

April 15, 2014

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Re: OCR Docket # 07141008

Dear Ms. XXXXXX:

On October 17, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Santa Fe Trail School District (District), Carbondale, Missouri, alleging discrimination on the basis of disability. Prior to the conclusion of OCR's investigation into Allegation 1 of this complaint, the District offered to resolve the allegation by entering into a Resolution Agreement with OCR. OCR completed its investigation regarding allegations 2, 3, and 4 of this complaint and determined there is insufficient evidence to conclude that the District discriminated against the complainant's son on the basis of his disability as alleged. This letter details OCR's investigation and findings.

Specifically, the complainant alleged the:

1. District failed to respond to reports that the complainant's son's head XXXXXX harassed him on the basis of disability (XXXXXX XXXXXX);
2. District failed to implement the complainant's son's Individualized Education Plan (IEP) when the XXXXXX refused to allow him to travel to his resource room during an anxiety crisis;
3. District failed to implement the complainant's son's IEP when an XXXXXX refused to allow his son to contact the complainant during an anxiety crisis; and
4. the XXXXXX retaliated against the complainant's son by harassing him until he quit the XXXXXX team.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.
- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits recipients of FFA from the Department from discriminating on the basis of race, color, or national origin. The Title VI regulation at 34 C.F.R. § 100.7(e) also prohibits retaliation. The Title VI regulation prohibiting retaliation is incorporated, by reference, into the regulation implementing Section 504 at 34 C.F.R. § 104.61. The Title II regulation at 28 C.F.R. § 35.134 contains a similar retaliation prohibition.

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, OCR referred to the complainant as “the Complainant” and referred to the complainant’s son as “the Student.” To protect individuals’ privacy, OCR also did not use the names of employees, students, and other parties in this letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination for allegations 2, 3, and 4 of this complaint, OCR considered information the Complainant and the District submitted, including District policies and procedures and the Student’s academic records. OCR also conducted in-person interviews on March 27, 2014, with the superintendent (Superintendent), XXXXX (XXXXX), XXXXX (XXXXX), XXXXX (XXXXX), XXXXX / XXXXX (XXXXX XXXXX XXXXX) and the XXXXX (XXXXX). In addition, OCR interviewed the Complainant by telephone.

Based on our investigation of allegations 2, 3, and 4, OCR has concluded there is insufficient evidence to prove that the District failed to implement the Student’s IEP and retaliated against the Student. As noted above, prior to the completion of OCR’s investigation of allegation 1 of this complaint, the District offered to resolve this allegation by entering into a

Resolution Agreement with OCR. The legal and factual bases for OCR's determination regarding allegations 2, 3, and 4 are set out below.

Allegation 1 – District Failed to Respond to Report of Harassment

The Complainant alleged the District discriminated against the Student on the basis of disability by failing to respond to reports that the XXXXX harassed him on the basis of his disability.

Prior to the completion of OCR's investigation into Allegation 1 of this complaint, the District submitted a signed Agreement (copy enclosed) to OCR on April 14, 2014, that, when fully implemented, will address this allegation. The Agreement requires the District to provide training to all District administrators, teachers, and staff members regarding harassment on the basis of disability, specialized training on investigating discrimination complaints for all employees designated to handle such complaints, post notices throughout the high school prohibiting harassment and informing individuals how and where to file complaints, and provide OCR documentation of any discrimination complaints and investigations conducted during the 2014-15 school years. Please consult the Agreement for further details.

OCR considers Allegation 1 of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation into Allegation 1 of this complaint.

Allegation 2 – Failure to Implement IEP

District failed to implement the Student's Individualized Education Plan (IEP) when the head XXXXX refused to allow him to travel to his resource room during an anxiety crisis.

Specifically, the Complainant alleged that during a discussion with the Student in the XXXXX XXXXX's office the Student became emotional and requested to travel to his resource room, but the XXXXX refused to allow him to leave his office. The Complainant indicated the Student's IEP allows him to travel to the resource room whenever the student feels it is necessary.

Legal Standard

The regulation implementing Section 504 at 34 C.F.R. §104.4 states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity that receives FFA. The regulation implementing Section 504 at § 104.33(a) requires recipients of FFA that operate a public elementary or secondary education program to provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation implementing Section 504 at 34 C.F.R. § 104.33(b)(1) defines an "appropriate education" as regular or special education and related services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. § 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). As stated in the Section 504 regulation at 34 C.F.R. § 104.33(b)(2), a school district may satisfy its obligation to provide an appropriate education to a student with a disability by implementing an IEP developed for the student in accordance with the Individuals with Disabilities Education Act.

The regulation implementing Title II at 28 C.F.R. § 35.130(a) states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities, of a public entity. The Title II regulation at 28 C.F.R. § 35.130(b)(1)(i) similarly states that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service on the basis of the individual's disability. OCR interprets the Title II regulation to require school districts to provide a free appropriate public education to qualified individuals with a disability to the same extent required by the Section 504 regulation.

A school district's failure to provide services identified in a student with a disability's IEP may deny the student a free appropriate public education and, thus, violate Section 504 and Title II. Not every failure to implement an aid, service, or accommodation/modification in an IEP, however, automatically constitutes a denial of a free appropriate public education. OCR takes into consideration the frequency of the failure to implement and what impact the failure had on the student's ability to participate in or benefit from a school district's services, programs, and activities.

Findings of Fact

OCR investigated whether the District discriminated against the Student on the basis of disability by failing to implement his IEP. OCR made the following factual findings based on information the Complainant provided, documentation provided by the District, and information provided by District administrators and staff members.

Background Information

- The District currently serves grades kindergarten through 12. During the 2012-13 school year approximately 1,078 students were enrolled at the District. The Student attends Santa Fe Trail High School. Approximately 350 students are enrolled at the high school.
- The Student is currently in XXXXX grade at Santa Fe Trail High School.
- The Student is diagnosed as having XXXXX XXXXX. The Student's IEP indicates that he sometimes "shuts down" and can become overwhelmed. The IEP also states he needs to learn to manage his frustration and when he becomes overwhelmed he needs a safe place to go. The IEP states that when the Student becomes overwhelmed his first safe place is the counselor's office and the second safe place is the mental health office.

September 12, 2012 Incident

- The Complainant stated that after a XXXXX game in September 2012, the Student posted comments on his Facebook page indicating that he planned on transferring to XXXXX, a neighboring school district. The Complainant stated that the Student was frustrated because he was not receiving the playing time that he felt he deserved from the XXXXX.
- On or around September 12, 2012, the Student was called into the XXXXX XXXXX's office during his XXXXX class to discuss Student's Facebook post. The XXXXX XXXXX taught a XXXXX class that met during the same time period as the Student's class. The Student's XXXXX XXXXX Teacher was also present during the discussion.
- The Complainant stated that the Student was uncomfortable during the whole meeting and that stated the XXXXX XXXXX asked the student if he planned on quitting the XXXXX team. He stated that the Student was emotional and could not answer the question. The Complainant stated XXXXX XXXXX informed the Student that if he was going to cry, he was going to make him "sit in a chair while he cried."
- The XXXXX XXXXX alleged the Student's Facebook post was brought to his attention by other students. He stated that he called the Student into his office with the Student's XXXXX XXXXX Teacher present. The XXXXX XXXXX stated that during the conversation he told the student, "if he planned on transferring he needed to turn in his XXXXX equipment." According to the XXXXX XXXXX, the Student stated that he did not want to transfer. He stated that he discussed with the Student the importance of not posting things about the team on Facebook and coming and talking to the coaches when he has an issue and that the Student was "antsy" during the conversation but does not remember him crying or requesting to go to the counselor's office. He stated that he did not raise his voice during the conversation and denied making any statement

instructing the complainant to “sit in the chair and cry.” After the conversation was over, the XXXXX XXXXX left the office and returned to his XXXXX XXXXX class. He stated the XXXXX XXXXX Teacher stayed behind with the Student.

- The XXXXX XXXXX Teacher stated that he remembers the discussion between the Student and the XXXXX XXXXX. He stated the Student seemed visibly upset before the conversation began. He does not remember the Student requesting to leave the office at any time during the conversation. However, he does remember the Student crying during the conversation. The XXXXX XXXXX Teacher stated the XXXXX XXXXX did not say or do anything that would warrant the Student being so emotional. He stated the XXXXX XXXXX left the office after the discussion to return to his XXXXX class. The XXXXX Teacher noticed the Student was crying and did not want him to return to the XXXXX class until he regained his composure, so he walked the Student to the counselor’s office.

Analysis and Conclusion

In analyzing an allegation that the District discriminated against the Student on the basis of disability by failing to implement provisions in his IEP during the 2012-13 school year, OCR considered whether the District failed to provide the services identified in the Student’s IEP and if services were not provided whether the District’s failure to provide the services identified in the IEP denied Student a free appropriate public education in violation of Section 504 and Title II. As noted above in the *Legal Standard* section of this letter, a school district’s failure to implement key aids or services identified in the in the IEP of a student with a disability may deny the student a free appropriate public education, and thus violate Section 504 and Title II. However, not every failure to implement an aid, service, or accommodation/modification in an IEP automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and what impact the failure had on the student’s ability to participate in or benefit from a school district’s services, programs, and activities.

During a conversation with OCR on November 20, 2013, the Complainant stated the District failed to implement the Student’s IEP. Specifically, Complainant alleged that during a September 12, 2012 conversation the XXXXX refused to allow Student to travel to his resource room during an anxiety crisis.

OCR reviewed the Student’s IEP and it stated that when overwhelmed the Student should be allowed to transition to a safe place. The IEP stated that Student’s safe places are: 1) the counselor’s office; and 2) mental health office.

The Complainant stated that the Student requested to travel to his safe place during the conversation with the XXXXX when he began to feel overwhelmed by the situation and was forced to sit in the office and cry while the coach lectured him on his behavior.

The XXXXX stated the Student seemed “antsy” but never requested to leave the office and go to one of his designated safe places. The XXXXX also stated that he did not raise his voice during the discussion and that he did not force the Student to sit in a chair and cry during the conversation.

Both the Complainant and the XXXXX informed OCR that the XXXXX Teacher was present during the incident. The XXXXX Teacher stated the Student seemed emotional before the conversation with the XXXXX began. The XXXXX Teacher stated the XXXXX did not raise his voice at Student during the conversation and did not make student sit in a chair and cry. However, the XXXXX Teacher did state that the Student cried during the meeting. The XXXXX Teacher stated that the Student did not request to transition to one of his safe places during the conversation with the XXXXX. After the XXXXX left the office to return to his class the XXXXX Teacher noticed the Student was still very emotional. The XXXXX Teacher thought the Student needed to transition to the counselor’s office in order to regain his composure.

In analyzing an allegation that the District discriminated against Student on the basis of disability by failing to implement provisions in his IEP during the 2012-13 school year, OCR first examined whether the District failed to provide the services identified in the Student’s IEP. The Student’s IEP required that when the Student is overwhelmed he should be allowed to transition to a safe place. The IEP stated that Student’s safe places are the counselor’s office and the mental health office. In his interview with OCR, the XXXXX stated that the Student did not request to transition to his safe place during their conversation. The XXXXX Teacher told OCR he was also present during the conversation and the Student did not request to go to a safe place during the conversation. However, because the Student was very emotional at the end of the conversation, the XXXXX Teacher felt it was necessary for the Student to go to the counselor’s office. The XXXXX Teacher stated that he personally escorted the Student to the counselor’s office after the conversation ended with the XXXXX. The evidence establishes that, based on the Student’s emotional state, the XXXXX Teacher escorted the Student to the counselor’s office at the conclusion of the meeting. The counselor’s office is identified in the IEP as one of the Student’s safe places. Therefore, OCR was unable to establish sufficient evidence to determine the District failed to implement provisions in the Student’s IEP during the 2012-13 school year.

The preponderance of the evidence does not establish that District personnel failed to implement the Student’s IEP on or around September 12, 2012. Consequently, OCR is closing allegation 2 of this complaint as of the date of this letter.

Allegation 3 – Failure to Implement IEP

The District failed to implement the Student’s IEP when an assistant XXXXX refused to allow the Student to contact the complainant during an anxiety crisis.¹

Legal Standard

The same legal standard and analysis described under Allegation 2 applies to Allegation 3.

Findings of Fact

OCR investigated whether the District discriminated against the Student on the basis of disability by failing to implement his IEP when the assistant XXXXX refused to allow Student to contact the Complainant during an anxiety crisis.

In addition to the Findings of Fact for Allegation 2, OCR made the following factual findings based on information you and the District provided:

- The Student was a member of the Santa Fe Trail High School XXXXX team at the beginning of the 2013 XXXXX season.
- The Complainant alleged that Student came off the XXXXX field on August 28, 2013, and informed him that he was triple teamed at practice by three other players and knocked on his back.
- The Complainant informed the XXXXX Teacher, who is also an assistant XXXXX, what happened after the Student told him of the incident.
- On the morning of August 29, 2013, the Complainant informed the XXXXX about the Student’s allegations. The XXXXX informed the XXXXX who investigated the incident further.
- The XXXXX called Student into his office, with the Special Education Teacher also present.

The XXXXX, XXXXX Teacher, and the Student reviewed a video recording of the entire August 28, 2013 XXXXX practice. The XXXXX stated that after watching the entire tape, there was no evidence the Student was XXXXX or XXXXX by other players. Furthermore, that particular day at practice the players were not in full pads and were not supposed to be XXXXX or taking each

¹ After receiving data from the District, and conducting the investigation of Complainant’s allegation, OCR learned the staff member that was the subject of the allegation was the XXXXX and not an XXXXX coach.

other to the ground during drills. The XXXXX stated that the Student was the only player that was XXXXX and taking other players to the ground during the practice.

- OCR reviewed the practice tape from the August 28, 2013 practice and verified that the Student was not XXXXX or XXXXX by teammates during the practice.
- The Complainant alleged the XXXXX asked the Student to read some XXXXX plays and told the Student that he didn't understand them. The Complainant also alleged that he played the practice film and asked the Student to identify where he was hurt. The Complainant alleged that the Student began crying and requested to call his father. He alleged that eventually the XXXXX Teacher stated, "that's enough" and took the Student back to class.
- The XXXXX denied that the Student began to cry during their meeting and that the Student never requested to call his father. He stated after they began reviewing the tape the Student shutdown and stopped talking.
- The Special Education Teacher stated that during the meeting, they reviewed the tape and did not see any of the other players XXXXX on or XXXXX the Student. She stated the Student was the only player on the tape XXXXX other players. She stated the XXXXX asked the Student to explain why he was the only player XXXXX, but the Student did not answer and became very quiet and put his head down. She stated the Student did not start crying, become agitated, or ask to call his father. At the end of the discussion with the XXXXX the Student walked back with her to the classroom. She stated the Student finished the school day without further incident.
- The XXXXX Teacher was part of the Student's IEP team and is very familiar with the content of his IEP. She stated that there is no provision in his IEP that requires the District to allow him to call home to his parents. She stated that there are times when she will allow him to call home if she feels it is helpful, but it is not required.
- OCR's review of the Student's IEP confirmed that it did not have a provision requiring District staff to allow the Student to call his parents.

Analysis and Conclusion

OCR analyzed Allegation 3 under the framework described above in Allegation 2.

In analyzing an allegation that the District discriminated against the Student on the basis of disability by failing to implement provisions in his IEP during the 2013-14 school year, OCR first examined whether the District failed to provide the services identified in Student's IEP.

During a conversation with OCR on December 3, 2012, the Complainant stated the District failed to implement the Student's IEP. Specifically, the Complainant alleged that during an August 29, 2013 conversation with the Student the XXXXX refused to allow the Student to contact the Complainant during an anxiety crisis.

OCR reviewed the Student's IEP and did not find a requirement that staff members allow the Student to call the Complainant when he becomes overwhelmed. As mentioned above, the Student's IEP states he needs to learn to manage his frustration and when he becomes overwhelmed he needs a safe place to go and identifies the counselor's office and the mental health office as safe places for the Student. The IEP does not mention that staff members must allow him to call the Complainant. The Special Education Teacher stated that she has allowed the Student to call his father at times, but it was just because she felt that it was helpful under the circumstances at the times she allowed the Student to call the Complainant.

Although the evidence established that the Student was occasionally allowed to call the Complainant, the preponderance of the evidence does not support a conclusion that the District failed to implement the Student's IEP by not allowing him to call the Complainant because the IEP does not have a provision addressing the Student being allowed to call the Complainant. Furthermore, the evidence did not establish that the Student made a request to use the phone to call the Complainant on August 29, 2013. Because OCR's investigation did not establish sufficient evidence to indicate that the District failed to provide the services identified in the Student's IEP, OCR is closing Allegation 3 of this complaint as of the date of the letter.

Allegation 4 –Retaliation

The Complainant alleged that the XXXXX retaliated against the Student by harassing him until he quit the XXXXX team. Specifically, the Complainant alleged that after he filed a discrimination complaint in August of 2012 the XXXXX began to harass the Student until he quit the XXXXX team.

Legal Standard

The Title VI regulation at 34 C.F.R. § 100.7(e) prohibits retaliation. This regulation states no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI. This regulation is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61 and the Title II regulation at 28 C.F.R. § 35.134.

OCR first examined whether a *prima facie* case of retaliation occurred by determining whether: 1) the Complainant engaged in a protected activity; 2) the District had knowledge the Complainant engaged in a protected activity; 3) the District took adverse action against the Complainant or the Student contemporaneously with or subsequent to the protected activity; and 4) there is a causal connection between the protected activity and the adverse action. If OCR determines there is a *prima facie* case of retaliation, OCR would then determine whether the District had a legitimate non-retaliatory reason for the adverse action and whether this legitimate non-retaliatory reason was a pretext, or excuse, for retaliation.

Findings of Fact

In addition to the Findings of Fact for Allegation 2 and 3, OCR made the following factual findings based on information you and the District provided:

- On September 18, 2012, the Complainant emailed the Superintendent and reported that the XXXXX was bullying and harassing the Student on the basis of his documented disability.
- Due to a XXXXX the Student missed the majority of the 2012 XXXXX season.
- The Complainant stated that the student worked hard to return to the team for his XXXXX XXXXX season. The Complainant stated the Student went to XXXXX camps with the rest of his teammates and went to lifting sessions with the team during the summer of 2013.
- The Complainant alleged that at the beginning of the 2013 XXXXX season, the XXXXX began to retaliate against the Student by bullying and harassing him.
- Specifically, the Complainant alleged that on August 28, 2013, the XXXXX called the Student a “worthless piece of crap” and stated that he “didn’t deserve to be on the XXXXX field.”
- The Complainant also alleged that the XXXXX turned the Student’s padlock backwards so he would be late to XXXXX practice.

- The Complainant informed an assistant XXXXX , the XXXXX Teacher, what happened shortly after the alleged incident occurred on August 28, 2013.
- The XXXXX Teacher, who was present at XXXXX practice, informed the Complainant the XXXXX did not call the Student a “worthless piece of crap” and never said that the Student “didn’t deserve to be on the XXXXX field.”
- On the morning of August 29, 2013, the Complainant informed the XXXXX of the XXXXX ’s comments.
- The XXXXX immediately reported the comments to the XXXXX who investigated the Complainant’s allegations.
- The XXXXX interviewed the Student with the XXXXX Teacher present in his office. The XXXXX Teacher stated that during the meeting the XXXXX asked the Student if the XXXXX made the comments directly toward him. The XXXXX Teacher stated the Student told them he was unsure if the comments were directed toward him, but he believed that he heard the coach make the comments.
- The Superintendent stated that he also investigated the issue and interviewed the XXXXX and three assistant coaches that were present on the XXXXX field that day and all of the coaches indicated that it did not occur.
- The XXXXX Teacher informed OCR that the XXXXX did not call the Student a “worthless piece of crap” and never made statements that the Student “didn’t deserve to be on the XXXXX field.” The XXXXX Teacher also stated that he has not heard the XXXXX call the Student or any other player a “worthless piece of crap.” The XXXXX Teacher also stated that he has never witnessed the XXXXX tamper with the padlock of any student, including the Student. He stated that students will often do that to each other in the locker room as a practical joke, but he did not observe any students tampering with the Student’s padlock.
- The XXXXX denied calling the Student or any other player a “worthless piece of crap.” The XXXXX also denied stating that the Student “did not deserve to be on a XXXXX field.” The XXXXX also denied harassing the Student at any time. He also denied making jokes to any of the other players about the Student’s disabilities. He stated that he has often stopped other student’s from taking actions against the Student. Specifically, he stated that the Student often tackles other students after the whistle and he has to settle the other players down. He stated that he has coached the Student since middle school and has always made sure the student was included as part of the team. As his coach he found ways for the Student to participate on the team and be successful. He stated that he has never bullied or harassed any students.

