



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI  
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TEXAS

March 22, 2017

Mr. Kevin George, Superintendent  
St. John the Baptist School Board  
118 West 10<sup>th</sup> Street  
P.O. Drawer AL  
Reserve, LA 70084

RE: OCR Case No. 06161090  
St. John the Baptist Parish School Board

Dear Mr. Martin:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, received on November 16, 2015, filed against the St. John the Baptist Parish School Board (SJBPSB or the District), Reserve, Louisiana. The complaint alleged the SJBPSB discriminated against the complainant's daughter (the Student) on the basis of disability and retaliated against her. Specifically, the complainant alleged the following:

1. The SJBPSB failed to implement the Student's Section 504 plan (e.g., failed to provide an "anytime restroom pass," failed to provide lactose free milk or to substitute juice, ignored prescription orders, and the Student was left unattended in a classroom to complete assignments) during the 2015-2016 school year.
2. The SJBPSB failed to provide the complainant procedural safeguards for a 504 meeting held on October 22, 2015.
3. The SJBPSB retaliated by sending Truant Officers to the Student's home on October 26, 2015, without advance warning or notification after the complainant and Student filed a complaint with the Principal on October 20, 2015.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or from an agency that has delegated investigative

authority to the Department, are in compliance with 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 prohibits discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. In addition, OCR enforces Federal anti-retaliation provisions applicable to persons who either complain about discrimination on one of the aforementioned prohibited bases or participate in an investigation into such discrimination. The SJBPSB is a recipient of Federal financial assistance from the Department and is a public secondary and elementary school system. Therefore, OCR has jurisdictional authority to process this complaint of disability discrimination under Section 504 and Title II.

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 that it is more likely than not that unlawful discrimination occurred). Where 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 law.

OCR's investigation of this complaint included a careful review of information gathered through written documentation provided by the complainant and the SJBPSB, as well as interviews conducted with SJBPSB representatives, the complainant and the Student. Based on our review and analysis of all information obtained, OCR has determined there is sufficient evidence to support a finding of noncompliance with Section 504 with respect to Issue 1. However, OCR has determined there is insufficient evidence to support a finding of noncompliance with respect to Issues 2 and 3. The bases for OCR's determinations are outlined below.

**Issue 1:**

Whether the SJBPSB discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (e.g., implementation of the Student's 504 plan during the 2015-2016 school year, provision of an "anytime restroom pass," substitution of lactose free milk or juice, adherence to prescription orders, and providing appropriate teacher support in the classroom when completing assignments), and thereby denied the Student a free appropriate public education (FAPE) during the 2015-2016 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

**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 public school district that receives Federal financial assistance

from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define 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," or "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.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

### **Findings of Fact**

The Student enrolled in the fifth grade at SJBPSB's Lake Pontchartrain Elementary School (LPE) in April 2015. Prior to enrolling at the LPE, the Student attended KIPP New Orleans Schools (KIPP) where the Student was provided Section 504 related aids and services. The Student's Section 504 plan from the KIPP was implemented by the LPE's teachers from the beginning of 2015-2016 school year. The Section 504 plan specified, among other provisions, the Student was to be provided an "anytime restroom pass" and substitution of juice for lactose intolerant milk. The Student was enrolled in the sixth grade for the 2015-2016 school year. In September 2015, the LPE obtained additional documents from the KIPP's Section 504 plan and re-evaluated the Student on October 27, 2015. The LPE classified the Student as a student with a disability (anxiety disorders, severe asthma, and lactose intolerant to milk). Subsequently, the Student was placed in homebound education on December 17, 2015, based on medical recommendations.

The complainant alleged that the LPE failed to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs. Specifically, the complainant alleged that, during the fall semester of the 2015-2016 school year, the Student was not provided an "anytime restroom pass" and "bathroom buddy", was not provided appropriate teacher support in the classroom when completing assignments, was not provided a lactose free beverage substitute for milk, the LPE failed to adhere to prescription orders, and the Student was left unattended in a classroom to complete assignments.

OCR reviewed the Student's Section 504 plan and related documents. The investigation revealed that the Student was re-evaluated by the LPE on October 27, 2015, and the Student's primary teachers were included among the group of knowledgeable persons conducting the evaluation. The approved Section 504 plan specifies the Student is to be provided the following related aids and services: 1) preferential seating; 2) "anytime bathroom pass"; 3) peer tutors/work buddies/note takers or scribe; 4) increased time for classwork and/or tests; 5) breaks during work periods or between tasks; 6) increased time for homework and projects; 7) refill water as needed; and 8) substitution of lactose free beverage for milk.

