from school.

⁶ A transport position is a "cross-grain grip" to secure the individual between two staff members during transport while maintaining close body contact.

Student A was supervised the entire time she was in the intervention room by the Principal, Assistant Principal, or the Social Worker who took turns monitoring the room. The Principal, Assistant Principal, and Social Worker documented Student A's behavior in the intervention room generally, but did not keep contemporaneous notes recording her behaviors. Student A's misbehavior was documented to include the following: climbing/scaling the walls, doing handstands, running around the room jumping as high as she could, spitting on the floor and stepping in it, kicking and spitting on the door, spitting at staff, calling staff names, XXXXXXXXXXXX.

The District reported that Student A requested to use the restroom twice while in the intervention room. When Student A made her first request to use the restroom, it was granted because the Social Worker believed that Student A appeared to have calmed down enough to safely use the restroom. In the restroom, however, Student A's misbehavior began to re-escalate and she stuck her foot in the toilet. The Social Worker reported that Student A began spitting again and started calling staff names and swearing when she left the restroom and she therefore returned Student A to the intervention room. Student A reportedly requested to use the restroom a second time, and was told she had to regain her composure before she would be allowed to leave the intervention room to use the restroom. Student A then said that she would XXXXXXXX. The Nurse told OCR that she was not aware that XXXXXXXXXXXX, though she reported and documentation reflects, that she was called to check Student A to ensure that she had no injuries after she was transferred to the intervention room. The discipline referral form indicates that XXXXXXXXXXXX.

According to the Complainant, upon arrival at the school (which the Complainant estimated at approximately XXXX), she found the Counselor⁷ standing in the doorway of the intervention room and Student A huddled in the corner, looking scared, and XXXXXXXX. The Complainant reported that she was told that Student A had asked to go to the bathroom and that Student A was told she could not go until she calmed down and XXXXXXXX. The Complainant reported that staff had XXXXXXXXXXXXXXXXXXXXXXXXXXXX.⁸ The Complainant maintains Student A was placed in the intervention room for several hours; however, staff testimony, the incident report and the Principal's written log reveal that Student A was transported from the office at XXXX and arrived at the intervention room at XXXX where she remained until sometime between XXXXXXXXXXXX, with a restroom break, which amounted to approximately 50-63 minutes in the intervention room.⁹

The Complainant reported to OCR that, to her knowledge, Student A's conduct did not rise to the level of a verbal or physical threat to harm any students or herself, and staff did not report to her that Student A was a danger to others or herself. The District administrators and staff, including those who are members of the SCM Team, contend that Student A's behaviors presented

⁷ The District indicated the Social Worker was present at that time.

⁸ The Complainant explained that Student A wets herself daily and that extra clothes are kept for her at school.

⁹ The Principal's written log indicates the Complainant arrived at XXXX, and the incident report states that Student A was in isolated time out from XXXXX.

legitimate safety concerns to Student A. The District maintains that the situation was handled consistent with its Code of Conduct and Student A's IEP and BIP. The incident report set forth a plan for dealing with Student A's behavior in the future, including convening an IEP meeting to address Student A's behavior and BIP. Documentation establishes the District provided the Complainant written notice of the incident.

Legal Standards

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

The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(ii) and (iv), provide, in relevant part, that a recipient shall not deny a qualified individual with a disability an aid, benefit or service, or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting qualified students with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to persons with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.33(a) and (b), requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or the severity of the person's disability. 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 education needs of persons with disabilities as adequately as the needs of persons without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards. The implementation of an IEP developed in accordance with the Individuals with Disabilities Education Improvement Act (IDEA) is one means of meeting the FAPE standard.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. Section 504 and its implementing regulations do not specify a time frame for evaluating a student believed to be in need of special education and related services. OCR applies a standard of reasonableness for the completion of the evaluation process.

Analysis

Allegation 1

The Complainant alleges that the District failed to reevaluate Student A in September 2014.

The evidence establishes that the District reevaluated Student A and developed an IEP and BIP in XXXXXXXX, which were in place at the beginning of the 2014-15 school year. The evidence further establishes that, as a result of escalating, negative behavior in September 2014, the District acted promptly by holding a XXXXXXXX IEP meeting, at which time the team, including Student A's parent, determined Student A's negative behaviors to be related to her disability. At this meeting, Student A's parent agreed to immediately allow the District to place Student A in a self-contained program and to update her FBA and to revise her BIP to reflect new goals and objectives to decrease her non-compliant behaviors. Upon receipt of the signed consent from Student A's parent on XXXXXXXX, the District conducted the reevaluation, and held a meeting on XXXXXXXX, in which her IEP and BIP were revised.

The evidence is insufficient to establish that the District failed to reevaluate Student A in accordance with the requirements of Section 504. The District convened an IEP meeting when Student A's negative behavior increased, changed Student A's placement, and conducted a reevaluation. The reevaluation occurred and the IEP and BIP were put in place 51 days after the District received consent consistent with Section 504 and with State requirements. Based on this information, OCR determined that the evidence shows that the District met the procedural requirements of Section 504 pertaining to evaluation. Therefore, OCR has concluded that the District did not subject Student A to discrimination based on disability as alleged in Allegation 1.

Allegation 2

The Complainant alleges that, in XXXXXXXX, the District repeatedly suspended Student A, an action that should not have been taken because the behavior was related to her disability. The Complainant does not deny that Student A engaged in the conduct described by the District.