- In order to prevent issues with the Complainant during the 2013 XXXXX season, the XXXXX assigned two assistant coaches to work directly with the Student during the 2013 XXXXX season. The XXXXX stated that he wanted to minimize his interactions with the Student and prevent future complaints. The XXXXX stated the complaints during the 2013 XXXXX season only began after another player took what the student perceived was his starting position during the first two weeks of practice.
- The XXXXX was also on the XXXXX staff for during the 2013 school year. He stated that he did not observe the XXXXX harass the Student or any other student.
- The XXXXX Teacher stated that she has other special education students that play on the XXXXX team and she has never received a report that the XXXXX harassed them or treated them differently on the basis of their disabilities. She stated the Student never mentioned that he was being harassed by the XXXXX. She stated the only complaints that she received from the Student or the Complainant were about the Student's lack of playing time during the 2012 season.
- The Student quit the XXXXX team on or around August 30, 2013.
- The Special Education Teacher stated that the Student informed her that he quit the XXXXX team because of his XXXXX injury. She stated that he still drags his XXXXX and she believes that it was not healed at the beginning of the XXXXX season.

Analysis and Conclusion

The Complainant alleged that the XXXXX retaliated against the Student by harassing him until he quit the XXXXX team. Specifically, the Complainant alleged that after he filed a discrimination complaint in August of 2012, the XXXXX began to harass the Student until he quit the XXXXX team.

OCR examined this allegation under the Title VI regulation at 34 C.F.R. § 100.7(e) which prohibits retaliation. This regulation states no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VI. This regulation is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61 and the Title II regulation at 28 C.F.R. § 35.134.

OCR determined whether a *prima facie* case of retaliation occurred by determining whether: 1) the Complainant engaged in a protected activity; 2) the District had knowledge the Complainant engaged in a protected activity; 3) the District took adverse action against the Complainant contemporaneously with or subsequent to the protected activity; and 4) there is

a causal connection between the protected activity and the adverse action. If OCR determines there is a *prima facie* case of retaliation, OCR would then determine whether the District had a legitimate non-retaliatory reason for the adverse action and whether this legitimate non-retaliatory reason was a pretext, or excuse, for retaliation.

In analyzing the Complainant's allegation that the District retaliated against the Student, OCR first determine whether the Complainant engaged in an activity protected under the laws enforced by OCR and whether the District was aware of the protected activity. Attempting to file a discrimination complaint under the District's discrimination complaint policy is considered a protected activity under the laws enforced by OCR. The evidence established the Complainant engaged in a protected activity when it emailed the Superintendent on September 18, 2012, and indicated that he was looking for the school to remedy the XXXXX's discriminatory actions. The evidence further established the Superintendent and other administrators received the Complainant's email message. Consequently, the evidence established the Complainant engaged in a protected activity and the District was aware of the protected activity. Therefore, the first two element of a *prima facie* of retaliation are established.

Next, OCR examined whether the District took adverse action against the Student contemporaneously with or subsequent to the protected activity and whether there was a causal connection between the protected activity and the adverse action such as closeness in time. The evidence did not establish that the District took an adverse action against the Student. OCR interviewed the XXXXX and he denied ever making the alleged comments towards the Student. OCR also interviewed the XXXXX Teacher, a staff member that was present at the time the Complainant is alleging the comments were made, and the XXXXX Teacher denied that the XXXXX made the alleged statements to the Student. OCR considered the Complainant's allegations that the XXXXX harassed the Student by putting his padlock on backwards. The XXXXX denied ever tampering with the Student's padlock in the locker room. The XXXXX Teacher also stated he has never witnessed the XXXXX touching the padlock of the Student, or any student. He stated the students often turn each other's locks around backwards as a practical joke in the locker room. OCR was unable to find any evidence that the XXXXX made the alleged statements, or put the Student's padlock on backwards in the locker room.

The preponderance of the evidence did not establish the District took any adverse action against the Student. Therefore, OCR was unable to establish a *prima facie* case of retaliation and concludes the District did not retaliate against the Student as alleged in this complaint. Consequently, OCR is closing Allegation 4 of this complaint as of the date of this letter.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. As noted above, OCR will monitor the District's implementation of the Agreement regarding Allegation 1. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the

complaint. If the District fails to carry out the Agreement, OCR may resume its investigation into Allegation 1 of this complaint.

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 the right to file a private suit in Federal court whether or not OCR finds a violation.

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

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

OCR is committed to prompt and effective service. If you have any questions, please contact XXXXX XXXXX, Attorney, at XXXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by e-mail at XXXXX. XXXXX [@ed.gov](mailto:XXXXX@ed.gov).

Sincerely,

/s/ Maria North

Maria L. North
Supervisory Attorney

Enclosure

Dr. Diane DeBacker
Kansas Commissioner of Education