



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
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TEXAS

October 12, 2017

Dr. Michael Hinojosa, Superintendent
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75201

Re: OCR Complaint No. 06151028

Dear Dr. Hinojosa:

This letter is to inform you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), based on its investigation of the above-referenced complaint filed against the Dallas Independent School District (DISD or the District), Dallas, Texas, which was received by OCR on October 14, 2014. The complainant alleged that DISD discriminated against her child (a Student) and retaliated against the Student and the complainant, on the basis of his disability (XXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXX). Specifically, the complainant alleged during the XXXX-XX school year, DISD discriminated against the Student on the basis of his disability, by denying him an appropriate public education when school officials at XXXXXX X. XXXXXXXXXs Elementary School (XXES) failed to provide the Student with services designed to meet his individual educational needs (Allegation 1) and failed to take appropriate action when notified that the Student was subjected to verbal and physical harassment (Allegation 2); and when school officials at XXES and XXXXXX XXXXXX Elementary School (XXES) disciplined the student for behaviors related to his disability (Allegation 3). The complainant also alleged during the XXXX-XX school year, DISD retaliated against her and the Student because the complainant sought to secure rights for the Student under Section 504, by transferring the Student from XXES to XXES without the complainant's permission after she identified herself and the Student as XXXXXXXX (Allegation 4a); by failing to provide the complainant with copies of the Student's educational records after the complainant requested copies (Allegation 4b); and releasing the Student's educational records to a third party without the complainant's consent (Allegation 4c).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12132 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit disability discrimination by public entities. Moreover, the regulation implementing Section 504 at 34 C.F.R. § 104.61 incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, which provides that:

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

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by [regulations enforced by OCR] or because [one] has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part.

Title II at 28 C.F.R. § 35.134 similarly prohibits such retaliation by public entities.

DISD is a recipient of Federal financial assistance and a public entity. Therefore, OCR has jurisdictional authority over DISD to process this complaint for resolution under Section 504 and Title II.

Based on the complainant's allegations, OCR investigated the following issues:

1. Whether DISD discriminated against the Student, on the basis of his disability, by denying the Student a free appropriate public education (FAPE) when school officials at XXES failed to provide the Student with services designed to meet his individual educational needs during the XXXX-XX school year, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.33(a) and (b) and Title II and its implementing regulation at 28 C.F.R. § 35.130(a);
2. Whether DISD discriminated against the Student, on the basis of his disability, when school officials at XXES failed to take appropriate action when notified that the Student was subjected to verbal and physical harassment during the XXXX-XX school year, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.4(a) and (b)(1)(i) and Title II and its implementing regulation at 28 C.F.R. § 35.130(a) and (b)(1)(i);
3. Whether DISD discriminated against the Student, on the basis of his disability, when officials at XXES and XXES disciplined the Student for behaviors related to disability, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.33 (a) and (b)(1) and (2); and Title II and its implementing regulation found at 28 C.F.R. § 35.130(a) and (b)(1)(i); and
4. Whether DISD retaliated against the complainant and the Student, because the complainant sought to secure rights for the Student, by a) transferring the Student from XXES to XXES without the complainant's permission after she identified herself and the Student as XXXXXXXX, b) failing to provide the complainant with copies of the Student's educational records after the complainant requested copies; and c) releasing the Student's educational records to a third party without the complainant's permission, during the XXXX-XX school year, in violation of 34 C.F.R. § 104.61, and Title II and its implementing regulation at 28 C.F.R. § 35.134.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

In reaching our compliance determination, OCR reviewed documentation and information provided by the complainant and DISD, as well as information obtained during OCR interviews with the complainant and relevant DISD employees. Based on a careful review of all information obtained, OCR has determined that the evidence is insufficient to support a finding of discrimination or retaliation, in violation of Section 504 or Title II, regarding Issue 1 in part (concerning the XXXX-XX school year after XXXXXXXXXXXX XX, XXXX), Issue 2, Issue 3, and Issue 4c, as described further below. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding Issue 1 in part (concerning the XXXX-XX school year after XXXXXXXXXXXX XX, XXXX), Issue 4a, Issue 4b and Issue 4c.

With regard to the remaining issues (i.e., the other part of Issue 1 pertaining to the beginning of the XXXX-XX school year until XXXXXXXXXXXX XX, XXXX, Issue 4a and Issue 4b), prior to the completion of OCR's investigation, DISD voluntarily submitted the enclosed Resolution Agreement (Agreement) dated October 11, 2017 to memorialize the steps it will take to resolve the compliance concerns OCR has identified in its investigation to date. Also, during the course of its investigation, OCR found an additional compliance concern regarding the DISD's provision of a FAPE to the Student during the prior school year (i.e., the XXXX-XX school year), which will also be resolved by the Agreement. OCR has determined that the provisions of the Agreement are aligned with the complaint allegations and appropriately resolve them. Further, OCR accepts the Agreement as an assurance that DISD will fulfill its obligations under Section 504 and Title II with respect to the above issues. The dates for implementation and specific actions are detailed in the Agreement, and OCR will actively monitor DISD's implementation of the Agreement. If DISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts with respect to the above issues.

Issue 1:

Legal Standard:

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a recipient must provide a FAPE to each qualified student with a disability in the recipient's jurisdiction. The Section 504 regulation, at 34 C.F.R. § 104.33(b), defines an "appropriate education" as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student's Section 504 plan, also known as an "individualized education program" (IEP). When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student's needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student's individual needs were or are being provided. If they have not been provided, OCR will determine the district's reason for failing to do so and the impact of the failure.

complainant did not have medical documents at the time of the meeting, and that the lack of medical documents would keep the school from beginning his Section 504 Plan. Accordingly, OCR found a compliance concern with respect to implementation of the Student’s Plan during the XXXX-XX school year.

Concerning the XXXX-XX school year, documentation showed that while enrolled in XXXXX grade at XXES, the Student was referred for another Section 504 evaluation by the School Support Team (SST) on XXXXXXXXXXXX XX, XXXX. Based on the above documentation, OCR also found that on XXXXXXXXXXXX XX, XXXX, a Section 504 Committee, which included the complainant, was conducted by a group of knowledgeable persons, which reviewed information from a variety of sources in accordance with Section 504 requirements. OCR reviewed a copy of the Student’s Section 504 Services Plan dated XXXXXXXXXXXX XX, XXXX, which included the following accommodations for all subjects/courses to meet his disability-related needs: XXXXX XXXXXXXX XXXXXXXXs to XXXXX or XXXXXXXX; XXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX to XXXXXXXX through XXXXXXXX XXX; XXXXXXX XXX-XXXXXXXXXXXX XXXXXXXXXXXX; XXXXXXX XXXXXXX with teacher and XXXX with teacher during XXXXXXXXXXXX; XXXXXXX XXX XXXXXXX to facilitate XXXXXXXXXXXX and XXXXXXXXXXXXXXXX; XXXXX XXXXX XXXXXXX as need for XXXXXXXXXXXX of XXXXXXXXXXXX and XXXXX, and separate BIP. The Plan also provided that the Student would receive XXXXXXXXXXXX as a related service, and an attached BIP included the following behavior interventions for XXXX-XXXXXXXX: XXXXXXX XXXXXXX XXXXXXX, XXXXXXXXXXX XXXXXXXXXXX of XXXXX, XXXXXXXXXXX XXXXXXXXXXX behavior, XXXXXXXXXXX XXXXXXX, and XXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX (frequency/duration not specified). The BIP provided for communication with the complainant on behavioral progress/status via a daily tracking form, e-mail (as needed), and a weekly phone call (as needed). In addition, the BIP indicated that to assist the Student with XXXX-XXXXXXXX, teachers were responsible for providing specific rewards and consequences for targeted behaviors. Documentation revealed that the complainant signed a form providing parental consent for Section 504 services on XXXXXXXXXXXX XX, XXXX, and on the same date, the above Plan was disseminated to the school nurse, the XXES Principal, a counselor, and the Student’s teachers.

The investigation revealed that on XXXXXXXXXXXX XX, XXXX, the XXES Principal withdrew the Student from the school based on lack of residency in the DISD, and on XXXXXXXXXXXX XX, XXXX, the complainant enrolled the Student at XXES. Regarding the period while the Student was enrolled at XXES from XXXXXXXXXXXX XX, XXXX through the remainder of the XXXX-XX school year, OCR conducted interviews with a District Licensed Specialist in School Psychology (LSSP) and the XXES Principal, AP, Section 504 Coordinator/XXXXXXXXXXXX, as well as the Student’s XXES teachers for XXXXXXX, XXXXXXX XXXXXXX/XXXXXXXX, X.X., XXX, XXXXX, and XXXX. Based on the interviews and documentation, OCR found the Student received XXXXXXXXXXXX XXXXXXXX with the LSSP on XXXXXXX X, XXXX and XXXXXXX XX, XXXX. In addition, interview information revealed the Student’s teachers provided him with accommodations from his Section 504 Plan and BIP, such as XXXXXXXXXXX XXXXXXX, XXXXXXX XXXXXXX XXXX, XXXXX XXXXX XXXXXXX, XXXX XXX, XXX-on-XXX XXXXX with the Student while XXXXXXX with him during XXXXXXXXXXXX, and rewards for XXXXXXX behavior.

Based on the above information, OCR determined there was insufficient evidence to show that the District failed to provide the Student with services from his XXXXXXXXXX XX, XXXX Section 504 Plan from XXXXXXXXXX XX, XXXX through the remainder of the XXXX-XX school year while enrolled at XXES. However, based on interviews with the complainant and XXES personnel, OCR had compliance concerns regarding whether the Student was provided services in the above Section 504 Plan while enrolled at XXES during the remainder of the XXXX-XX school year and the beginning of the XXXX-XX school year through XXXXXXXXXX XX, XXXX. OCR did not continue its investigation regarding Issue 1 concerning the XXXX-XX school year and the beginning of the XXXX-XX school year based on the Agreement submitted by DISD, which OCR determined resolved the above described compliance concerns.

Issue 2:

Legal Standard:

Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. According to OCR policy, a violation of Section 504 and Title II may be found if a recipient has created or fostered a disability-based hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on disability and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated incidents to create a disability-based hostile environment. Further, a determination of whether conduct is “severe” or “pervasive” must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Section 504 and Title II if it has effectively caused, encouraged, accepted, or failed to correct a disability-based hostile environment of which it has actual or constructive notice.

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether a disability-based hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient’s response to harassing conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

Findings of Fact and Analysis:

The complainant alleged DISD discriminated against the Student on the basis of his disability, when XXES officials failed to take appropriate action when notified that the Student was subjected to verbal and physical harassment during the XXXX-XX school year.

According to the complainant, other students at school called the Student names and made fun of him because he has a disability. The complainant further related that when she was called to the school regarding a discipline incident on XXXXXXXXXXXX XX, XXXX, she reported the harassment to school officials, including the XXES AP. In a written data response dated December 18, 2014, DISD stated that no notification of physical or verbal harassment was reported to campus officials concerning the Student. The XXES AP, Principal, and XXES Section 504 Coordinator/XXXXXXXXXX denied they received any complaint that the Student was harassed. The complainant also stated that she reported harassment to a XXES AP on XXXXXXXXXXXX XX, XXXX, when called in regarding a discipline incident involving the Student. However, the Student was still enrolled at XXES on XXXXXXXXXXXX XX, XXXX, and in an interview with OCR, the above AP said she had received no notice that the Student had been harassed. Similarly, the other XXES AP related that she had not been informed of any harassment.

In interviews, the Student's teachers at XXES said that the Student reported that one or more students were making fun of him, "bothering" or "messaging with" him, or staring at him. However, the teachers related that the Student did not report specific comments from other students with the exception of the XXXXX teacher who stated that the Student reported receiving comments such as, "You look like a XXXXX" or "You look like a XXXX XXXX." The teachers related that when they questioned other students identified by the Student, these students denied doing or saying anything to the Student. According to the teachers, the Student did not indicate that he had been subjected to any hostile conduct by other students related to a disability.

On August 24, 2017, the complainant was provided an opportunity to rebut the above information. According to the complainant, the Student's teachers were supposed to know he had a disability. She said that when her son was on XXXXXXXXXXXX, he was XXXX unless someone "messed with him."

Based on the above information, OCR determined that there was insufficient evidence to show the District received notice that the Student was subjected to a hostile environment due to disability-related harassment by other students. Although there were reports of name calling, it did not rise to the level of harassment that would trigger the District's duty to evaluate the student to determine whether the harassment is affecting the Student's FAPE. Therefore, OCR determined that there is insufficient evidence to substantiate that DISD failed to take appropriate action when notified that the Student was subjected to verbal and physical harassment during the XXXX-XX school year, in violation of Section 504 and Title II, as alleged in Issue 2.

Issue 3:

Legal Standard:

Taken together, the Section 504 regulation 34 C.F.R. § 104.33 and 34 C.F.R. § 104.35 prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled

student without reevaluating the student and affording due process procedures. The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students. A parent who disagrees with the outcome of the manifestation determination may request, and is entitled to, an impartial hearing to review the determination.

Findings of Fact and Analysis:

The complainant alleged DISD discriminated against the Student on the basis of his disability, when school officials at XXES and XXXXXX XXXXXX Elementary School (XXES) disciplined the student for behaviors related to his disability during the XXXX-XX school year.

OCR reviewed the Student's disciplinary referrals for the period during which he was enrolled at XXES from about late August 2014 through XXXXXXXXXXXX XX, XXXX. The above documentation revealed that the Student was referred for discipline on XXXXXXXXXXXX X, XXXX and September 18, 2014, which resulted in conferences with the Student and/or the complainant and in withdrawal of some of the Student's privileges (such as participation in extracurricular activities). However, the documentation did not indicate that the Student's placement was changed with respect to the above two disciplinary referrals at XXES. Based on the Student's records for his enrollment at XXES beginning on XXXXXXXXXXXX XX, XXXX and interviews with the XXES Principal, AP, Section 504 Coordinator/XXXXXXXXXX, and the Student's teachers, the Student had not received any formal disciplinary referrals while attending the above school. On August 24, 2017, the complainant was provided an opportunity to rebut the above information provided by DISD and its employees. She related that she did not remember if he received any additional discipline. However, she indicated that she did not receive any discipline information regarding other students involved in disciplinary incidents with the Student, which led her to believe the Student had been disciplined unfairly.

Based on the information obtained, OCR determined that the Student had not been subjected to a disciplinary change in placement during the XXXX-XX school year that would require the District to evaluate whether any misconduct was caused by, or was a manifestation of his disability. Accordingly, OCR determined that there is insufficient evidence to substantiate that DISD disciplined the Student for behaviors related to his disability during the XXXX-XX school year, in violation of Section 504 and Title II, as alleged in Issue 3.

Issue 4:

Legal Standard:

Retaliation is prohibited by each of the laws enforced by OCR, including Section 504 and Title II and their respective implementing regulations. Specifically, the Section 504 regulation at 34 C.F.R.

§ 104.61 incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by [regulations enforced by OCR] or because [one] has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part.

As previously stated, the Title II regulation at 28 C.F.R. § 35.134 similarly prohibits such retaliation by public entities.

It is unlawful retaliation when a recipient, for a retaliatory reason, takes an *adverse action* against a person. Although the adverse action is usually taken in response to an exercise of *protected activity*, adverse action done by a recipient with the motive to deter or prevent future protected activity is also prohibited.

In order for an allegation of retaliation to be sustained, OCR must determine whether:

1. an individual experienced an adverse action caused by the recipient; *and*
2. the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; *and*
3. there is some evidence of a causal connection between the adverse action and the protected activity.

An act of intimidation, threat, coercion, or discrimination constitutes an adverse action if it is likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. While there are no per se exclusions, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Depending on the particular factual circumstances of a case, OCR will also consider whether a series of incidents, which standing alone do not conclusively demonstrate sufficient adversity may, taken together, constitute an adverse action.

A “protected activity” includes an action taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR, as well as one in which an individual has “has made a complaint, testified, assisted or participated in any manner” in an investigation, proceeding, or hearing under OCR's regulations. It is unnecessary for the complainant to have actually engaged in a protected activity before a violation can occur. In cases involving past or ongoing protected activity, the recipient must have had knowledge of the protected activity at the time of the adverse action.

In a retaliation investigation, the ultimate issue OCR must determine is whether the recipient took adverse action because an individual engaged in protected activity or for the purpose of interfering with a protected activity. For purposes of the prima facie case, OCR looks at the facts as a whole and broadly construes whether there is some evidence of a causal connection. A causal connection may be established through either direct evidence, e.g., a recipient's written or oral statement, or

action demonstrating unambiguously that the recipient took the adverse action because the complainant engaged in protected activity or for the purpose of interfering with protected activities; or circumstantial evidence, e.g., changes in the recipient's treatment of the complainant after the protected activity occurred, proximity in time between the protected activity and the adverse action, the recipient's treatment of the complainant compared to other similarly situated individuals, or the recipient's deviation from established policies or practices.

If OCR does not find that a prima facie case exists, OCR will conclude that there is insufficient evidence to support a finding of retaliation. If, however, the evidence demonstrates a prima facie case of retaliation, an inference of unlawful retaliation is raised and OCR proceeds to the next stage of the analysis. To ascertain whether this inference might be rebutted, OCR will then determine whether the recipient can identify a non-retaliatory reason for its actions. If such a reason is identified, OCR's investigation proceeds to the third stage. At the third stage, OCR examines the evidence to resolve what the real reason was (or reasons were) for the intimidation, threat, coercion, or discrimination.

Findings of Fact and Analysis:

The complainant also alleged during the XXXX-XX school year, DISD retaliated against her and the Student because the complainant sought to secure rights for the Student under Section 504 by, a) transferring the Student from XXES to XXES without the complainant's permission after she identified herself and the Student as XXXXXXXX; b) failing to provide the complainant with copies of the Student's educational records after the complainant requested copies; and c) releasing the Student's educational records to a third party without the complainant's consent.

Alleged Adverse Action #1 (Issue 4a): Transferring the Student from XXES to XXES without the complainant's permission after she identified herself and the Student as XXXXXXXX.

Documentation provided by DISD revealed that on August 27, 2014, the complainant enrolled the Student in fifth grade at XXES. OCR found that the complainant signed a Section 504 consent form on Friday, XXXXXXXXXX XX, XXXX, the same date the Student was evaluated and placed in a Section 504 services Plan by a group of knowledgeable persons, including the XXES Principal. The investigation revealed that the XXES Principal wrote a letter to the complainant dated Monday, XXXXXXXXXX XX, XXXX. The above letter stated that the complainant's documentation showed a different address from the previous school year (address listed and copy of the complainant's residency documentation provided), which was not in the XXES attendance boundaries. The letter further notified the complainant that XXES was beginning the Student's withdrawal paperwork on the same date and indicated that the complainant was required to enroll him at XXES. Additional documentation showed the Student was withdrawn from XXES on the above date and the complainant enrolled him at XXES on XXXXXXXXXX XX, XXXX.

OCR determined that DISD had written policy permitting students who become XXXXXXXX between or during school years to remain at their school of origin, and in the case of enrollment disputes, XXXXXXXX students or their parents/guardians were to be referred to the District's liaison for XXXXXXXX students. According to the complainant, she did not specifically tell the Principal she was XXXXXXXX when she spoke to her approximately the day after receiving the

letter withdrawing the Student from XXES. However, she indicated that she told the Principal she put another address down as she “did not have a place to stay.” The complainant reported that she also advised an individual at the DISD Central Office that at the time the Student began the school year she was XXXXXXXX, did not know where she was going to be moving, and did not want to transfer her son to another school. In an interview with OCR, the XXES Principal denied that the complainant ever informed her she was XXXXXXXX, and the above individual at the District’s Central Office, whom OCR determined was an administrative assistant, related that she did remember anything regarding the alleged incident. Although OCR received conflicting information from the complainant and DISD personnel regarding whether the complainant informed the XXES Principal and District administrative assistant of her XXXXXXXX status, based on the above referenced letter from the Principal dated XXXXXXXX XX, XXXX, OCR determined that the Student was subjected to an adverse action when the Principal withdrew him from XXES without the complainant’s consent.

Alleged Adverse Action #2 (Issue 4b): Failing to provide the complainant with copies of the Student’s educational records after the complainant requested copies.

According to the complainant, she made records requests to the XXES Section 504 Coordinator/XXXXXXXX and two other DISD employees on or about XXXXXXXX X, XXXX, one of which was identified as a former District parent liaison and the other as a DISD Data Technician. However, regarding records for the XXXX-XX school year, the complainant reported to OCR that she only received two pages of records that she already had. Additionally, she related she had not received copies of any disciplinary records that she previously requested during the XXXX-XX school year. OCR interviewed the above XXES Section 504 Coordinator who denied that the complainant requested any records. OCR also interviewed the above Data Technician who stated that she could not remember the complainant as she talked to so many parents. During interviews with OCR, the XXES Principal and a XXES AP informed OCR that the complainant requested the Student’s two disciplinary referrals, which the above AP provided to her on the same date.

However, in a written narrative dated December 18, 2014, DISD reported that on XXXXXXXX XX, XXXX, the complainant returned to XXES, where the Student had been previously enrolled, and requested a copy of his records. According to the above narrative, the complainant was given a copy of two disciplinary referrals and sent to XXES in accordance with DISD protocols regarding the chain of custody for transferring student records. The narrative stated that the complainant came to the XXES office on XXXXXXXX XX, XXXX and signed a written request for the above information, in addition to making a written request to another DISD official, but reported that she had received no response. The District also provided a copy of a sign-in-sheet from XXES, which the complainant signed on XXXXXXXX XX, XXXX with a notation “trying to get records.” In addition, DISD submitted a copy of a letter from the complainant to the XXES Principal, marked with the date XXXXXXXX XX, XXXX. In the letter, the complainant requested a copy of the Student’s complete “discipline records and all other records that consist of his behavior for the entire XXXX-XXXX and XXXX-XXXX school year” and “the 504 forms that were completed last year.”

Although the above information indicated the complainant received some of the Student’s records she requested (XXXX-XX discipline records), OCR had concerns regarding whether she received the other records requested for the XXXX-XX school year, and therefore suffered an adverse action.

Alleged Adverse Action #3 (Issue 4c): Releasing the Student's educational records to a third party without the complainant's permission.

The complainant alleged that in September 2014, the XXES Principal provided the Student's educational records to the Student's XXXXXXXX XXXXXXXX when the Student was picked up from the school. OCR interviewed the XXES Principal who said that she provided the Student's withdrawal papers in a sealed envelope to the Student to take home. OCR also interviewed the complainant's XXXXXXXX XXXXXXXX who denied that the incident occurred. Via telephone on August 24, 2017, OCR provided the complainant an opportunity to rebut the above information. The complainant confirmed she received an envelope, and said papers were given to her son without contacting her. Based on the above information, OCR determined that there was insufficient evidence to establish that the above alleged adverse action occurred. Therefore, OCR did not continue its investigation concerning Issue 4c.

Determination:

Regarding Issue 4a, based on its investigation, OCR determined the Student was subjected to an adverse action as the evidence revealed the XXES Principal withdrew him from XXES without the complainant's consent on XXXXXXXXXXXX XX, XXXX. With respect to Issue 4b, OCR had compliance concerns that the complainant may have suffered an adverse action as the evidence did not show she received all of the Student's educational records requested in her XXXXXXXX XX, XXXX letter to the XXES Principal. However, OCR did not continue its investigation regarding Issues 4a and 4b based on the Agreement submitted by DISD, which OCR determined resolved the above compliance concerns.

Regarding Issue 4c, based on the information obtained, OCR determined that there was insufficient evidence to establish that the alleged adverse action occurred and that the complainant was subjected to retaliation. Accordingly, OCR has determined that the evidence is insufficient to support a finding of retaliation in violation of Section 504 or Title II with respect to Issue 4c.

In summary, as above described OCR determined that there was insufficient evidence to support a finding of noncompliance with Section 504 or Title II regarding Issue 1 (concerning the XXXX-XX school year after XXXXXXXXXXXX XX, XXXX), Issue 2, Issue 3, and Issue 4c. Therefore, OCR will take no further action with regard to these issues as of the date of this letter. With respect to Issue 1 (concerning the XXXX-XX school year and the beginning of the XXXX-XX school year until XXXXXXXXXXXX XX, XXXX), Issue 4a, and Issue 4b, based on the Agreement submitted by DISD resolving OCR's compliance concerns, OCR will cease all investigative actions regarding these issues as of the date of this letter. However, OCR will monitor DISD's implementation of the Agreement.

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

The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that DISD 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, that individual 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions about this letter, please contact Ms. Page Baird, the investigator assigned to this complaint, at (214) 661-9604 or page.baird@ed.gov. You may also contact me at (214) 661-9687 or terri.gonzales@ed.gov.

Sincerely,

Terri Gonzales
Supervisory Attorney/Team Leader
Dallas Office

Enclosure

cc: XX. XXXXX XXXXXXXXX,
DISD Legal Services