



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

May 11, 2021

Via email to: shubham@ptaaschool.org
Mr. Shubham Pandey, Superintendent
Pioneer Technology and Arts Academy

Ref: 06-21-1093

Dear Superintendent Pandey:

This letter is to notify you of the resolution of the above-captioned complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office against Pioneer Technology Arts Academy/North Dallas (PTAA), Dallas, Texas. OCR received the complaint on XXXX XXXXX XXXX, in which the complainant alleged that PTAA retaliated against her and XXXX (the Student) because of her efforts to advocate on behalf of the Student's disability-related needs, including, but not limited to, XX – end of sentence redacted – XX.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the U.S. Department of Education or an agency that has delegated investigative authority to this Department are in compliance with 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, 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, including public school systems. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin and also states, at 34 C.F.R. § 100.7(e), the following:

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 section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under this part.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the prohibition against retaliation found in Title VI. The regulation implementing Title II, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

Legal Issue

In letters issued XXXX XXXX XXXX, OCR notified PTAA and the complainant that OCR was opening this complaint for investigation and that, based on the complaint allegations, OCR would investigate the following legal issues:

1. Whether PTAA retaliated against the complainant and Student because the complainant filed a complaint of disability discrimination XXXX XXXX XXXX XXXX and has continued to advocate for the Student’s disability-related needs, in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134, when:
 - a. On or around XXXX XXXX XXXX, PTAA’s XXXX XXXXX emailed campus staff to obtain communications between staff and the complainant in response to XXXX XXX XXXX, in an effort to “build a case” against the complainant;
 - b. During the fall 2020 semester, PTAA staff have logged the Student out of his school email and accounts and deleted his email messages;
 - c. On XXXX XXXXX X, during a meeting with PTAA staff, staff encouraged the complainant to XXXX XXXX XXXX XXXX, and have repeatedly encouraged the complainant to XX – end of sentence redacted – XX;
 - d. Throughout the fall 2020 semester, the PTAA Principal has requested that PTAA staff cease any communication with the complainant, including outside of school hours;
 - e. During the fall 2020 semester, the Student’s XXXX XXXX professor emailed other PTAA teachers to encourage them not to speak with the complainant, accused the complainant of XXXX XXXX and refused to meet with the complainant;
 - f. During the fall 2020 semester; the Student’s XXXX XXXX teacher rejected the Student’s attempts to retake a XXXX quiz multiple times and, even after the Student ultimately took the test in person at school for a better score, failed to correct the Student’s grade on the quiz in the PTAA’s electronic grading system;
 - g. On XXXX XXXX XXXX, XXXX stated to the complainant that she was a “firing squad looking for her next target”;
 - h. On XXXX XXXX XXXX, PTAA issued the complainant a “XXXX XXXX XXXX,” prohibiting the complainant from communicating with any PTAA staff other than the XXXX;
 - i. During the fall 2020 semester, after the issuance of the XXXX XXXX XXXX, the XXXX XXXX has failed to ensure that the Student’s teachers receive the complainant’s email communications, and the complainant has not received all communication from the Student’s teachers;
 - j. On XXXX XXXXX XXXXX, after the complainant notified PTAA that she would be picking the Student up from school early, PTAA called for police assistance, and there were police officers present at the campus when the complainant arrived;

- k. On XXXX XXXX XXXX, the XXXX XXXX denied the complainant’s request for an Admission, Review, and Dismissal (ARD) meeting requested submitted by the complainant on XXXX XXXX XXXX;
- l. On XXXX XXXX XXXX, the Student’s XXXX teacher pulled the Student from XXXX for detention for “behavior” after she refused the Student’s BIP accommodations of XX – end of phrase redacted – XX;
- m. From XXXX XXXX XXXX, the XXXX sat in the Student’s classes and also accompanied the Student when XX – end of phrase redacted – XX;
- n. On XXXX XXXX XXXX, PTAA denied the Student the opportunity to participate in his classes remotely after he left school early; and
- o. After XXXX XXXX XXX, when the complainant XXXX XXXX XXXX XXXX, PTAA has failed to respond to the complainant’s concerns regarding grading, assignments, and the scheduling of an ARD meeting;
- p. After the Student XX – phrase redacted – XX, the Student has been denied entry to virtual classes;
- q. In XXXX XXXX, PTAA staff threatened to call the police when the complainant came to campus to pick up school lunches and school supplies; and
- r. PTAA has notified the complainant that she is no longer allowed to come to the campus to pick up school lunches and/or school supplies.

As a preliminary matter, 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 the law.

In its investigation of this complaint, OCR reviewed information provided by the complainant and PTAA. OCR also interviewed the complainant and PTAA personnel. Finally, OCR contacted the complainant and offered her the opportunity to provide additional information in support of her allegations of retaliation. Based on a careful review of all of the available evidence, OCR determined there is insufficient evidence to support a finding of retaliation with respect to a portion of the complainant’s allegations; however, OCR also identified concerns related to some of the complainant’s allegations of retaliation and intimidation. Prior to OCR investigating further and making a compliance determination, PTAA expressed interest in taking action to voluntarily resolve the compliance concerns identified by OCR pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). OCR approved PTAA’s request and negotiated a Voluntary Resolution Agreement with PTAA which will resolve the concerns identified by OCR.

A summary of the relevant legal standard and OCR findings and concerns is provided below.

Legal Standard

OCR interprets the regulations it enforces, consistent with case law regarding analogous provisions, to require satisfaction of the following three elements to find a *prima facie* case of retaliation:

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 adverse action for the purposes of the anti-retaliation regulations 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 and regulations enforced by OCR. Under that perspective, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Whether an action is adverse is judged from the perspective of a reasonable person in the complainant's position.

Although all three elements must exist to establish a *prima facie* case, OCR need not address all three elements if it determines one is missing. 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 considers whether the recipient's offered justification is legitimate or a pretext for retaliation.

Background

PTAA is a tuition-free charter school system with campuses across the Dallas-Fort Worth metroplex. PTAA opened its North Dallas campus during the summer of 2020, and the 2020-21 school year is its first year of operation. The Student enrolled at PTAA for the 2020-21 school year, where he is currently in the XXXX XXXX. In an initial interview with OCR, the complainant stated that the Student has been diagnosed with the following: XX – redacted - XX. According to the complainant, the Student was evaluated and determined eligible to receive special education services at the charter school he previously attended. The complainant stated that the Student's previous school developed a "very detailed" Individual Education Program (IEP) for the Student, but she asserted that the IEP was not provided to the Student's teachers at PTAA when she enrolled the Student at PTAA and was not "copied correctly" by PTAA.

The complainant asserted to OCR that when she enrolled the Student at PTAA's XXXX XXXX campus, the new campus did not yet have a Special Education Coordinator. According to the complainant, she was communicating with a coordinator from a different PTAA campus, and the PTAA had "nothing in place" and did not share the Student's IEP with the Student's teachers. The complainant stated that she personally provided a copy of the Student's IEP to the Student's

teachers and had difficulty getting the school to schedule an Admission, Review, and Dismissal (ARD) meeting to review the Student’s IEP. Therefore, according to the complainant, she XX – end of sentence redacted – XX. The complainant asserted that after she XX – phrase redacted – XX, she continued to express concerns to PTAA that the Student’s IEP was not being followed, and she was met with “pushback” from PTAA.

OCR interviewed XXXX XXXX. XX – remainder of paragraph redacted – XX.

The complainant asserted to OCR that PTAA staff – XX redacted – XX – began retaliating against the complainant and Student after she XX – to end of sentence redacted – XX. With respect to some of the complainant’s specific allegations of retaliation, OCR determined that the evidence is insufficient to support a finding that PTAA retaliated against the complainant or Student. OCR’s findings with respect to these specific allegations is detailed below.

OCR Findings – Issues 1(a), (e), (f), (k), (l), (n), and (p)

Issue 1(a)

In an interview with OCR, the complainant asserted that after she XX – phrase redacted – XX, XXXX emailed PTAA teachers requesting all of the “negative communications” from the complainant. The complainant stated her belief that XXXX was going to use these communications “in response to XXXX XXXX.” OCR obtained a copy of the email from XXXX, as well as additional communications between XXXX and PTAA staff. In the email, which is dated XXXX, XXXX informs PTAA staff that she is compiling a “formal response” and XX – remainder of paragraph redacted – XX.

XX – paragraph redacted – XX.

In a written response provided to OCR in response to the complaint, XXXX explained that when PTAA received XX – phrase redacted - XX, PTAA had to compile documentation for XXXX to review. Among the documentation requested by XXXX was the following: “XX – phrase redacted – XX.” Therefore, according to XXXX, XXXX requested narratives from the staff so that she could “establish a timeline of events” so that a “complete picture” could be provided to XXXX. OCR also interviewed XXXX. In her interview, XXXX reiterated that she was not “building a case” against the complainant, but simply gathering documentation to respond to XXXX.

The preponderance of the evidence corroborates that XXXX emailed PTAA staff to obtain written narratives of staff interactions with the complainant after the complainant XX – to end of sentence redacted - XX. Under the circumstances presented here, however, XXXX’s action cannot be considered “adverse.” As stated above, an act of intimidation, threat, coercion, or discrimination constitutes adverse action for the purposes of the anti-retaliation regulations 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 and regulations enforced by OCR. Based on the context of XXXX’s email message to PTAA staff – gathering information to respond to XXXX – the email message alone (which was not directed toward the complainant) is not an act of intimidation, threat, or coercion related to the complainant’s XXXX XXXX. Moreover, contrary to the complainant’s assertion, OCR’s review of the email communications reveals that XXXX did not state that PTAA was building a “case” against the complainant. Rather, XXXX’s email communications make clear that PTAA was

compiling documentation requested by XXXX – to end of sentence redacted – XX. Accordingly, the preponderance of the evidence does not support that XXXX engaged in an adverse action against the complainant, and a *prima facie* case of retaliation cannot be established with respect to this issue.

Issues 1(e) and (f)

The complainant also alleged that the Student's XXXX teacher began to retaliate against the Student after she raised concerns regarding the Student's receipt of IEP accommodations in his XXXX class. In her written complaint, the complainant alleged that, on XXXX XXXX, the Student's XXXX teacher emailed all of the Student's teachers for a "group meeting" about the Student and complainant. In an interview with OCR, the complainant explained that she had not seen this email, but she had "second-hand knowledge" that the XXXX teacher told other teachers that the complainant was "threatening and harassing" and asked other teachers not to speak with the complainant. In her interview, the complainant also asserted that the XXXX teacher refused to provide "services" to the Student, and when she threatened to forward to XXXX an email in which the XXXX teacher stated that she would not provide services, the XXXX teacher advised XXXX that she felt "threatened." The complainant further asserted that the XXXX teacher refused to provide her with her "grading rubrics" and initially refused to permit the Student to retake a XXXX quiz. According to the complainant, the Student eventually re-took the quiz with his XXXX teacher, but she asserted that the copy of the quiz results and grade returned home was not the version that the Student had retaken. According to the complainant, XXXX teacher never corrected the Student's grade on this quiz.

XX – paragraph redacted – XX.

XX – paragraph redacted – XX.

In her interview with OCR, the XXXX teacher reiterated that she perceived the complainant's email as a threat. The XXXX teacher also confirmed that she denied a face-to-face meeting with the complainant. According to the XXXX teacher, she did not feel the need to meet with the complainant again because all of the teachers had already met with the complainant, and the XXXX had already met with the complainant to convey her position on the Student's grade for this assignment. The XXXX teacher stated that she ended up dropping the grade on this assignment for the Student, as she drops the lowest grade for all students in her course.

With regard to the XXXX quiz, the XXXX teacher wrote in her written response that all students were able to retake this quiz. According to the XXXX teacher, she arranged for the Student to take the test in the presence of another teacher, but the Student ended up retaking the test in her classroom. The XXXX teacher stated that the Student scored XXXX, which is the same score that he received on the first test. Therefore, a grade change was not warranted. In her interview with OCR, the XXXX teacher corrected herself and recalled that the Student actually took the test in a different teacher's classroom. However, according to the XXXX teacher, the Student brought the quiz to her and she graded it. The XXXX teacher recalled that although the Student missed different questions, he received the exact same score. Further, the XXXX teacher stated that she sent the quiz home so that the Student could review it. The teacher confirmed that the Student's grade has not been changed for this quiz.

Due to the conflict in the evidence received, OCR contacted the complainant and afforded her the opportunity to provide additional information regarding the retake and grading of the XXXX quiz. The complainant asserted that the Student took the second XXXX quiz in marker, but that the version of the retake sent home was not the Student's paper, as it was not in his handwriting and was not in marker. According to the complainant, the Student's XXXX teacher supervised and graded the retake. As noted above, however, the Student's XXXX teacher reported that, while another teacher had supervised the Student's retake, the Student brought the quiz back to her for the XXXX teacher to grade it. OCR's review of the Student's grade reports reveals that the Student made the following grades on his report card for the first three six-week grading periods of the school year: XXXX, XXXX, XXXX.

After carefully considering the above, OCR has determined that the evidence is insufficient to support a finding that the complainant or Student were subjected to unlawful retaliation with respect to Issues 1(e) and (f). First, with regard to Issue 1(e), OCR reviewed the XXXX teacher's email to other PTAA staff as well as other email communications between the complainant and PTAA staff. OCR's review did not corroborate the complainant's allegation that the XXXX teacher encouraged other staff not to speak with the complainant. However, the XXXX teacher did indicate to other teachers that she perceived the complainant's language to be harassing and indicated that teachers may need to consider taking action against the complainant. This communication was not directed at the complainant, and the evidence does not indicate that the XXXX teacher ever took any action to complain about the complainant's language toward her other than putting administration on notice of the email communications received. Given the context, OCR cannot determine that the complainant suffered an "adverse action" from the XXXX teacher when the XXXX teacher emailed her administrator and other PTAA staff.

Moreover, although the XXXX teacher conceded that she denied a face-to-face meeting with the complainant regarding the complainant's concerns with the Student's grade on this particular project, the XXXX teacher indicated that she and other staff members had already met with the complainant. Further, the XXXX teacher stated that the XXXX had met with the complainant to listen to her concerns regarding the XXXX teacher's grading of this particular assignment. Finally, the evidence indicates that the XXXX teacher offered the Student the opportunity to redo the project and, ultimately, the Student's grade on this project was dropped. Because the complainant was afforded the opportunity to address her concerns with the teacher and XXXX, OCR does not find that the XXXX teacher's denial of an additional meeting with the complainant is an "adverse action." Accordingly, the preponderance of the evidence does not support a *prima facie* case of retaliation with respect to Issue 1(e).

With respect to Issue 1(f), although the complainant asserted that the Student received a higher score on his retake of his XXXX quiz, the XXXX teacher indicated that she personally graded the quiz, and the Student received the same score. Due to the conflict in information from witnesses, OCR could not corroborate the complainant's allegation that the Student earned a higher score. Accordingly, there is insufficient evidence for OCR to conclude that the Student was subjected to the adverse action alleged. For this reason, the preponderance of the evidence does not support a *prima facie* case of retaliation.

Issue 1(k)

The complainant also asserted to OCR that PTAA retaliated against her when, on XXXX XXXXX XXXX, PTAA denied her request for an ARD meeting to review the Student’s services. In an interview with OCR, the complainant stated that she requested the meeting for the Student because the Student’s XXXX teacher was leaving PTAA, and she wanted to be sure that “the Student would receive the same interaction.” According to the complainant, however, XXXX never received her request, and she received a Prior Written Notice (PWN) declining the meeting request signed by XXXX.

OCR received a copy of the PWN from PTAA. XX – remainder of paragraph redacted – XX.

XX – paragraph redacted – XX.

XX – paragraph redacted – XX.

OCR followed up with the complainant and afforded her the opportunity to provide additional information to support her allegation that the denial of her XXXX request for an ARD was an act of retaliation. The complainant asserted that the evaluation of the Student by PTAA was “drug out” for months and was nothing more than “5 minutes” when it did happen.

The evidence reviewed by OCR confirms that PTAA denied the complainant’s request for an ARD meeting in XXXX XXXX. As reflected above, the evidence corroborates that the complainant engaged in protected activity (e.g., XXXX XXXXX XXXXX and further advocacy on behalf of her Student, who has been identified as a student eligible to receive special education services by PTAA). Because the ARD committee was denied approximately one month after PTAA received notice of the complainant’s XXXX XXXX, OCR will infer a causal connection between the complainant’s protected activity and the denial of the complainant’s request. Accordingly, a *prima facie* case of retaliation is supported by the preponderance of the evidence.

PTAA offered an explanation for its denial of the complainant’s request in XXXX XXXX: ARD meetings had already been held to evaluate the Student’s needs, and XX – to end of sentence redacted – XX. Further, the evidence shows that PTAA convened an ARD committee on XXXX XXXX XXXX. Based on a review of ARD documentation and information received from the complainant and the PTAA, OCR has determined that PTAA’s explanations are legitimate and not a pretext for retaliation against the complainant. Accordingly, OCR has determined that the evidence is insufficient to support a finding of retaliation against the complainant with respect to Issue 1(k).

Issue 1(l)

The complainant also alleged that, on XXXX XXXX, the Student’s XXXX teacher “pulled” the Student from P.E. to serve a detention after the Student XX – to end of sentence redacted – XX. In an interview with OCR, the complainant asserted that the Student served a detention in the Principal’s office, and she was not notified of the detention until after the Student had already served the detention.

OCR interviewed the XXXX teacher involved in this incident. The teacher reported that she is the Student’s XXXX teacher for the 2020-21 school year, but during the fall semester, classroom teachers rotated providing XXXX XXXX for the Student. The XXXX teacher reported that, due

to her classroom schedule, she was available to provide XXXX XXXX for the Student during his XXXX XXXX classes. XX – to end of paragraph redacted – XX.

XX – paragraph redacted – XX.

XX – paragraph redacted – XX.

Because the evidence provided by PTAA indicated that the Student was not assigned detention on this date, OCR followed up with the complainant to afford her the opportunity to respond. The complainant provided OCR with a copy of the same documentation provided by PTAA (email communications and the referral form). XX – remainder of paragraph redacted – XX.

Based on the above-described evidence, OCR cannot confirm that the Student was placed in detention on XXXX XXXX XXXX, as alleged by the complainant. XX – sentences redacted – XX. Further, both parties concede that the Student had a “meltdown” on this date. Although the Student did not receive a detention on this date, the preponderance of the evidence supports a finding that the Student did miss at least some of his XXXX class on this date. Accordingly, OCR has determined that the Student suffered an adverse action. Further, PTAA was aware by this date that the complainant had engaged in a protected activity of XXXX XXXX XXXXX. PTAA offered a legitimate, nonretaliatory reason for the Student’s absence for a portion of XXXX on this date, i.e., that the Student was XX – to end of sentence redacted – XX. Based on information received from the complainant and the recipient, OCR has determined that the reason offered by PTAA is not a pretext for retaliation. Accordingly, the evidence is insufficient to support a finding that PTAA retaliated against the Student in violation of Section 504 or Title II with respect to Issue 1(l).

Issue 1(n) and (p)

The complainant also expressed concern in her complaint that PTAA has retaliated against the Student by denying him entry to virtual classes when he is learning remotely. The complainant alleged that, on XXXX XXXX XXXX, the Student called the complainant so that he could leave school early. The complainant stated that, after the Student returned home, he attempted to participate in classes virtually, but was not allowed to participate in online learning activities on this day. According to the complainant, XXXX sent an email to staff that day providing instructions on how to mark students present for class who generally attend school in person but who are remote learning. The complainant asserted that this was not “permitted for the Student,” and “he was in the waiting room for the remainder of his classes.” The complainant also advised OCR that, after XXXXX, xx – remainder of paragraph redacted – XX.

OCR received a written response from PTAA regarding these allegations. According to PTAA, although students are not permitted to switch back and forth between virtual and in-person learning, the Student was permitted to learn virtually on XXXX XXXX XXXX, and was provided with log-in information to complete his assignments for this date. In an interview with OCR, XXXX stated that he was not aware of the specifics of the XXXXX XXXX XXXX incident. However, XXXX explained that students can elect to switch from virtual to in person or vice versa every six weeks period. If a student is absent or leaves school for an appointment or any other reason on one occasion, the teachers will presume that the student is absent for the that day, and the teacher may not be prepared to log the student in virtually. XXXX also indicated in a written response to OCR that on XXXX XXXXX PTAA had a “fun fest” for all students.

OCR also interviewed the Student’s “core” subject teachers. The Student’s XXXX teacher recalled one date where the Student left school early and explained that there was a “miscommunication.” As explained by the XXXX teacher, if an in-person student leaves school early, the staff will assume that it is for an appointment of some kind unless the parent notifies the teacher that the Student wishes to participate virtually. The XXXX teacher stated that XX – phrase redacted – XX, so if she is not notified that the Student wishes to attend virtually, she will not “run Zoom.” The STEM teacher also stated that the Student’s absence on this date did not have a “detrimental effect” on his grade because she posts all notes from the class on her Google stream and the class reviews it the following day. As for after XX – to end of paragraph redacted – XX.

Other teachers interviewed by OCR recalled having “technical” issues from time to time, or sometimes not hearing an alert which notifies staff that the Student is waiting in the virtual classroom. One of the Student’s teachers reported that if the Student is “late” to class by a few minutes, the teacher may have to move away from the computer to attend to the class and then may not be able to admit the Student until several minutes later. According to this teacher, there may have been some times when the Student was late because the teacher was unable to let him in, but the Student has never “outright missed all of his classes.” Staff reported that they are not aware of any PTAA teacher who would intentionally not let the Student in to class virtually.

OCR contacted the complainant and provided her the opportunity to provide additional information regarding this allegation. With regard to the XXXX XXXX XXXX incident, the complainant asserted that on this date, virtual students were provided with instructions for games, and the Student was “left out” because he was “slower to enter,” so the students began each game without him. According to the complainant, the Student XX – remainder of sentence redacted – XX.

XX – paragraph redacted – XX.

The preponderance of the evidence does not support a finding that PTAA subjected the Student to adverse actions with respect to these issues. With respect to Issue 1(n), OCR received some evidence from both the complainant and a PTAA teacher that the Student’s participation in virtual classes on this date may have been limited due to PTAA’s not having advance knowledge that the Student wished to participate virtually during the afternoon hours on this date. OCR also received evidence from both the complainant and PTAA, however, indicating that the Student was able to participate in some of the “games” scheduled for this date, even if the Student was late to log on. Further, PTAA indicated that the Student was provided with the materials covered during class sessions that the Student may have missed. The evidence does not indicate that the Student’s limited participation in activities on this single date caused the Student any lasting harm, and thus is not sufficiently “adverse” to support a *prima facie* case of retaliation.

Further, OCR did not receive sufficient evidence from PTAA staff that the Student has not been logged in to his virtual classes since XX – remainder of sentence redacted - XX. While it is possible that there have been occasions the Student has been logged in to a virtual platform (e.g., Zoom or Google classroom) a few minutes after class has begun, OCR’s investigation could not corroborate the complainant’s allegation that the Student has been consistently denied entrance to virtual classes, thus adversely impacting the Student’s educational opportunities. As such, the evidence does not support a *prima facie* case of retaliation with respect to Issue 1(p).

Compliance Concerns – Issues 1(b), (c), (d), (h), (i), (j), (m), (o), (q), and (r)

While OCR’s investigation did not reveal sufficient evidence to support a finding of retaliation with respect to those issues discussed above, OCR’s investigation revealed preliminary compliance concerns with respect to some issues raised by the complainant, namely Issues 1(b), (c), (d), (h), (i), (j), (m), (o), (q), and (r). The concerns identified with respect to these issues are summarized below.

1(b) - Student’s email account and messages

The complainant asserted that, at some point after XX – phrase redacted – XX, “someone” from PTAA logged in to the Student’s school email account and deleted all of his email messages. In an interview with OCR, the complainant stated that about two weeks later, the Student’s email messages were erased again.

In interviews with OCR, one PTAA teacher XX – remainder of sentence redacted – XX. The teacher also stated that there were times that the teacher and the Student were not receiving messages to and from each other. Other staff members also reported having trouble with their PTAA email accounts, such as emails suddenly “disappearing.” This information from PTAA staff suggests that PTAA exercises sufficient control over staff and student email accounts such that some information may not have reached the Student, resulting in an adverse educational impact on the Student.

PTAA advised OCR that, in response to OCR’s preliminary investigative findings, PTAA’s XXXX XXXX reviewed the Student’s email account and could not find evidence that the Student’s email account was deleted in XXXX XXXX. PTAA also asserts that the Student has never been denied the ability to communicate with his teachers via Google classroom, a platform used by PTAA. As referenced above, however, OCR identified some concerns based on interviews with PTAA staff that at least some email messages were not reaching the Student or complainant.

1(c), (d), (h), and (o) – TEA complaint, Cease and Desist Notice, and Communications

The complainant also asserted to OCR that, after she XX – phrase redacted – XX, she was encouraged to XXXX XXXX XXXX and staff were told not to communicate with her. Further, the complainant alleged that after she complained to one PTAA teacher that she was not implementing the Student’s IEP, she was served with a XXXX XXXX XXXX XXXX which prohibited her from communicating directly with *anyone* at the campus other than XXXX XXXX. Finally, the complainant asserted that after she XX – phrase redacted – XX, she has had difficulty communicating with PTAA teachers and staff about grading and assignments.

OCR interviewed PTAA staff and identified potential concerns with intimidation and/or retaliation against the complainant with respect to these allegations. For example, one PTAA teacher stated to OCR that XX – remainder of paragraph redacted – XX.

Issue 1(g) – “Firing squad” comment

The complainant further asserted that, in a face-to-face meeting with XXXX on XXXX XXXX XXXX, she questioned XXXX about one of the Student’s grades, to which the XXXX responded

that she was a “firing squad looking for her next target.” In a written response to OCR, XXXX conceded that he made a comment of this nature to the complainant. XX – remainder of paragraph redacted – XX.

While OCR cannot know the exact statements the Principal made, or the context in which the statements were made, OCR has concerns that such a comment could have had the effect of dissuading the complainant from pursuing her concerns, including concerns of potential disability discrimination on behalf of the Student.

Issue (i) – Communications with PTAA staff

The complainant has continued to assert to OCR that, since the issuance of the XXXX XXXX XXXX which requires that all communication to and from teachers pass through XXXX, XXXX has not been able to ensure that the complainant and Student receive all necessary communications from the Student’s teachers.

XX – paragraph redacted – XX.

OCR has concerns that the limitations on communications with the complainant is adversely impacting the Student’s ability to participate in the educational services offered by PTAA. Further, the limitation is so broad that it does not appear to be narrowly tailored to actual concerns identified by PTAA with respect to the complainant’s communications with staff.