OCR interviewed the Student's primary teachers (English, Language and Arts (ELA); Science; Social Studies; Math), the school nurse, the cafeteria manager, and cafeteria workers regarding the implementation of the Student's 504 plan. The following information summarizes OCR's interviews and analysis:

#### Preferential Seating

All teachers informed OCR that the Student was provided preferential seating in accordance with the Student's 504 plan. Teacher 1 informed OCR the Student's desk was at the front of the class room near the teacher. Teacher 2 stated the Student's desk was at the front of the class adjacent to a peer buddy. Teacher 3 reported that the Student was seated in the middle of the third row, next to a peer buddy who is an excellent note taker. Teacher 4 informed OCR that the Student requested to be seated at the back of the classroom where the Student felt most comfortable.

#### "Anytime Bathroom Pass" and "Bathroom Buddy"

OCR's interview with the Student revealed the following: 1) the Student stated she was never given an "anytime bathroom pass" and she would wait until the end of class to use the restroom; 2) the Student felt there were issues with being able to use the restroom anytime during class, and, on three occasions, she soiled herself because she felt she could not use the restroom when needed; and 3) the Student asked Teachers 1 and 2 to use the restroom and was denied. In addition, the Student informed OCR that she did not have a "bathroom buddy."

OCR interviewed the Student's primary classroom teachers and each of the teachers informed OCR they had a process or practice pertaining to students' use of the restroom during class. All of the teachers said they allowed students' restroom accommodations during class when needed.

During OCR's interview, Teacher 1 said her class lasts 100 minutes and all students take a break 53 minutes after the class begins. Teacher 1 claims she met with the Student at the beginning of the 2015-2016 school year and told the Student she could use the restroom when needed and they also discussed who would be the Student's "bathroom buddy." According to Teacher 1, the Student never used the restroom during class. As to the Student's allegation that Teacher 1 denied the Student a request to use the restroom, Teacher 1 informed OCR that the Student could use the restroom when needed.

Teacher 2 informed OCR that all students in the class are allowed to use the bathroom when needed without a pass; however, students are to inform the teacher when they need to use the bathroom, for safety reasons. According to Teacher 2, the Student never went to the bathroom during class. Teacher 2 stated she did not meet or discuss an “anytime bathroom pass” or “bathroom buddy” with the Student until all teachers met as a group with the complainant regarding the Student’s restroom accommodations following the October 27, 2015, ARD meeting. Teacher 2 said she never denied the Student restroom privileges.

Teacher 3 informed OCR that all students needing to use the restroom during class take a magnetic pass when they leave the classroom. Teacher 3 stated that she requests students to tell her they need to go to the bathroom and then pick up a pass when they leave. Teacher 3 informed OCR that the Student was in her class during the Spring Semester of 2015 and that she was knowledgeable about the Student’s restroom accommodation and “bathroom buddy.” She indicated that nothing changed regarding the Student’s restroom accommodation from the prior school year and she knew the Student had restroom privileges.

Teacher 4 revealed that no specific meeting was held with the Student to discuss an “anytime bathroom pass” or “bathroom buddy” until after the October 27, 2015, ARD meeting. At that time, the Student designated a “bathroom buddy.” Teacher 4 stated that her class period is 100 minutes and all students take a bathroom break during the class period. She reported that the Student was free to use the bathroom as often as needed but most often did not take any additional bathroom break other than the class break. Teacher 4 informed OCR that she speaks to the Student’s parent on a regular basis and that any issue the Student had with respect to soiling herself) did not occur in her class. She also said that the Student is vocal enough to tell her things that have occurred.

#### Peer Tutors/Work Buddies/Note Takers or Scribe

All teachers addressed the issue of peer assistance. Teacher 1 informed OCR that the Student selected a close friend as her peer buddy. She stated that no writing assistance is needed as students are not required to take notes and that students individually read and write essays for the class. Teacher 2 reported that the Student’s peer buddy sits next to her and is a very kind student that provides assistance when needed. Teacher 3 informed OCR that notes from a PowerPoint lesson are taken on Tuesdays. She reported a peer buddy sitting next to the Student is an excellent note taker and provides assistance as needed. Teacher 4 stated that the Student’s close friend sits next to her and serves as note taker when needed.

#### Increased Time for Class-Work and/or Tests

Teacher interviews revealed the Student rarely needed additional time for assignments or tests. Teacher 1 informed OCR that extra time is provided when needed. She said the Student was a good student and rarely required extra time. She indicated the Student always turned in assignments on time and was an “A” student. Teacher 2 reported that extra time was an

accommodation that was never needed, that the Student had excellent grades (e.g., “A’s”), and usually was first to finish an assignment. Teacher 3 informed OCR that the Student would be given extra time if needed, however, the Student works fast and usually is able to take notes for herself and usually finishes tests in the top 10 category. Teacher 4 reported that the Student rarely needed extra time as she completed most assignments in less than the allotted time. If needed, extra time would be provided.

#### Allow Breaks During Work Periods or Between Tasks

The Student’s teachers informed OCR that she was able to take breaks when needed. Teacher 1 informed OCR that the class lasted 100 minutes and the Student was never observed to have needed a break during class. The Student could take breaks if needed. Teacher 2 stated that the Student could take a break when needed but never asked for one. Teacher 3 reported that the class was 50 minutes and the Student understood she had break privileges and that the break privilege was discussed during the ARD meeting. On one occasion, the Student asked to put her head down on the desk. Teacher 3 reported that the Student was provided a break and decided when she was ready to start work again. Teacher 4 informed OCR that the class is 100 minutes and that the entire class takes a break midway during the class period. The Student did not take any other breaks during the class.

#### Increased Time for Homework and Projects

OCR’s investigation of the evidence indicated that the Student rarely needed increased time for homework and projects. Teacher 1 informed OCR that the Student would be provided extra time for homework and projects when needed, however, the Student always turned in assignments on time. Teacher 2 stated that the Student was a top student and did not need extra time. Teacher 3 stated that she rarely assigns homework. When a project is assigned, students are provided 4 to 6 weeks advance notice of the project due date. Teacher 4 informed OCR that the Student did not need extra time for projects but she would have been provided extra time if needed.

#### Refill Water as Needed

Teacher interviews revealed that drinking water or refilling water was not an issue for the Student. Teacher 1 informed OCR that the Student kept a water bottle with her at all times but never used it. Teacher 2 stated that the Student could bring water to the classroom and drink anytime. Teacher 3 reported that students do not need permission to drink water during class (applies to all students). She requests that students let her know when they need to leave to fill a water bottle. Teacher 4 stated that the Student and her classroom buddy could get water or refill a water bottle without requesting permission.

#### Substitute Beverage for Lactose Intolerant Milk

OCR interviewed the school nurse as to whether the Student was provided a substitute beverage for lactose intolerant milk. The school nurse informed OCR that after being provided

information that the Student requires a lactose free beverage, she completed a Child Nutrition Department Diet Prescription Form (Order) for the Student. The School Nurse delivered the completed Order to the cafeteria manager on October 30, 2015. The Order specified that a substitute beverage was to be provided for “Milk and Milk Products” and showed that juice, Gatorade or water is to be substituted for lactose intolerant milk.

OCR interviewed the cafeteria manager who verified receipt of the Order on October 30, 2015, and that no prior Order had been provided. According to the cafeteria manager, when an Order is received, she communicates the information to the four cafeteria employees and posts the order on the wall behind the serving counter. At breakfast or lunch, when a student reaches the cashier, the student provides an identification number that is entered into the computer and the student’s name shows on the computer screen identifying the student. When a student requires a lunch or beverage modification, that requirement is communicated to the other workers. In addition, the upper elementary class students often remind cafeteria workers of special lunch requirements. The cafeteria manager stated that she did not know whether the Student received any beverage substitution prior to the Order received on October 30, 2015. Furthermore, the cafeteria manager informed OCR that she does not know the Student and would not recognize the Student except for the name appearing on the cashier computer.

The cafeteria serves breakfast and lunch. Only juice is served with breakfast. Milk is served at lunch. Juice is kept behind the serving line and a student needing juice would need to request juice from a cafeteria worker.

The cafeteria manager informed OCR that no complaints were made by the Student regarding not receiving a beverage substitution for lactose intolerant milk for lunch.

OCR interviewed three of the four cafeteria workers. The cafeteria serves approximately 400-500 students daily. All of the workers rotate jobs and periodically operate the cash register. The cafeteria workers informed OCR that although an Order was posted on the wall regarding the Student’s accommodation, none of the workers would know or recognize the Student. Moreover, they stated that the cashier would see the Student’s name, but the system does not highlight that a student needs an accommodation and the cashier usually does not communicate the student’s presence or need for accommodation. All cafeteria workers stated that the Student or a teacher would need to request juice in order to receive it.

The complainant also alleged that the Student was left unattended in a classroom, which was a violation of the Student’s Section 504 plan. OCR’s investigation revealed that, in October 2015, the Student needed to make up a Science test and went to the teacher’s classroom during school to see if the teacher was available for her to take the test. After administering the test, the teacher left for a meeting, leaving the Student unattended in the classroom to complete the test. The teacher informed OCR that although the Student was left unattended in the classroom, she saw the principal in the hallway when she left the classroom, and again observed the principal in the hallway when she returned from the meeting. When the teacher returned, the Student had completed the test and had left the classroom. When interviewed by OCR, the Student did not

report that any harm occurred from being left unattended to take the test. Moreover, the Student's Section 504 plan does not address the matter of the Student being left unattended.

### **Analysis**

Based on the information above, OCR has determined that the evidence is sufficient to support a conclusion of noncompliance with Section 504 and Title II. Specifically, while the evidence indicated that the Student received some of her Section 504 accommodations, OCR determined that the provisions of the Student's Section 504 plan that required a substitute beverage for lactose intolerant milk, an "anytime bathroom pass," and a "bathroom buddy" were not provided. The evidence established that from the beginning of the 2015-2016 school year until an ARD meeting was held on October 27, 2015, the cafeteria manager and cafeteria employees had no information regarding the requirement to provide the Student with a substitute for lactose intolerant milk, i.e., juice, Gatorade, or water.. In addition, the investigation revealed that a Diet Prescription Form (Order) for the Student was issued on October 30, 2015; however, the Order was not implemented, other than its placement on a wall behind the cafeteria line. The cafeteria manager and three cafeteria workers informed OCR that they did not know the Student and would not recognize the Student except for the name appearing on the cashier computer, and that the Student would have been provided lactose intolerant milk unless a teacher or the Student requested the juice substitution.

As to the Student's Section 504 plan requirement for an "anytime bathroom pass" and "bathroom buddy," two of the Student's four classroom teachers informed OCR that they did not have any discussion with the Student regarding the "anytime bathroom pass" or "bathroom buddy" prior to the October 27, 2015, ARD meeting. The Student informed OCR that she was never given an "anytime bathroom pass" and waited until the end of class to use the restroom. Moreover, the Student felt there were issues with being able to use the restroom anytime during class and stated that, on three occasions, she soiled herself because she felt she could not use the restroom when needed.

As to the complainant's assertion that Student was not provided a FAPE because she was left without supervision in a classroom, OCR's review of the Student's 504 plan revealed that the matter of leaving the Student unattended is not addressed. Although the complainant sent an e-mail message to the Principal on October 15, 2015, informing him that the Student is not to be left unattended, the Student did not indicate any specific harm resulted as a result of being left unattended while taking the test. As such, there is no evidence that this incident resulted in the denial of a FAPE to the Student.

OCR must then determine the reason for the SJBPSB's failure to provide the placements, aids, and services identified by the District as necessary for the Student and the impact of such failure. The evidence indicated that from the beginning of the 2015-2016 school year until an ARD meeting was held on October 27, 2015, the Student was not provided an "anytime restroom pass" by two teachers who acknowledged they had received the Student's Section 504 plan at the beginning of the 2015-2016 school year. OCR was informed that after the ARD meeting on

October 27, 2015, the Student’s teachers met with the complainant to discuss the “anytime restroom pass” and “bathroom buddy” provisions of the Section 504 plan. After meeting with the complainant, these services were provided the student. OCR determined that the Student was harmed when, prior to the October 27, 2015, ARD meeting, the Student did not feel free to use the restroom privilege during class and, reportedly, soiled herself on several occasions because she did not feel she could exercise this accommodation. In addition, OCR determined that the Student was not provided a substitute beverage for lactose intolerant milk. Furthermore, the evidence revealed that even after the school nurse issued the above-referenced Order on October 30, 2015, the cafeteria manager failed to implement a process to assure the Student would be provided a substitute beverage for lactose intolerant milk. OCR determined that the cafeteria manager communicated the Order to cafeteria workers and placed the Order on a wall behind the serving line; however, cafeteria workers were not provided any means of recognizing the Student and they informed OCR that a substitute beverage would have been provided only if the Student or a teacher requested a beverage substitution. As such, the SJBPSB failed to implement prescribed related aids and services for the Student and, thereby, denied the Student a FAPE.

**Issue 2:**

Whether the SJBPSB discriminated against the complainant by failing to provide procedural safeguards for a Section 504 meeting on October 22, 2015, in violation of Section 504 at 34 C.F.R. § 104.36 and Title II at 28 C.F.R. § 35.130, respectively.

**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 public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district’s jurisdiction. The Section 504 regulations’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. The Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.....

Finally, the Section 504 regulations, at 34 C.F.R. § 104.36 provide that:

[a] recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, and impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

### **Findings of Fact and Analysis**

The complainant alleged that the SJBPSB failed to provide procedural safeguards for a Section 504 meeting held on October 22, 2015. OCR's investigation revealed that no Section 504 meeting was held on October 22, 2015, with regard to the Student. However, OCR's investigation revealed that the SJBPSB convened an ARD meeting on October 27, 2015, to evaluate the Student's need for special education or related aids and services. The ARD committee was made up of a group of knowledgeable persons that included the Section 504 Coordinator, the LPE counselor, the LPE nurse, four of the Student's classroom teachers, the complainant, the complainant's advocate, and the Student. The ARD committee considered new documents obtained from the Student's former school (KIPP), current medical information, and pertinent educational documents to determine appropriate accommodations and services for the Student. Among the various documents OCR reviewed was the "Section 504 Individual Accommodation Plan (IAP)." Part K of the IAP specifically addresses "Notification of Parent Rights" and requires that a parent sign the IAP as notice of having received parental rights. OCR's review of the IAP revealed that the complainant signed the IAP on October 27, 2015, evidencing receipt of parental rights.

Based on the evidence above, OCR determined that the complainant was provided with procedural safeguards, as required under Section 504 and Title II. Thus, OCR finds insufficient evidence to support a conclusion of noncompliance by the SJBPSB under Section 504 and Title II with respect to Issue 2.

### **Issue 3:**

Whether the SJBPSB retaliated against the Student by sending Truant Officers to the Student's home on October 26, 2015, because the complainant and the Student filed a complaint with the Principal regarding the Student's disability, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

### **Legal Standard**

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

- (1) The complainant or other alleged injured party engaged in a protected activity;
- (2) The recipient had notice of the protected activity;
- (3) The recipient took an adverse action against the complainant or other alleged injured party contemporaneously with or subsequent to the protected activity; and
- (4) There was a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

### **Findings of Fact**

During the investigation, OCR interviewed the LPE Principal, LPE Assistant Principal, Truant Officer, and counselor. The investigation revealed that on October 20, 2015, the complainant sent a letter to the Principal complaining that a student decided to play “football” with the Student’s juice bottle, kicking it several times, and also reported that potato chips had recently been stolen from the Student’s school bag. In the letter, the complainant informed the Principal that he expected a full investigation into the incidents as the drink and food were medically necessary for the Student.

The complainant informed OCR that, six days later, on October 26, 2015, truant officers appeared unannounced at the complainant’s home. The complainant asserts that the visit by the truant officers was ordered by the Principal and was an act of retaliation because of his letter of complaint.

OCR’s investigation revealed that truant officers are employees of the SJBPSB’s Child Welfare Office and that the Principal has no authority over a truant officer. OCR’s investigation found that the incidents involving the Student reported by the complainant in his letter to the Principal had also been discussed by the counselor and Student and were considered by the Student to be bullying. The Principal informed OCR that when a student reports bullying, the Louisiana Department of Education policies require an investigation of the incident and notification to the parent (by letter) regarding the results of the school’s investigation. According to the Principal, the SJBPSB sends its letters certified mail and, prior to mailing the letter, conducts an address check to confirm that the mailing address is correct. As such, the Principal contacted the Child Welfare Office and requested confirmation of the complainant’s address.

