



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

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN**

April 14, 2017

Dr. Aldo Sicoli  
Superintendent  
Roseville Area School District #623  
1251 W. County Rd. B-2  
Roseville, MN 55113

Re: OCR #05-17-1014  
Roseville Area School District #623

Dear Dr. Sicoli:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Roseville Area School District #623 (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged the District discriminated against her son (Student A) on the basis of disability (Autism Spectrum Disorder) when, during the 2015-2016 school year, Student A's special education teacher (Teacher A) and a special education aide/paraprofessional (Aide A) at the District's Emmet D. Williams Elementary School (School) bullied and harassed Student A on the basis of disability and the School failed to adequately respond to such bullying and harassment.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance (FFA). OCR is responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR reviewed documents provided by the District and the Complainant and interviewed three District employees and the Complainant. Based on its analysis of the relevant evidence in the case, OCR found sufficient evidence to conclude that the District failed to comply with the regulations implementing Section 504. Specifically, OCR found sufficient evidence, using a preponderance of the evidence standard, that the District failed to respond adequately to the complaint that Student A was harassed based on disability. The District has agreed to resolve the issue of non-compliance by executing the enclosed Resolution Agreement.

The applicable legal standards, a summary of the facts gathered during the investigation, and the reasons for OCR's determination are summarized below.

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

### **Legal Standard**

The Section 504 implementing regulation, 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, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives FFA. Disability harassment<sup>1</sup> is a form of discrimination prohibited by Section 504. Both the Section 504 regulations<sup>2</sup> and the Title II regulations<sup>3</sup> require a recipient such as the District<sup>4</sup> to adopt and publish grievance procedures that include appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination.<sup>5</sup> OCR examines a number of factors in evaluating whether a school district's grievance procedures are prompt and equitable, including whether the procedures provide for notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; and adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, designated and reasonably prompt timeframes for major stages of the complaint process, notice to the parties of the outcome of the complaint, and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Section 504 also generally requires that recipients of FFA provide students with disabilities equal educational opportunities. Among other things, recipients must ensure that students with disabilities receive a free appropriate public education, which is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain requirements concerning educational setting, evaluation, placement, and procedural safeguards.

If a school district determines that harassment of a student on the basis of disability limited or denied a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. The responsibility to respond to disability harassment includes taking prompt and effective action reasonably calculated to end the harassment, eliminate any hostile environment that was created, prevent the

---

<sup>1</sup> Disability harassment under Section 504 is intimidation or abusive behavior toward a student on the basis of disability that creates a hostile environment by interfering with or denying the 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, name-calling, and bullying, as well as nonverbal behavior such as graphic and written statements or conduct that is physically threatening, harmful, or humiliating.

<sup>2</sup> 34 C.F.R. § 104.7(b).

<sup>3</sup> 28 C.F.R. § 35.107(b).

<sup>4</sup> The relevant Section 504 regulation applies to all recipients of FFA employing 15 or more persons. The Title II regulations apply to a public entity employing 50 or more persons.

<sup>5</sup> 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 raised in this complaint do not provide greater protection than the applicable Section 504 regulations and has, therefore, applied the relevant Section 504 standards in its analysis of this complaint.

harassment from recurring and, where appropriate, remedy the effects on the student who was harassed. Moreover, if a district determines that harassment—even harassment that is not “on the basis of” or “based on” the student’s disability—causes a hostile environment and affects a student’s receipt of a free appropriate public education, the school district must remedy the harassment.

### **Background**

The District is an elementary and secondary school district in suburban Ramsey County, Minnesota. It serves approximately 7,500 students in grades kindergarten through twelve.<sup>6</sup> The School is an elementary school with approximately 500 students in grades kindergarten through six.<sup>7</sup>

Student A was a student at the School from XXXXXXXXXXXX, when he was in XXXXXXXXXXXX, and XXXXXXXXXXXXXXXXXXXX from the school and matriculated to the District’s middle school, Roseville Area Middle School. He has received special education services under an Individualized Education Program (IEP) for XXXXXXXXXXXXXXXXXXXX continuously since his enrollment in the District.

### **Relevant District Policies and Procedures**

The District’s School Board Policy 104, *Equal Employment Non-Discrimination Policy*,<sup>8</sup> states that the District does not discriminate against students based on disability.<sup>9</sup> Policy 104 also states that the District will provide a means for the prompt and equitable resolution of complaints alleging disability discrimination.

School Board Policy 416, *Harassment and Violence*,<sup>10</sup> prohibits any pupil, teacher, administrator, or other school personnel of the District from harassing a pupil, teacher, administrator, or other school personnel through conduct or communication based on a person’s disability. The policy defines “harassment” and “disability,” and indicates that the District will act to investigate all complaints of disability harassment and discipline or take appropriate action against any pupil, teacher, administrator, or other school personnel found to have violated the policy.<sup>11</sup>

---

<sup>6</sup> <https://www.isd623.org/about-our-district>.

<sup>7</sup> <https://www.isd623.org/school/emmet-d-williams-elementary>.

<sup>8</sup> <https://www.isd623.org/sites/isd623.org/files/SBPolicy104PEqualEmp.pdf>.

<sup>9</sup> Policy 104 and the other policies and procedures addressed in this section also address protected classifications other than disability, such as race, color, creed, religion, national origin, sex, and gender, and prohibited conduct other than harassment, such as violence. Because this complaint addresses only disability harassment, the portions of the policies and procedures that address other factors are not addressed in this letter.

<sup>10</sup> <https://www.isd623.org/sites/isd623.org/files/SBPolicy416PHarassViol.pdf>

<sup>11</sup> Another School Board policy, Policy 508, *Bullying Prohibition*, also purports to govern pupil-on-pupil disability harassment (bullying) in at least some cases. The policy can be found online at <https://www.isd623.org/sites/isd623.org/files/SBPolicy508PBullying.pdf>. Because the instant complaint

Policy 416 provides that any person who believes he, she, or a third party has been the victim of disability harassment should report the alleged acts immediately to the relevant school building principal, although reports also may be made directly to the District Human Rights Officer (HRO) or to the Superintendent. The policy states that both oral and written complaints will be considered, and identifies the locations where report forms may be found. The policy provides that any adult District employee who receives a report of harassment must inform the building principal as soon as possible, and includes a prohibition against retaliation against any person who files a complaint under the policy.

When a building principal receives a complaint that an employee has harassed a student on the basis of disability, Policy 416 requires the principal to notify a District HRO immediately (within 72 hours for an oral report), without investigating the report first. Upon receipt of a report of alleged disability harassment, the Human Rights Officer must immediately undertake or authorize an investigation, which may be conducted by the District or a third party designee. Policy 416 authorizes the District to take immediate steps, at its discretion, to protect the complainant or others pending completion of an investigation of alleged harassment or violence prohibited by the policy.

When an investigation is complete, Policy 416 requires the HRO to make a written report to the Superintendent, who then forwards the report to the School Board. Upon receipt, the School Board will take appropriate action, which Policy 416 states may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. The policy provides that the result of the District's investigation of each complaint will be reported in writing to the complainant by the District.

In Policy 416, the School Board designates to the administration the responsibility to appoint the District's HROs, and the District reported to OCR that three District administrators serve as its HROs. Policy 416 requires the District to post the names of the HROs, including mailing addresses and telephone numbers, conspicuously in each school building in areas accessible to students and staff members. The policy also requires administration to provide each District employee a copy of Policy 416 when entering into an employment contract with the District, to publish the policy in a student rights and responsibility policy book and include an abbreviated version in student handbooks, and to otherwise communicate the policy to students, families, and employees. OCR confirmed that the District regularly includes the names and telephone numbers for HROs in its District newsletter, *623 Today*, which is available on its website.<sup>12</sup> In its review of the School's Student Handbook, which is available on the School's website,<sup>13</sup> OCR found no mention of the relevant District policies

---

involves only claims of employee-on-student harassment, OCR has not addressed any confusion that may arise regarding which policy—Policy 508 or Policy 516—governs in the case of pupil-on-pupil harassment.

<sup>12</sup> OCR reviewed the most recent version of *623 Today* online at <https://www.isd623.org/content/623-today>, as well as a number of archived versions, and each contained the names and telephone numbers of some District HROs, but no other contact information (e.g., mailing address, e-mail address).

<sup>13</sup> [https://www.isd623.org/sites/isd623.org/files/field\\_file/EDW%20Family%20Handbook%202016-17.pdf](https://www.isd623.org/sites/isd623.org/files/field_file/EDW%20Family%20Handbook%202016-17.pdf).

prohibiting disability-based discrimination. OCR confirmed, however, that the District's School Board Policies are available on its website.<sup>14</sup>

### **Factual Summary**

During the 2015-2016 school year, Student A spent most of his day in one of the School's regular education XXXXXXXXXXXX classrooms, which was led by a regular education teacher (Teacher B). Student A spent approximately XXXXXXXXXXXX in a XXXXXXXX classroom led by a special education teacher who was also his special education case manager (Teacher A) and two special education aides (Aide A and Aide B).

According to the Complainant, Teacher A and Aide A regularly harassed Student A in the XXXXXXXX classroom during the 2016-2016 school year. Student A told the Complainant that Teacher A regularly yelled at him in class, including when he requested help on schoolwork, and that when he asked Teacher A for supplies or other things he needed in class, she would ignore him.<sup>15</sup> The Complainant also told OCR that Student A reported that Aide A regularly called Student A "a baby" and asked him how old he was in class in front of other students, and that those students would laugh at Student A. According to the Complainant, because of his disability, Student A does certain things  
XX.

When OCR asked for specific instances of or details about the harassment by Teacher A, the Complainant said that Student A reported to her the following incidents:

- In April 2016 Teacher A yelled in Student A's face "You cannot do nothing!" when Student A asked Teacher A for help with schoolwork.
- Also in April 2016, Teacher A ripped tape off of a box, which Student A reported bothered his sensory issues related to sounds/noises. When Student A asked Teacher A to stop, she stared at him and hissed at him through her teeth.
- Also in April 2016, Teacher A forbade Student A from talking to a "Black lady" from the District at an upcoming IEP meeting. The Complainant identified the "Black lady" as the District's Student Services Supervisor (Supervisor) who had attended previous IEP meetings for Student A. The Complainant told OCR she believes that, because the IEP meetings typically involved discussion about whether staff were complying with Student A's IEP, Teacher A did not want Student A to tell the Supervisor and the IEP team that Teacher A was not properly implementing Student A's IEP. According to the Complainant, at the next IEP meeting, Student A was silent and kept his head down for most of the meeting. The Complainant said that when she

---

<sup>14</sup> <https://www.isd623.org/our-district/school-board/district-623-policies>.

<sup>15</sup> The Complainant reported that when she asked Student A for more details about what Teacher A specifically denied him, he told her that he did not want to talk about it.

asked Student A why, he said Teacher A was always staring at him during the meetings, which the Complainant believes was another attempt to intimidate Student A into remaining silent. The Complainant told OCR that Student A displayed this behavior at the April 26 IEP meeting and at the May IEP meeting. The Complainant said the Supervisor attended the May meeting. The Complainant reported that the Supervisor was upset when the Complainant said that Teacher A told Student A not to speak with her.

The Complainant reported that she regularly called Teacher A and the School Principal to report the alleged harassing conduct by Teacher A. She said she confronted Teacher A specifically about telling Student A not to talk to the District representative at IEP meetings, and that Teacher A stated that she did not recall giving Student A that direction. Teacher A and the Principal denied speaking to the Complainant about any allegedly harassing conduct by Teacher A prior to April 26, 2016, when, as discussed below, the Complainant raised certain issues about Teacher A and Aide A in a meeting at the School.

- Aide A

On April 25, 2016, Teacher A was absent, and Aide A and Aide B were overseeing the XXXXXXXX classroom. Aide A said Student A asked if he could retrieve his “fidget” toy from the regular education classroom. Although the XXXXXXXX room had age- and school-appropriate fidget toys available for students to use, and although Student A regularly used the classrooms fidgets when he needed one, Aide A agreed to allow Student A to retrieve his fidget from the other classroom.<sup>16</sup>

According to the Aide, Student A returned to the classroom with a plastic zipper storage bag with multiple toy dinosaurs inside, which the Aide reported is not a school-appropriate fidget. The Complainant disputes that Student A had a bag of toy dinosaurs; she said he had a plush lizard with beading that he previously used as a fidget in Teacher A’s class. Teacher A, who said she saw the proposed fidgets later, agreed that Student A had “several dinosaurs,” that they were larger and more numerous than what she would generally allow in the classroom as a fidget, and that the dinosaurs were more akin to toys than fidgets.