Issues 1(j), (q), and (r) – Police and Complainant’s Ability to Come to Campus

In her written complaint to OCR, the complainant asserted that when she arrived to pick up the Student from campus on XXXX XXXX XXXX, there were police “waiting” for her. The complainant has also asserted to OCR that she is prohibited from coming on to campus for any reason, and when she has tried to come to campus to pick up supplies for the Student, staff have threatened to call the police, which makes the complainant feel as if PTAA is trying to “force” the complainant and Student out of the school.

PTAA denies that the police have ever been called because the complainant came to the campus to pick up supplies. While no staff member interviewed by OCR personally witnessed any police officers on campus, XX – remainder of paragraph redacted – XX.

XX – sentences redacted – XX. As referenced previously, however, OCR received little information from staff interviewed regarding communications from the complainant that they perceived as “threatening” other than XX – to end of sentence redacted – XX. Based on the information received during OCR’s investigation, OCR has concerns that the threat of police presence is not intended to protect PTAA staff from alleged harassment from the complainant, but rather to impede the complainant’s ability to come to campus for any reason, thereby limiting the complainant’s involvement in the education of the Student.

Issue 1(m) – XXXX’s Presence in Student’s Classes

Finally, the complainant also alleged that, from at least XX – phrase redacted – XX, XXXX was “following” the Student in all of the Student’s classes, which made the Student “stressed out and very anxious.” During OCR’s investigation, PTAA staff confirmed that XXXX has been present in their classes. According to one teacher, XXXX attended the class on two separate days. Another

teacher reported that XX – to end of sentence redacted – XX. XXXX denies that he has ever “followed” the Student, but states that he did conduct “many class observations.” While there could be reasonable explanations for XXXX observations of classes in which the Student was present, OCR has concerns that XXXX’s frequent observations of classes in which the Student was present could have been intimidating to the Student. Indeed, the Student XX – phrase redacted - XX shortly after these incidents were alleged to have occurred.

Conclusion and Resolution

For the reasons set forth above, OCR has determined that the evidence is insufficient to support a finding that PTAA retaliated against the complainant or Student in violation of Section 504 or Title II with respect to Issues 1(a), (e), (f), (j), (k), (l), (n) and (p). With regard to the remainder of the issues opened for investigation, however, OCR’s investigation revealed concerns that PTAA may have engaged in actions that had the effect of intimidating or retaliating against the complainant or Student because of the complainant’s efforts to advocate on behalf of the Student, who has been determined eligible to receive related aids and services from PTAA due to his disabilities.

Prior to OCR issuing a compliance determination, PTAA expressed its willingness to voluntarily resolve the compliance concerns identified by OCR. Pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), allegations under investigation may be resolved at any time when, prior to the point when OCR issues a final determination, the recipient expresses an interest resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. In light of PTAA’s willingness to address the concerns identified by OCR, OCR has determined that entering into a voluntary resolution agreement with PTAA is appropriate in this case. Accordingly, OCR approved PTAA’s request to voluntarily resolve this complaint pursuant to Section 302 of the CPM.

PTAA voluntarily submitted the enclosed Voluntary Resolution Agreement (Agreement) to OCR, signed by PTAA’s Superintendent on XXXX XXXX XXXX. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR’s investigation and are consistent with applicable law and regulations. OCR has determined that the Agreement, upon full implementation by PTAA, satisfactorily resolves compliance concerns identified by OCR. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the PTAA’s implementation of the Agreement. Please be advised that if PTAA fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

With respect to OCR’s findings for Issues 1(a), (e), (f), (k), (l), (n), and (p), the complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to PTAA. PTAA has the option to submit to OCR a

response to the appeal. PTAA must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to PTAA.

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 PTAA 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 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 or the Agreement, please contact Rachel Caum, Attorney, at (214) 661-9632, or at rachel.caum@ed.gov. You may also contact me, at (214) 661-9638, or at lori.bringas@ed.gov.

Sincerely,

/s/

Lori Howard Bringas
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: Voluntary Resolution Agreement