OCR’s review of the evidence indicated that Truant Officers conducted the address verification on October 26, 2015. OCR’s investigation revealed that prior to leaving the office to conduct the

address verification, one of the Truant Officers reviewed the Student's attendance record that showed twelve unexcused absences. The Truant Officer then met with the complainant about mid-morning and informed the complainant that she was conducting a physical verification of the complainant's address. The Truant Officer informed OCR that she did not see the Student while at the complainant's home. While at the complainant's home, the Truant Officer also discussed the Student's absences and instructed the complainant to remain in contact with the School, the School's Testing Center, and the Special Education Department to obtain services needed for the Student. According to the Truant Officer, the complainant was upset by the visit.

The complainant stated that the Truant Officer also informed him the Student had behavior issues at school. The complainant said this was inaccurate because the Student does not have behavior issues at school. The Truant Officer denied any discussion about behavior issues and informed OCR that she had no information about the Student on which to base such a discussion.

**Analysis:**

OCR first considers whether the complainant engaged in a protected activity. A "protected activity" is one in which a person either opposes an act or policy that is unlawful under any of the laws that OCR enforces; files a complaint, testifies, assists or participates in an investigation, proceeding or hearing conducted under the laws that OCR enforces; or otherwise asserts rights protected by laws enforced by OCR. OCR determined that the complainant engaged in a protected activity on October 20, 2015, when the complainant sent the above-referenced letter to the Principal.

OCR next considers whether the SJBPSB had notice of the complainant's protected activity. A recipient must have notice of any protected activity for OCR to conclude that it retaliated because of the protected activity. OCR concluded that SJBPSB had notice of the complainant's protected activity on October 20, 2015, when the Principal received the complainant's letter of complaint.

The third step in OCR's analysis involves determining whether the complainant or other alleged injured party was subjected to an adverse action. To be an "adverse action," the recipient's action must significantly disadvantage the complainant or other alleged injured party as a student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's employment or educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claim(s). To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. As part of this analysis, OCR must also determine whether the adverse action occurred contemporaneously with or subsequent to the protected activity. If

the adverse action occurred before the protected activity, OCR cannot establish that the protected activity caused the adverse action.

OCR's investigation revealed that the SJBPSB's Truant Officer contacted the complainant at his home on October 26, 2015. According to the Truant Officer, the purpose of the visit was to verify the complainant's physical address as requested by the Principal. The evidence also confirmed that the Truant Officer informed the complainant the Student's records showed twelve absences and that she instructed him to remain in contact with LPE about the Student's attendance issue. The investigation revealed that on October 26, 2015, after verification of the complainant's physical address, the Principal sent the complainant certified mail regarding the outcome of the investigation into the alleged bullying. Other than the unpleasant circumstances of the Truant Officer's visit to the complainant's residence, there is no evidence that the visit significantly disadvantaged the complainant or the Student, or their ability to gain the benefits of the SJBPSB's program. As noted above, merely unpleasant or transient incidents usually are not considered adverse. Moreover, OCR was not provided with any evidence that the Truant Officer's visit reasonably acted as a deterrent to further protected activity, or precluded the complainant from pursuing a discrimination claim. As noted above, on October 27, 2015, the SJBPSB conducted a Section 504 re-evaluation of the Student to consider new information received regarding the Student and to determine appropriate related aids and services for the Student. The SJBPSB made modifications to the Student's Section 504 plan and implemented the revised Section 504 plan. Because OCR determined that a *prima facie* case of retaliation has not been established, there is insufficient evidence to support a conclusion of noncompliance under Section 504 and Title II by the SJBPSB with regard to Issue 3.

On March 21, 2017, the SJBPSB submitted a Voluntary Resolution Agreement (Agreement) to resolve the identified areas of noncompliance. OCR will consider this complaint fully resolved when the SJBPSB has fully implemented the provisions of the Agreement. The dates for implementation and specific actions required are detailed in the Agreement, a copy of which is included with this letter.

OCR is closing this complaint effective the date of this letter. This letter is not intended, nor should it be construed, to cover any other civil rights matters that may exist but are not specifically included herein.

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

Please be advised that the SJBPSB may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding this letter, you may contact Marvin Macicek, the investigator assigned to your complaint, by phone at (214) 661-9636, or by email at [marvin.macicek@ed.gov](mailto:marvin.macicek@ed.gov). You may also contact me at (214) 661-9648, or by email at [timothy.caum@ed.gov](mailto:timothy.caum@ed.gov).

Sincerely,

Taylor D. August, Director  
Office for Civil Rights  
Dallas Office