Aide A told OCR that he asked Student A “How old are we?” and “Are those fidgets?” in an effort to suggest that Student A was too old to be playing with toys in the classroom and that the dinosaurs were toys, not fidgets. Aide A told OCR he then explicitly told Student A that the dinosaurs were toys and not fidgets and directed Student A to put the dinosaurs away. According to Aide A, although there were other students in the classroom at the time, no one reacted to anything Aide A said to Student A about his age or the fidgets.

---

<sup>16</sup> Aide A explained that a fidget is a small toy that is intended to be out of sight but that the student can play with in his hands. Complainant and District staff explained that a fidget is a self-regulation tool that helps the student focus and remain calm in the classroom and helps with sensory concerns.

According to both the Complainant and Aide A, Student A had his cellphone in class on April 25, and called the Complainant, although their accounts of the timing of the phone call differ. Aide A told OCR that Student A called his mother after Aide A told him to put away the dinosaurs, and told her he did not like the way that Aide A commented on his age. According to Aide A, he spoke with the Complainant on Student A's cell phone at that time, explained that Student A had toys, not fidgets, and stated that Student A could not have the toys in class. In contrast, the Complainant reported that when Student A called her, she overheard Aide A saying over and over to Student A "how old are you," and that she could hear Aide A and other students laughing in the background. She said she then spoke to the Aide on Student A's cell phone about what she had heard. Both Aide A and the Complainant told OCR, however, that during the phone conversation, Aide A apologized for making a comment about Student A's age.

The Complainant told OCR she contacted both Teacher A and the Principal on April 25 or 26 to express concern about Aide A's comments. Teacher A recalls speaking with the Complainant, but the Principal reported that he learned about the claims about Aide A from Teacher A, not from the Complainant. According to the Principal and Aide A, the Principal spoke to Aide A about the incident and Aide A walked the Principal through what occurred. Aide A admitted to making a comment about Student A's age and reported that he had apologized to both Student A and the Complainant immediately following the incident.

The Principal reported to OCR that he believed Aide A's comments to Student A were inappropriate because he used a somewhat sarcastic tone with Student A. The Principal told OCR he followed the District's disciplinary policy, which calls for a verbal warning that is not noted in an employee's files for first instances of minor behavior. The Principal stated that Aide A had no prior, similar incidents with students that might have justified a heightened sanction. The Principal also reported that Aide A has not received any other complaints from parents or students since the incident.

- *Police Report and Subsequent Meeting*

According to the Complainant, the incident with Aide A on April 25 was the "last straw;" she decided to file a police report with the Ramsey County Sherriff's Department in addition to notifying the School of what Student A said occurred.<sup>17</sup> Police representatives, the Complainant, Student A, the Complainant's advocate, the Principal, Teacher A, and Aide A met at the School on April 26, 2016, to discuss the Complainant's concerns. The Complainant told OCR that, at the meeting, she raised concerns about Aide A's humiliation of Student A regarding the fidgets and about Teacher A yelling at Student A, ripping tape off a box to aggravate Student A's sensory issues, and telling Student A not to talk to the District

---

<sup>17</sup> OCR requested a copy of the police report from the Complainant and the District. The Complainant indicated that she would provide a copy, but one was not provided by the date of this letter. The District reported that it did not maintain a copy of the police report.

representative at IEP meetings.<sup>18</sup> District staff reported to OCR that, at the meeting, the Complainant expressed her concerns with Aide A's humiliating comment about the fidgets on April 25, but also, for the first time, reported that Teacher A yelled at Student A in class and that Aide A purchased shoes for student A as a bribe.<sup>19</sup>

The Principal told OCR that the group discussed the age comment at length during the meeting, and that the Principal acknowledged during the meeting that the comment Aide A made was not an appropriate way for a staff member to address a student. Aide A also told OCR he apologized to the Complainant and Student A at the meeting. The District witnesses said they touched on the other two issues the Complainant raised.

With respect to Teacher A yelling, the Principal and Teacher A both told OCR that the concern the Complainant raised was that Student A was bothered by the stern voice Teacher A used with him, but that the Complainant did not specify if it was Teacher A's voice level or tone that bothered Student A or describe any specific instances of Teacher A yelling at Student A. Teacher A told OCR that she explained at the meeting that she at times uses a stern voice with all of her students but never yelled at Student A or any other student. Aide A agreed.<sup>20</sup>

With respect to the shoe issue, Aide A and Teacher A both told OCR that the Complainant expressed her concern at the April 26 meeting that no one had obtained her permission to purchase Student A shoes, which she perceived as disrespectful. According to Aide A and Teacher A, the District staff explained to the Complainant at the meeting that the shoes were purchased out of safety concerns. The Complainant said they did not discuss the shoes at the April 26 meeting.

The Principal reported to OCR that at the end of the meeting the police asked the Complainant to write down her concerns and provide them to the Principal. The Principal said the Complainant never provided him with a written summary of her concerns. No further action was taken by the police department regarding the Complainant's concerns.

---

<sup>18</sup> The Complainant at first told OCR that she did not report that the Teacher directed Student A not to talk to the "Black lady" at IEP meetings during the April 26, 2016 meeting. She initially told OCR that she first reported this alleged conduct to the Principal in May.

<sup>19</sup> The Complainant told OCR that when she spoke to Student A later about the incident with Aide A on April 25, 2016, he told her that when he told Aide A that he was going to report Aide A's comment about his age to the Complainant, Aide A attempted to bribe Student A by offering to purchase him a pair of shoes. Although the District admits that Aide A, with the authorization of the School Principal, used School funds to purchase shoes for Student A, Aide A told OCR that the motivation for the purchase was that Student A's sole was coming off of his shoe and Aide A believed it was a safety hazard. Because the aide understood that, at the time of the purchase, the Complainant was hospitalized, he requested to purchase the shoes for Student A. Both Teacher A and Aide A reported to OCR that the School authorizes similar purchases for other students approximately three times per school year.

<sup>20</sup> The Complainant raised the yelling issue again at an IEP meeting for Student A held on May 19, 2016. The Principal told OCR that, at the May 19 meeting, Teacher A explained that when Student A heard something he did not like, such as directions to complete work, he would say that Teacher A was yelling at him.

- District Investigation of Claims Raised on April 26

The Principal said that he felt that he had addressed most of the Complainant's concerns adequately during the April 26 meeting, but that he conducted an investigation pursuant to the District's policies and procedures generally governing employee discipline and bullying to address the Complainant's claims that Teacher A yelled at Student A and that Aide A humiliated Student A regarding the fidgets on April 25. The Principal said his investigation consisted of interviews with Teacher A, Aide A, Aide B, Student A, and three other students in the XXXXXXXX classroom. The Principal found insufficient evidence that Teacher A or Aide A harassed or bullied Student A, and memorialized his findings in a Prior Written Notice (PWN) to the Complainant dated May 20, 2016.<sup>21</sup>

- Complaint About Teacher B

On April 29, 2016, the Complainant contacted the Principal by telephone and notified him that Teacher B, Student A's general education classroom teacher, had engaged in some inappropriate conduct with respect to Student A. She was not aware of the specific details, but was concerned. Upon investigating this matter, the Principal found that Teacher B had called Student A "lazy" when he would not get up to sharpen his pencil so that he could complete a writing task. According to the Principal and the Complainant, Teacher B apologized to Student B prior to the Complainant reporting her concerns to the Principal.

The Principal told OCR that he again investigated this complaint at the building level by speaking with Teacher B and Student A. Teacher B reported that he had stated Student A was demonstrating lazy behavior, not that Student A was lazy. The Principal determined that no further action was required regarding Teacher B's comment. The Complainant confirmed that the Principal reported back to her about this finding in May.

On May 9, 2016, the Principal's communication log indicates that the Complainant reported that Student A was not feeling safe at school, and again claimed that "staff" was bullying Student A. The Complainant referred to Teacher A calling Student A "lazy" in her communication with the Principal. Although the log references that the Principal investigated complaints of student-on-student bullying that the Complainant raised during the

---

<sup>21</sup> The PWN was the result of the May 19, 2016 IEP meeting, which was held at the Complainant's request to discuss changing Student A's case manager from Teacher A to another staff member and eliminating the requirement that the Principal be an intermediary between the Complainant and School staff. The PWN states, "Two specific incidents were reported by the parent as bullying by a staff member. The first incident was an interaction with [Aide A] where the adult said to [Student A] "how old are you". This was acknowledged by [Aide A] as inappropriate and [Student A] was offered an apology at that time as well as in person on the 26<sup>th</sup> of April. The second incident that [the Complainant] reported was that [Teacher A] yells at him. [Student A] was interviewed about this and could not produce a time. No other individual reported that [Student A] was yelled at by [Teacher A]. [Teacher A] shared with [Student A], [the Complainant] and others at the meeting on April 26<sup>th</sup> that she will raise her voice to give direction when necessary but at no time did that include yelling at [Student A]. . . . Each of these areas was investigated and there was found to be no violation of the IEP nor any behaviors that rose to a level of concern."

conversation, there is no evidence that the Principal further investigated or spoke to the Complainant about her claims of bullying by staff.

- May 9, 2016 Meeting with HRO

The Principal told OCR that he never understood the Complainant's complaints to be complaints of discrimination based on disability, and so he did not address the complaints as implicating Policy 416. As noted previously, that policy requires escalation of complaints to the District's HRO without investigation by the building principal. The Principal instead completed each investigation of the Complainant's complaints as a bullying investigation against an employee, if he deemed it necessary based on the issues she raised.<sup>22</sup> The Principal said he kept his supervisor, an Assistant Superintendent who is also an HRO (Assistant Superintendent/HRO), informally apprised of his communications with the Complainant.

The Assistant Superintendent/HRO met with the Complainant and the Student on May 9, 2016, to address her concerns. The Assistant Superintendent/HRO's written statement memorialized the May 9, 2016 meeting. The written statement says that the Complainant raised a number of issues, including that Teacher A yells at Student A, that Teacher A lies to Student A about communications she has had with the Complainant and other staff members and blocks his communications with other staff members, that Teacher B called Student A lazy in front of the class, and that Student A was coming home with multiple bandages from biting and tearing at his skin. According to the Assistant Superintendent/HRO's written statement, the Complainant reported that Student A cries a lot and is very emotional, and that he has attempted suicide. The Complainant also reported that she did not believe the Principal was doing what he was supposed to be doing in response to her complaints.

After the meeting, the Assistant Superintendent/HRO met with the Principal to understand what had been done at the building level about the Complainant's concerns. According to the Assistant Superintendent/HRO's written statement, he determined that the Principal had already heard and either addressed or deemed unsubstantiated most of the Complainant's complaints through an investigation at the building level. The Superintendent/HRO asked the Principal to connect with the family on a couple of concerns the Complainant raised that had not yet been addressed. This included the concern that Teacher A told Student A not to talk to the "Black lady" during IEP meetings. The Principal told OCR that because the Complainant did not specifically identify this concern as an incident of bullying or harassment by Teacher A, he did not take any further action on that complaint.<sup>23</sup>

---

<sup>22</sup> If the Complainant raised an issue that the Principal had already investigated and reported back to the Complainant about, he did not conduct any additional investigation.

<sup>23</sup> Teacher A reported to OCR that she recalled one instance during the 2015-2016 school year when the Supervisor was at the School and Student A saw the Supervisor and commented to Teacher A that the Complainant was friends with the Supervisor and they had attended school together. Teacher A told OCR that she did not tell Student A not to communicate with the Supervisor or with a "black lady".

- *Impact on Student A and the Complainant*

According to the Complainant, because of the harassment, Student A did not want to go to school and, when he went to school, he would go into another teacher's classroom to avoid going to the XXXXXXXX room (where Teacher A and Aide A worked). The Complainant also reported noticing an uptick in the number of times that Student A was sent home with bandages on his fingers from biting or picking at his fingers until they bled, which he does when he is anxious.<sup>24</sup>

OCR reviewed the attendance records for Student A for the 2015-2016 school year. Student A was absent for eight full days and three partial days and was tardy on eleven days during the first seven months of the school year. For the two months of the school year after the April 25, 2016 incident, Student A was absent for seven full days and three partial days, and was tardy twice.

- *MDE Complaint*

The Complainant filed a complaint with the Minnesota Department of Education (MDE) in June 2016. Although the complaint included allegations of bullying by Aide A, the MDE investigation focused on the Complainant's student-on-student bullying allegations. The MDE conducted an investigation, which included written questions to the Principal, Teacher A, the HRO, and other relevant staff. The District provided OCR with copies of the documentation it submitted to MDE during its investigation, including staff responses to questions and the MDE's findings.

By letter dated August 11, 2016, the MDE issued a decision letter to the District and the Complainant. The MDE determined that the District was not in violation of Minnesota law, as there were no substantiated incidents of student-on-student bullying that materially and substantially interfered with Student A's educational opportunities or performance or ability to participate in school functions or activities or receive school benefits, services, or privileges during the 2015-2016 school year. The MDE determined Student A continued to make adequate progress on all IEP goals throughout the school year and his report card noted that Student A was usually physically and verbally appropriate.

**Analysis**

The Complainant alleged the District discriminated against Student A when, during the 2015-2016 school year, School staff bullied and harassed Student A on the basis of disability and the School failed to respond adequately. Based on OCR's careful review of the evidence, there is sufficient support a finding of noncompliance regarding the District's investigatory response to the Complainant's allegations of disability harassment.

---

The Complainant alerted School- and District-level administrators on multiple occasions to various instances of misconduct by School staff that were closely tied to the outward characteristics of Student A's disability. The evidence shows that Student A was a student with an IEP, whose disability impacted his capacity and drive to complete schoolwork and other tasks and led him to act in a childlike manner at times. The Complainant persistently reported that School staff harassed Student A, including specifically Student A's special education teacher and special education aide in the XXXXXXXXXXXXXXXX classroom. The reported harassment included forceful comments that Student A could not do anything, a teacher calling Student A "lazy," and an aide mocking Student A for being childlike in front of other students. The conduct exhibited by Student A, for which School staff verbally attacked him, was a manifestation of his disability. The Complainant also reported to administration that School staff attempted to prevent Student A from reporting the allegedly harassing behavior by directing him not to speak to certain District staff and by attempting to bribe Student A with new shoes.

Although the Complainant never specifically uttered "disability harassment," parents and students are not required to use any particular "magic words" to invoke a school district's duty to respond to a complaint of disability harassment. If a complainant provides information of some kind that alerts a school district to a possible connection between harassment and a student's disability, it is sufficient to implicate the responsibilities required by Section 504 and Title II. Here, Student A's status as a student with a disability, the nature of the alleged harassment, Student A's conduct that School staff criticized, and the location and alleged perpetrators, were sufficient to put the School and District on notice that the alleged harassment was disability related.

Despite the Complainant's reports and the fact that the District has a policy, School Board Policy 416, that on its face meets OCR's standards for a prompt and equitable grievance procedure, the District's investigation of the Complainant's concerns did not comply with Section 504 and Title II. Rather than using Policy 416, the Principal informally investigated the Complainant's claims at the building level using policies and procedures governing employment and bullying that do not contain the requisite protections required by the Section 504 and Title II regulations. Moreover, the alternate procedure the District used and the actual investigation by and findings of the Principal were not sufficient to discharge the District's duty to provide the Complainant with a prompt and equitable investigation of her disability harassment allegations. There was no notice to the Complainant as to the process that would be followed for the investigation, no guidelines regarding the adequacy, reliability, or impartiality of the investigation, no timeframes for major stages of the process, no written determination provided to the Complainant, and no explicit protection against retaliation or notice of any right to appeal—all of which are required by Section 504 and Title II.

OCR's investigation established that the Principal interviewed a few staff members and students regarding some of the alleged claims, but there is no evidence that he conducted

Dr. Sicoli - Page 13

April 14, 2017

05-17-1014

even the relatively modest amount of investigation into the Complainant's other claims that would be expected based on their nature. Although the Principal verbally reported the outcome of his informal investigation to the Complainant and referenced his findings on two of the issues in the PWN issued to the Complainant on May 20, 2016, such notice was not sufficient under either relevant law or District policy. Furthermore, the Complainant was not afforded the due process rights guaranteed by Policy 416, including an investigation by the HRO or his authorized designee, immediate steps to eliminate any harassment, and consideration of her complaints by the School Board.

Based on the foregoing, OCR found sufficient evidence to conclude that the District failed to respond adequately to the Complainant's reports that School staff harassed Student A on the basis of disability.

On April 14, 2017, the District executed the enclosed Resolution Agreement, which when fully implemented, will resolve the compliance concerns identified by OCR during its investigation of this complaint. The provisions of the Resolution Agreement are aligned with the issues raised in this complaint and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the District's implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. It should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed herein. 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.

Dr. Sicoli - Page 14  
April 14, 2017  
05-17-1014

OCR would like to thank Laura Booth, Attorney, for her assistance during OCR's investigation. If you have any questions, please contact Jackie Wernz at (312) 730-1486 or by email at [jacqueline.wernz@ed.gov](mailto:jacqueline.wernz@ed.gov).

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

Enclosure

cc: Laura Tubbs Booth  
Managing Partner, Attorney  
Booth Law Group LLC