Section 504 requires recipients to reevaluate a student with a disability prior to a significant change in placement. Here, the evidence demonstrates that the discipline imposed on Student A did not total more than 10 days in suspensions necessitating a re-evaluation. The evidence establishes that Student A received a half-day ISS for the XXXXXXXX incident; a one-day ISS for the XXXXXXXX incident; a one-day OSS for the XXXXXXXX incident, and a 6 day OSS for the XXXXXXXX incident. Thus, Student A was suspended, either in-school or out-of-school, for a total of 8.5 days, and had access to social work services and was allowed to complete school work on those days.

OCR notes that the assignment of these sanctions was consistent with the District's Code of Conduct at 7:190 for the offenses committed by Student A and in some cases was less than what the policies allowed based on the circumstances unique to Student A. The discipline imposed was consistent with the provisions of Student A's IEP – specifically, Student A's IEP does not

restrict the District from suspending Student A and the BIP includes escalating discipline as a response to misconduct.

Additionally, OCR notes that, although Student A’s suspensions did not amount to a change in placement, the District nevertheless convened an IEP meeting after the XXXXXXX incident due to the concerns about Student A’s escalated and unsafe behaviors and the possible need for a change in Student A’s placement. Once the District received parental consent on XXXXXXX, the IEP team re-evaluated Student A, determined that Student A’s misbehavior was related to her disability, and subsequently changed her placement, to which Student A’s parent agreed. Accordingly, OCR determined that the evidence is insufficient to conclude that the suspensions amounted to discrimination based on disability as alleged.

Allegation 3

The Complainant alleged that the District subjected Student A to discrimination based on her disability when, XXXXXXX, District staff improperly placed her in seclusion, denied her permission to use the restroom, XXXXXXXXXXXXXXXXXXXXXXXX. The Complainant indicated that, to her knowledge, Student A had not threatened others, nor did Staff report to her that Student A was a danger to herself.

The Principal, Assistant Principal, and other members of the SCM team assigned to monitor Student A while she was in the intervention room were trained on proper methods for restraint and seclusion. While Student A had an IEP and BIP that provided for special education and related services, which included both positive and restrictive behavioral interventions, OCR the evidence is not clear as to whether Student A’s IEP included monitored separation of Student A in the intervention room. Student A’s BIP included the use of “physical management” if Student A “becomes a danger to herself, others, or school property,” but does not directly provide for use of the intervention room.

The evidence reviewed to date indicates that, on XXXXXXX, Student A engaged in behavior that staff believed placed Student A in imminent risk of harming herself and that District staff tried a variety of intervention techniques, including the interventions and supports contained in Student A’s BIP to deescalate Student A’s behavior before making the decision to transport Student A to the intervention room. Despite these efforts, Student A’s behavior continued to escalate and District staff determined that seclusion in a safe room was necessary to prevent Student A from continuing to engage in behavior that was harmful to Student A and staff. Staff asserted that they monitored Student A throughout her time in the intervention room.

OCR noted potential concerns in the District’s handling of the XXXXXXX seclusion of Student A. More specifically, Student A was placed in the intervention room for a long period of time (approximately 53-60 minutes) and the documentation did not appear to support the District’s decision to return Student A to the intervention room following her use of the restroom (*i.e.*, that it was necessary to do so because she posed or continued to pose an imminent danger of serious harm to herself as opposed to continued inappropriate conduct).

While Student A was permitted to use the restroom several times XXXXXXXXXXXXXXXXXXXX. Student A engaged in inappropriate conduct during previous trips to the restroom, and District staff asked her to calm down before they would let her go the bathroom again. It is unclear whether it was necessary to delay a return trip to the bathroom.

The parties agree that the District immediately notified the parent of the use of restraint and seclusion. Written and verbal notice to the Complainant is documented in the incident reports dated XXXXXXXX (verbal notice on XXXX written notice given on XXXX). The incident report also included a plan for dealing with Student A's behavior in the future, including convening an IEP meeting. The meeting was held and Student A's placement was changed on XXXXXXXX days after the XXXXXXXX incident and prior to Student A's return to school from her suspension.

The District advised OCR that it wished to resolve this allegation pursuant to Section 302 of OCR's *CPM*. OCR has determined that it is appropriate to resolve this allegation at this juncture because OCR's investigation has not proceeded to a point where a finding is clear. OCR would need to view the intervention room and locking mechanism on door to the room, and gather additional data and interview District staff regarding the use of seclusion with other students, including nondisabled students, in order to determine if Student A was subjected to different treatment or otherwise subjected to discrimination on the basis of disability.

Overall Conclusion

For the foregoing reasons, OCR finds insufficient evidence to conclude that the District violated Section 504 and Title II with respect to Allegations 1 and 2. The District requested to resolve Allegation 3 pursuant to Section 302 of the *CPM* prior to the conclusion of OCR's investigation. The enclosed Agreement is fully aligned with Allegation 3, and requires the District to take the following actions:

- review and revise the District's policies regarding the use of restraint and seclusion to ensure that the District's restraint and seclusion policies are equitable to students with disabilities and that staff use appropriate restraint and seclusion techniques, including appropriately documenting incidents of restraint and seclusion;
- provide training on the District's policies regarding the use of restraint and seclusion to all administrators and staff responsible for implementing the District's policies, as well as to all staff members responsible for developing Individual Education Plans (IEPs) and Section 504 plans for students in the District; and
- send a written offer to the parent to convene an IEP meeting to determine whether compensatory services are necessary to address any lingering negative effects Student A experienced because of the incident.

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. OCR will monitor the Agreement to ensure compliance.

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 finds 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.

If you have any questions, please contact Ms. Sandra L. Garcia, Senior, Equal Opportunity Specialist, at 312-730-1580 or by email at Sandra.L.Garcia@ed.gov or Melissa Howard, Attorney Advisor, at 312-730-1527 or Melissa.Howard@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure