



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

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

November 27, 2017

Dr. Jeffrey M. Schatz  
Superintendent  
Fargo Public School District #1  
415 4<sup>th</sup> Street North  
Fargo, North Dakota 58102

*Via electronic mail only:* [campbeal@fargo.k12.nd.us](mailto:campbeal@fargo.k12.nd.us)

OCR # 05-17-1343

Dear Dr. Schatz:

This is to notify you of the disposition of the above-referenced complaint filed on May 31, 2017 with the U.S. Department of Education, Office for Civil Rights (OCR), against the Fargo Public School District #1's (District) Discovery Middle School (School) alleging discrimination against Student A on the basis of race (African American) and disability (major depressive disorder). Specifically, the complaint alleges that the District:

1. Discriminated against Student A based on race and disability when, from XXXXXXXX, it failed to evaluate Student A to determine his eligibility for special education and/or related aids and services and;
2. Discriminated against Student A on the basis of race when on XXXXXXXX, it charged Student A with truancy.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d – 2000d-7, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race by recipients of Federal financial assistance. OCR also enforces 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 and Title II prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the District, and interviewed the Complainant and relevant District staff. OCR determined, by a preponderance of the evidence, that the District discriminated against Student A based on disability when it failed to evaluate him to determine his eligibility for special education and/or related aids and services. OCR further determined that there is insufficient evidence to establish that the District discriminated against Student A based on race when it failed to evaluate him to determine his eligibility for special education and/or related aids and services and when it charged Student A with truancy. The reasons for OCR's determinations are set forth 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.

## **Applicable Legal Standards**

### ***Race Discrimination – Different Treatment***

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a), provides that no person shall, on the basis of race, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of a recipient. The Title VI regulation, at 34 C.F.R. § 100.3(b)(1)(ii), also prohibits a recipient, on the basis of race, from providing any service or other benefit to a student that is different, or from providing such service or benefit in a different manner than it is provided to other students.

In determining whether a recipient subjected a student to different treatment based on race, OCR considers whether there were any apparent differences in the treatment of similarly-situated students based on race. If this is established, OCR assesses the recipient's reason for any differences in treatment of similarly-situated students to determine whether the reasons are legitimate, non-discriminatory and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and procedures and whether there is any other evidence of discrimination based on race.

### ***Disability Discrimination***

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.

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 the Section 504 standards.

### ***Free Appropriate Public Education (FAPE)***

The Section 504 regulation, at 34 C.F.R. § 104.33, requires that school districts provide a free appropriate public education (FAPE) to each qualified student with a disability in the district's jurisdiction, regardless of the nature or severity of the person's disability. FAPE is defined, at 34 C.F.R. § 104.33(b)(1), as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and are based upon adherence to

procedures that satisfy the requirements of 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) or a Section 504 Plan is one means of meeting this standard.

### *Evaluation*

The Section 504 regulation, at 34 C.F.R. §104.35(a), requires that school districts evaluate any person who, because of disability, needs or is believed to need special education or related aids and services. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

While the Section 504 regulation requires districts to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district conducts the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by IDEA as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable.<sup>1</sup>

### *Procedural Safeguards*

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

## **Relevant District Policies and Procedures**

### *Non-Discrimination Statement*

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<sup>1</sup> The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Guidelines published by the North Dakota Department of Instruction likewise require districts to conduct and complete the team evaluation within 60 days from the date the parental consent to evaluate is received.

The District's Non-Discrimination Statement, which is available on the District's website,<sup>2</sup> provides that the District "fully and actively supports equal access for all people regardless of race, ... [and], disability...[and]...seek[s] to provide access to all its programs for those interested persons who might have differing levels of ability...[including] those with impaired vision and hearing loss."

### ***Special Education Procedural Handbook***

The District's Special Education Procedural Handbook (Handbook), which is generally available on the District's website,<sup>3</sup> states as follows in Section III:

The Fargo Special Education Unit assures that all children residing within its jurisdiction...regardless of the severity of their disability, and who are in need of special education and related services will be identified, located, and evaluated. This assurance extends to ...children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade.

Section IV of the Handbook adds that before conducting an evaluation of a child suspected of having a disability, the District has to "develop a student profile and, if additional information is needed, an assessment plan," and that once the evaluation is completed, the District will prepare an integrated written assessment report considering "all current and relevant data that has been gathered and reviewed to make eligibility determination decisions." This Section also states that the Fargo Special Education Unit follows the requirement for parental consent stated in the regulations at 34 C.F.R. § 300.300 for initial evaluations, services and reevaluations, and that prior to conducting the evaluation, the District "must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the school district proposes to conduct."<sup>4</sup>

### ***Attendance Policy and Procedures for Addressing Truancy***

The District's Attendance Policy, which is available on its website,<sup>5</sup> defines "truancy" as unexcused absences "from one or more classes without the consent of parents/guardians and or school officials." Truancy under the Policy also includes such behavior as "failure to report to the office after being sent there, leaving class without a teacher's permission, abuse

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[https://www.fargo.k12.nd.us/site/handlers/filedownload.ashx?moduleinstanceid=93&dataid=53&FileName=equal Opportunity Employer Statement.pdf](https://www.fargo.k12.nd.us/site/handlers/filedownload.ashx?moduleinstanceid=93&dataid=53&FileName=equal%20Opportunity%20Employer%20Statement.pdf)

<sup>3</sup> The Director of the District's Special Education/Student Support Services (Special Education Director) informed OCR that the Handbook is currently being revised and is therefore temporarily unavailable on the District's website.

<sup>4</sup> The Handbook incorrectly refers to the regulations as Section 504 implementing regulations when they are regulations implementing the IDEA.

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<https://www.fargo.k12.nd.us/cms/lib/ND01911460/Centricity/domain/53/policies/student/AP%206220%20Student%20Attendance.pdf>

of pass usage, failure to leave after checking out and failure to go to class upon return to school.”

The Attendance Policy describes three steps the District takes to address a student’s absenteeism and/or tardiness, whether excused or unexcused, that has become excessive. The first step (referred to as Tier 1) is reached when the student accrues 9 absences during the same school year, and it prompts the District to send a letter home, and a teacher/counselor to contact the family. The second step (referred to as “Tier 2”) is reached when the student accrues 13 absences or tardies during the same school year and it prompts the District to send a letter home, schedule a meeting with the parent/guardian, and take interventions in the Multi-Tier System of Support (MTSS). The third step (referred to as “Tier 3”) is reached when the student accrues 18 absences or tardies either during the same school year or during two consecutive school years if the student was at Tier 2 by the end of the prior school year. Upon reaching Tier 3 the District sends a letter home, and in some instances refers the case to the Student Attendance Review Board (SARB).<sup>6</sup> The SARB is comprised of school and community representatives who meet regularly to work cooperatively with students and families to address the factors that cause persistent school attendance concerns. Prior to referring a student to the SARB, the District asks the parent or guardian to sign a release of information form. If the family declines to sign the release, the District will refer the case directly to juvenile court or social services. Assistant Principal A serves as the District’s SARB contact. Assistant Principal A explained that a parent’s refusal to sign the release of information form is not the only reason for referring a case to juvenile court or social services. He explained that in certain cases, such as instances where a student has attendance as well as disciplinary problems, the District may refer the student directly to juvenile court or social services.

Assistant Principal A explained to OCR that once a student is referred to the SARB, a representative from the student’s school will present the student’s case at a SARB meeting by giving the panel background information about the student, describing the attendance concerns as well as the steps the school had taken to address those concerns, and requesting assistance from the SARB. Assistant Principal A explained that the SARB either offers suggestions for how the school might address the attendance issues, or refers the case to juvenile court or social services, for further support/services.

In the event a student referred to the SARB and/or his/her parents decline to work with the SARB and the student continues to be absent or tardy from school, the SARB will take the necessary steps to ensure enforcement of compulsory attendance laws.

If a student who transfers into the District had a negative attendance pattern while attending his/her prior district, the District will carry over the student’s attendance record from the prior district to address the attendance problems if they continue.

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<sup>6</sup> The District has a SARB Brochure, which is available to parents and students in each of the District’s schools. The SARB Brochure states that the District will refer students to the SARB when they have attendance problems that have not been resolved through the usual avenues of classroom, school, and District interventions.

## **Facts**

### ***Failure to Evaluate Student A***

On XXXXXXXX, the Complainant XXXXXXXX and enrolled Student A in the School. The Complainant alleges that the District discriminated against Student A based on his race and disability by failing to timely evaluate him for special education and/or related aids and services. She asserts that shortly after enrolling Student A in the School, she disclosed to the Principal that Student A has XXXXXXXX and was XXXXXXXX, and expressed her desire to have Student A evaluated for special education services. In response, the School Principal and Counselor discussed strategies to help Student A, but told the Complainant that it was too late in the school year to start the evaluation process to determine whether he required special education and/or related aids services. The Complainant asserts that the School did not provide their decision not to evaluate Student A in writing, did not request her consent to evaluate Student A and did not provide her with information about her right to file a due process complaint to challenge the School's decision not to evaluate Student A during the XXXXXXXX school year.

The School Principal informed OCR that she asked the Complainant upon enrollment whether Student A had received special education and/or related services at his prior school district and learned that he did not. The Principal denied to OCR that the Complainant disclosed that Student A had any disabilities or that she requested to have Student A evaluated for special education and/or related aids and services. Rather, the Principal asserts that the Complainant stated she was open to whatever the District decided to do regarding Student A's "placement." The documents produced by the District show, however, that shortly after Student A was enrolled in the District, his prior district, XXXXXXXX School District #1 (XXXXXXX), informed the District that they had requested approval from the Complainant to evaluate Student A for special education and/or related aids and services because of suspected XXXXXXXX, that the Complainant did not consent to have Student A evaluated, and that eventually XXXXXXXX placed Student A in a XXXXXXXX at his middle school for part of the day because he would walk out of class without permission and would not listen to authority. Additionally, notes from the Principal's files document that the Complainant indicated that she wanted Student A to participate in a program similar to the XXXXXXXX in which he was placed in his prior district and that she was "open to an IEP."

The Principal's notes further show that the Principal believed that it was too late in the school year<sup>7</sup> to complete Student A's evaluation to determine whether he qualified for an IEP. The District did not provide any evidence that the School either requested the Complainant's consent to evaluate Student A or provided her with notice of procedural safeguards, including her right to file a due process complaint. The Principal informed OCR that in consideration of all that it knew about Student A, including his history in XXXXXXXX, the District placed him in the Multi-Tiered System of Support (MTSS), which is a District-wide process to provide needed interventions for students and to observe them

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<sup>7</sup> The last day of school was June 4, 2017.

for about 4 to 6 weeks to determine whether the student needs to be evaluated for special education services.

OCR also interviewed the District's Special Education Director. She explained the District's policies and procedures regarding students who are referred to MTSS. She explained that when schools place a student on MTSS tier 2 or 3, they must "immediately begin the process of Child Find...[s]o the two events are concurrent" when there is a request to evaluate a student or when school staff suspect that the student may have a disability.

The District provided OCR data about students who were evaluated for special education and/or related aids and services during the 2015-2016 and 2016-2017 school years. The data show that 46 of the 79 students were evaluated within 10 days of their parent's request for an evaluation, and that 6 of those students were either African American or bi-racial (Caucasian/African American). Moreover, the data show that one of the 6 African American students who was evaluated attended Student A's school and was evaluated about one month before Student A XXXXXXXX into the District.

With respect to Student A's case, the Director of Special Education informed OCR that she indicated to the Principal that the District "might want to explore whether [Student A] had a disability based on the information we received from the previous school." Nevertheless, the School Principal stated Student A was not evaluated during the 2016-2017 school year because the MTSS team did not have enough data to determine whether he should be evaluated for special education services due to his absences. As of October 2017, the District informed OCR that it had not yet evaluated Student A, who was still under observation by MTSS team. Both the Principal and Assistant Principal denied that Student A was not evaluated for special education and services because of his race.

### ***Truancy Referral to Juvenile Court***

The Complainant also alleges that the District discriminated against Student A based on his race when it referred him to juvenile court after charging him with truancy. She acknowledged that Student A walked out of class without permission, but stated that he should not have been charged with truancy because he was not absent from School, he did not leave the building, and School staff always knew where he was because he either went to the Assistant Principal or the Counselor's office. The Complainant also took issue with the referral to juvenile court because she thought the School should have addressed Student A's absences through its disciplinary code, especially since Student A's behavior escalated after the District failed to evaluate him for special education and/or related aids and services to properly address his XXXXXXXX.

As noted above, XXXXXXXX informed the District that it placed Student A in a XXXXXXXX because he was frequently leaving class without permission. XXXXXXXX also informed the District that Student A had accrued 93 hours of unexcused absences and 2 tardies. Documentation from the District shows that Student A's attendance record was carried over from XXXXXXXX when he transferred into the District mid-school year. The School

Principal confirmed that this is the District's practice with respect to mid-year transfer students, and that it was justified in Student A's case because he had documented attendance problems in his prior district. The Principal also noted that XXXXXXXX had placed Student A in the "Stay in School" Program, a program intended to assess the barriers causing attendance problems for all students and to assist students and their families to meet school expectations regarding attendance.

Documents from the District show that within one month of enrolling at the School, Student A began leaving the classroom without permission and missing class. The District documented that by XXXXXXXX, Student A had been verbalizing that he felt overwhelmed with the large class sizes at the School and could not concentrate, and that when he felt overwhelmed he would walk out of the class and go to either the Assistant Principal's office or to the Counselor's office. In response to this behavior, the Complainant stated, and District documentation shows, that the District placed Student A in a separate setting for two class periods with a smaller class size during the day and kept him in physical education for an additional class period to help him with his XXXXXXXX, but he continued to struggle. Student A's attendance record shows that by XXXXXXXX he accumulated one tardy and had missed class 5 times, which, when added to his XXXXXXXX attendance record, totaled 18 absences and tardies, and prompted the District to send a Tier 3 letter to the Complainant. On XXXXXXXX, the Assistant Principal met with the Complainant to explain why Student A was placed on Tier 3, to explain the SARB process, and to request that she sign an attendance contract and authorization to disclose information form. The Complainant signed both documents.

Student A's attendance record shows that in the two weeks following the April 13<sup>th</sup> meeting, he missed class three more times and was late once. The Assistant Principal's notes indicate that he contacted the Complainant on XXXXXXXX, to inform her that Student A had been leaving the classroom without permission and that he and the Principal had discussed contacting the juvenile court to address Student A's absences. According to these notes, the Complainant responded that she was going to contact the school board to complain about the School's treatment of Student A. Other District documentation shows that on XXXXXXXX, the Assistant Principal communicated with a juvenile court officer about Student A's situation and that the officer asked the District to send Student A's attendance records and indicated that she wanted to take over the case. The Assistant Principal stated that he referred the case to the juvenile court shortly after his conversation with the juvenile court officer. He added that he and the Principal made this decision instead of referring the case to SARB because of the severity of Student A's situation. He explained that Student A was not only missing classes, but was also walking out of class without permission when he was in attendance, and when he was instructed to return to class, he would refuse to comply with the teacher's directions.

Data from the District shows that during the 2015-2016 and 2016-2017, the District referred the vast majority of students charged with truancy directly to juvenile court. A total of 120 students who were charged with truancy were referred directly to the juvenile court. Of these students 53 were Caucasian, 36 were African American (including Student A), 17 were

Native American, 3 were Asian, 2 were Hispanic and 7 were of an unspecified race. During the same period, only 19 students charged with truancy were not referred directly to juvenile court. 15 of these students were Caucasian, 3 were Native American and 1 was African American.

## **Analysis**

### ***Failure to Evaluate Student A- Race Discrimination***

OCR determined there is insufficient evidence to establish that the District discriminated against Student A based on his race by failing to evaluate him for special education and/or related aids and services as alleged by the Complainant. OCR first considered whether there was any apparent difference in the District's treatment of similarly situated students of other races who needed an evaluation for special education and/or related aids and services. The evidence established that the School failed to timely evaluate Student A for special education and/or related aids and services after the Complainant provided the District reason to suspect Student A was a student with a disability in need services, and after the School received information that his prior district suspected that Student A had a disability and needed to be evaluated. However, the evidence shows that the District evaluated similarly situated students of other races (as well as African American students) within 10 days following parental consent for an evaluation.

The evidence further indicates that the Districts' treatment of Student A was inconsistent with its usual practice of timely evaluations following parental consent. The District offered a variety of explanations for the delay (it was too late in the year, it did not have enough time/data to evaluate him and that Student A's parent did not request an evaluation). The evidence did not support the first two rationales and is disputed as to the third rationale. While OCR did not find the District's stated rationales for the delayed evaluation to be persuasive, it nonetheless determined that the stated reasons were not a pretext for race discrimination and there was no other evidence of race discrimination.

The data obtained by OCR suggests that the delay in evaluating Student A was not due to race as the District has timely evaluated African American students whose parents consented to an evaluation. OCR's investigation established that the District evaluated a total of 79 students during the 2015-2016 and 2016-2017 school years and that 46 of those students, or roughly 60%, were evaluated within 10 days or less after the District received consent. The District's data also shows that 6 of the 46 students were either African American or mixed-race, and that 1 of the 6 African American students attended the same school as Student A. Moreover, the Complainant did not point to any information, and OCR did not find any during its investigation, indicating that the failure to evaluate Student A was because of his race. Therefore, while the District failed to evaluate Student A despite the Complainant's statement that she was open to an IEP and despite all of the information from Student A's prior school district, OCR was unable to substantiate that the District's failure to evaluate Student A was based on his race. Consequently, OCR has determined there is insufficient evidence from which to conclude that the District discriminated against Student A based on

his race by failing to evaluate him as alleged and has closed this allegation effective the date of this letter.

***Truancy Referral to Juvenile Court- Race Discrimination***

Similarly, OCR concludes that there is insufficient evidence to establish that the District discriminated against Student A based on his race when it referred him to juvenile court after charging him with truancy.

OCR found no evidence that similarly situated students of any race who had as many truancy-related interventions as Student A (*i.e.*, letters and phone calls and meetings with parents regarding excessive absences and tardies) were not referred to juvenile court. The District did not follow its written procedures for a juvenile court referral with regards to Student A or many truant students of other races.

The District asserted to OCR that it referred Student A to the juvenile court officer because his absenteeism was escalating even after interventions. It is undisputed that Student A walked out of some of his classes without permission. The School documented that this was a continuation of behavior he exhibited in his prior district, where he had 93 hours of unexcused absences and 2 tardies, and had been placed in the “Stay in School” Program. Consistent with its asserted practice for transfer students, the District carried over Student A’s attendance record from XXXXXXXX. The evidence shows that within one month of enrolling in the District, Student A reached 18 total absences or tardies (when combined with his prior attendance record), prompting the District to place him in Tier 3 and to have a meeting with the Complainant to ask her to sign an attendance contract and the authorization to disclose information form for a possible referral to the SARB. Student A’s attendance record shows that after this meeting, his attendance did not improve and his behavior escalated because when he was instructed to return to class, he consistently refused to comply with the teacher’s directions. This caused the Principal and Assistant Principal to contact an officer of the juvenile court, who requested that the School refer Student A to the court, and the District ultimately referred Student A’s case to juvenile court in late XXXXXXXX.

The Complainant asserts that Student A, who did not leave the school and instead left class without permission to go to the Assistant Principal or Counselor’s office, should not have been charged with truancy, and asserts the District’s decision to do so was based on race. However, the District, as stated in its policy, defines “truancy” as unexcused absences “from one or more classes without the consent of parents/guardians and or school officials.” Documentation from the District shows that other students of different races than Student A were also charged with truancy merely for being late or missing one or more classes multiple times.

Although the District’s justification for contacting the juvenile court officer does not fully explain its failure to follow its procedures regarding truancy referrals (*i.e.*, failure to complete the SARB referral process prior to the juvenile court referral) OCR nonetheless

determined that the evidence is insufficient to establish that the District treated Student A differently based on his race, as the evidence showed that the District treated many students of other races in the same manner. Other than her assertion, the Complainant did not provide and OCR did not find any evidence showing that the School's decision to refer Student A's case to juvenile court instead of addressing his behavioral issues by evaluating him for special education and related services or through its disciplinary code was done because of his race.

For all these reasons, OCR has determined there is insufficient evidence from which to conclude that the District subjected the Complainant to discrimination based on his race by referring his truancy case to juvenile court.

#### ***Failure to Evaluate Student A- Disability Discrimination***

OCR concludes that the District discriminated against Student A based on disability when the School failed to evaluate him for special education and/or related aids and services. The evidence establishes that the Complainant expressed her desire to have the District evaluate Student A, and that the School had received credible and objective information from XXXXXXXX that Student A had a suspected disability and needed to be evaluated. Additionally, the District's Special Education Director explained that the School deviated from District practice that requires schools that place a student on MTSS tier 2 or 3 and for whom a parent has requested a special education evaluation or when school staff suspects that the student may have a disability to "immediately begin the process of Child Find," and not to wait weeks for the MTSS team to determine whether the student should be evaluated. More importantly, the Director stated that she indicated to the School that based on the information they received from XXXXXXXX, they needed to determine whether Student A had a disability and required special education and related services. However, despite District practice and the recommendation of the Special Education Director, the School had still not completed Student A's evaluation as late as XXXXXXXX. Lastly, OCR found no evidence that the School sought the Complainant's consent to evaluate Student A or provided her information about her right to file for due process to challenge the School's decision not to evaluate Student A during the 2016-2017 school year. Therefore, OCR finds that the District discriminated against Student A based on disability when the School failed to evaluate him for special education and/or related aids and services, in violation of Section 504 and Title II of the ADA.

#### **Resolution**

To resolve the above-described Section 504 and Title II compliance determination, the District entered into a resolution agreement (the Agreement) with OCR on November 7, 2017. Under the terms of the Agreement the District will, among other things:

1. Review and revise, if necessary, its Special Education Procedural Handbook to ensure the District will timely adhere to the identification, evaluation, placement and due process procedures in the regulation implementing Section 504, especially upon

- parental request or when it has reason to believe a student has a disability in need of special education or related services.
2. Provide training to all administrators, teachers, and relevant staff at the School who are responsible for the identification, evaluation, and placement of students with disabilities on the District's revised policies and procedures regarding the evaluation of a student who the District has reason to believe may be a student with a disability in need of special education or related services to ensure that the District provides a free and appropriate education (FAPE).
  3. Request the Complainant's consent in writing to conduct an initial evaluation of Student A to determine whether Student A is a student with a disability in need of special education or related services, and if the Complainant consents to an initial evaluation, to conduct the evaluation in accordance with District's Section 504 policies and procedures within 60 school days and provide the Complainant with a copy of the District's procedural safeguards, including information about her right to challenge the group's determination through an impartial due process hearing.
  4. In the event that the team finds Student A eligible for special education and/or related aids and services, and the Complainant provides consent to the provision of special education and related services, the team will determine what, if any, compensatory services are needed as a result of the School's failure to conduct an evaluation in March 2017, and in doing so consider whether Student A's grades, attendance and/or disciplinary records need to be modified to account for performance, attendance and/or conduct that resulted from the District's failure to timely evaluate Student A.

OCR will monitor the District's implementation of the Resolution Agreement until the District is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Resolution Agreement will address OCR's Section 504 and Title II compliance findings.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment. The Complainant may also file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives

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such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank you and the District for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Alonzo Rivas by phone at 312-730-1684, or by e-mail at [Alonzo.Rivas@ed.gov](mailto:Alonzo.Rivas@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure