



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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KANSAS
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August 30, 2017

XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX, XXXXX
XXXX XXXXX XXXXX XXXXX, XXXXX XXX
St. Louis, Missouri 63132

Re: Fort Osage R-1 School District
OCR Case Number: 07-15-1039

Dear XXXXX XXXXX:

On November 5, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against the Fort Osage R-1 School District (District), Independence, Missouri, alleging discrimination on the basis of disability and retaliation for engaging in a protected activity. For the reasons set out below, we have determined there is insufficient evidence to conclude that that the District retaliated against the Complainant’s daughter as alleged in allegation 1 of the complaint. The District has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegations 2 and 3 of the complaint.

Specifically, the Complainant alleged the District retaliated against her daughter because she complained about the District’s handling of a sexual assault against her daughter by:

- 1. Placing her daughter on a long-term suspension from school for XXXXX XXXXX XXXXX XXXXX after the XXXXX XXXXX XXXXX XXXXX XXXX XXXXX during an altercation at school.

The Complainant also alleged the District discriminated against her daughter on the basis of disability by:

- 2. Failing to evaluate her daughter, determine her eligibility for services, and, if appropriate, make a placement decision for her after her daughter was diagnosed with XXXXX XXXXX XXXXX XXXXX; and
- 3. Suspending her daughter from school for more than 10 school days without determining whether the conduct for which she was disciplined was a manifestation of her disability.

OCR is responsible for enforcing:

- Title IX of the Education Amendments of 1972 (Title IX), 20 United States Code (U.S.C.) § 1681, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference the prohibition on retaliation and intimidation for engaging in a protected activity found in the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, at 34 C.F.R. § 100.7(e).
- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

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

In the remainder of this letter, the Complainant’s daughter is referred to as “the Student.” To protect individuals’ privacy, the names of employees, witnesses, and other parties also were not used in the 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 in this complaint, OCR considered information the Complainant and District submitted, including policies and procedures, as well as discipline and special education records. OCR conducted interviews of the superintendent, the elementary school assistant principal, the middle school principal, the middle school assistant principal, and the middle school counselor. OCR also interviewed the Complainant, the Student’s father, and the Student’s XXXXX. The legal and factual bases for OCR’s determination are set forth below.

Allegation 1

Legal and Policy Standards

The Title IX regulation at 34 C.F.R. § 106.71 incorporates the Title VI retaliation prohibition at 34 C.F.R. § 100.7(e), which states that “[n]o recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege... or

because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.”

To determine whether retaliation in violation of Title IX has occurred, OCR reviewed the evidence to determine if there was a sufficient factual basis to believe a *prima facie* case of retaliation exists. A *prima facie* case of retaliation exists if: 1) the Complainant engaged in a protected activity, 2) the District was aware of the protected activity, 3) the District took an adverse action against the Complainant or the Student contemporaneously with or subsequent to the Complainant’s participation in the protected activity, and 4) there is an inferable causal connection between the protected activity and the adverse action. OCR will take into consideration the proximity in the time between the protected activity and the adverse action to determine whether an inferable causal connection exists. If a *prima facie* case is established, OCR will use a burden-shifting framework to determine if the District articulated a legitimate non-retaliatory reason for the adverse action, and if so, whether there is evidence the District’s reason is a pretext for retaliation.

Findings of Fact

The Complainant told OCR that on XXXXX XX, XXXX, the District suspended the Student from school for 10 days because, during a fight at school, the Student hit XXXXX XXXXX. On XXXXX X, XXXX, the District held a disciplinary hearing regarding the incident. The Complainant said after the hearing she received a letter from the superintendent explaining that the District was suspending the Student from school until XXXXX XX, XXXX, and that after XXXXX XX, XXXX, the Student would attend school in the long-term suspension program at the District’s alternative school. According to the Complainant, the Student accidentally hit XXXXX XXXXX and apologized for it, but XXXXX XXXXX said she feared for her safety if the Student returned to school. The Complainant told OCR the Student was diagnosed with XXXXX as a result of a XXXX XXXX sexual assault and explained that when XXXXX XXXX grabbed the Student from behind, the Student’s reaction was due to her XXXX. The Complainant believes the District retaliated against the Student by imposing a long-term suspension on her because the Complainant reported the XXXXX XXXX sexual assault to District officials.

The Complainant told OCR the Student was sexually assaulted (raped)¹ on the XXXXX at the XXXXX XXXXX XXXXX XXXXX in XXXXX XXXX. She did not make a written complaint about the incident, but she and her husband spoke with the superintendent about the incident. The Complainant said before she and her husband left the superintendent’s office, the superintendent said the Student XXXXX XXXXX. The Complainant acknowledged she was not certain to what XXXXX referred, but stated that the superintendent’s comment was upsetting.

¹ The Student’s father told OCR he spoke with the Student and the Complainant about the alleged XXXXX XXXX sexual assault of the Student at the time the incident occurred. He said, based on his conversations with the Complainant and the Student, the Student was not raped; rather, a male student XXXXX XXXXX the Student’s XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX.

The District investigated the alleged sexual assault of the Student in XXXX XXXX and found the allegation to be unsubstantiated.²

District Regulation 2600 states:

The District has the authority to discipline for student conduct that is prejudicial to good order and discipline in the school as provided by state law. . . .

Students forfeit their right to a public education by engaging in conduct prohibited in Regulation 2610, the code of student conduct, and/or state or federal law.

Disciplinary consequences include, but are not limited to, withdrawal of school privileges (athletics, intramurals, student clubs and activities and school social events); the reassignment of the student to another school; removal for up to ten (10) school days by building principals; extension of suspensions for a total of 180 days by the Superintendent; and longer term suspension and expulsion from school by the Board of Education.

District Regulation 2610 identifies acts of misconduct and the consequences for each. According to Regulation 2610, assault of a student or staff member has a minimum consequence of a principal/student conference and a maximum consequence of a 10-day out-of-school suspension with possible referral to the superintendent for further disciplinary action up to and including a 180-school-day suspension or expulsion. Fighting has the same range of disciplinary consequences as assaulting a student or staff member.

District Regulation 2662 addresses the suspension of students who are in violation of the District's student code of conduct. According to Regulation 2662, a building principal may suspend a student for no more than 10 consecutive school days. If a principal decides that a suspension longer than 10 consecutive school days is warranted, the principal may petition the superintendent for a longer suspension. The superintendent may suspend a student for no more than 180 consecutive school days. A suspension of more than 10 days imposed by the superintendent may be appealed to the District's board of education and be heard by the full board, a quorum of the board or a committee of three board members.

The District provided OCR a copy of the 2014-15 Osage Trail Middle School Student Handbook (Handbook). The Handbook includes the full text of Regulations 2600 and 2610.

²The assistant principal of XXXXX XXXXX XXXXX told OCR that in XXXXX XXXX, a teacher reported to her that the Student told XXXXX XXXXX XXXXX Student 1 touched her inappropriately XXXXX XXXXX XXXXX. The Student's statement about what happened did not include any details; the Student indicated she was touched, possibly in XXXXX XXXXX. The assistant principal spoke to several student witnesses none of whom saw Student 1 touch the Student. XXXXX XXXXX XXXXX said she was with the Student XXXXX XXXXX XXXXX and did not see Student 1 touch the Student. The assistant principal told OCR the Student and a group of students were XXXXX XXXXX XXXXX with XXXXX XXXXX at XXXXX when the alleged touching occurred. The superintendent said the Complainant did not share with him details about the incident other than the Student had been inappropriately touched. The superintendent spoke with the assistant principal at XXXXX XXXXX XXXXX as well as the XXXXX XXXXX. XXXXX XXXXX XXXXX told the superintendent, she was with the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and emphatically denied that Student 1 touched the Student.

The District provided OCR a copy of the Student's discipline records. According to these records, the Student was involved in a fight with another student during physical education class. According to the Student's written statement, the other student was sitting in the Student's assigned space. The other student pushed the Student who then kicked the other student. Four other students provided written statements with varying descriptions of the altercation. Teacher 2 provided a brief description of the incident via email indicating that Teacher 2 stopped a fight between the Student and another girl and told both of them to go to the office. One student started toward the office, and the Student started to run after her. When XXXXX XXXXX tried to stop the Student, she turned around and punched XXXXX XXXXX XXXXX XXXXX XXXXX.

In a letter dated XXXXX XX, XXXX, the middle school principal informed the Complainant that the Student was suspended from school for 10 school days for fighting and assaulting XXXXX XXXXX XXXXX. The principal's letter stated that he was referring the matter to the superintendent for review and that the Student's conduct could result in additional disciplinary consequences up to and including expulsion.

On XXXXX X, XXXX, the superintendent conducted an informal hearing regarding the XXXXX XX, XXXX incident in which the Student struck XXXXX XXXXX. The hearing was attended by the superintendent, the principal and the assistant principal, the Complainant, the Student, the Student's stepfather and grandmother, the Student's XXXXX, and the Student's XXXXX from XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX.

Pursuant to the informal hearing, in an email dated XXXXX X, XXXX, the superintendent notified the Complainant informally that the Student's out-of-school suspension was being extended through the end of the first semester, and that the Student would be assigned to the long-term suspension program at the alternative school for the second semester of the 2014-15 school year. The superintendent said he would secure a homebound teacher for the Student for the rest of the first semester so the Student could keep up with classwork. The superintendent's XXXXX X email to the Complainant identified and explained three reasons for extending the Student's 10-day suspension. The first reason was the severity of the offense and XXXXX XXXXX expressed concern for her own safety if the Student returned to school. The second reason was the Student's dishonesty about the events leading up to incident. According to the superintendent, at the hearing the Complainant and Student both stated Teacher 4 failed to address the Student's oft-repeated concern about the other student sitting in the Student's assigned space and that the XXXXX XX incident was "bubbling over of [sic] frustration" from this ongoing conflict. When the superintendent spoke with Teacher 4, however, he learned the Student had not spoken with Teacher 4 about any students sitting in her assigned space and that the Student at times sat in the assigned spaces of other students. Third, the superintendent explained, even though the Student asserted she did not realize she was striking XXXXX XXXXX, based on XXXXX XXXXX description of the incident, the superintendent concluded the Student would have seen and known who she struck.

In a letter dated XXXXX X, XXXX, the superintendent informed the Complainant that pursuant to the XXXXX X, XXXX disciplinary hearing, he was suspending the Student for the remainder

of the first semester and assigning her to the long-term suspension classroom at the alternative school for the remainder of the 2014-15 school year.

A board hearing on the Complainant's appeal of the Student's long-term suspension was held on XXXXX XX, XXXX. The District provided OCR a copy of the transcript of the hearing. Teacher 2 testified that, on the day of the incident, she was XXXXX XXXXX XXXXX XXXXX XXXXX in the Student's physical education class. According to Teacher 2, at the beginning of the class period, she instructed the girls in the class to sit down and start stretching which they did. She heard some yelling and commotion; then two girls stood up and appeared to be fighting. Teacher 2 said she told them to stop and go to the office. One of the two girls started walking to the office. The other girl, the Student, was talking with her friends. When Teacher 2 realized the Student was not coming to the office with them, she turned around and repeated to the Student, "Let's go to the office." Teacher 2 said the Student appeared angry; her face was red and her expression was angry. The Student started running. Teacher 2 said she believed the Student was trying to run past XXXXX to "get" the other student who was walking to the office. Teacher 2 said XXXXX turned and reached for the Student to stop her. The Student stopped and punched XXXXX XXXXX XXXXX XXXXX XXXXX with her fist. XXXXX XXXXX let go of the Student and the Student ran out of the gymnasium. Teacher 2 said the Student could not have mistaken XXXXX XXXXX XXXXX XXXXX or anyone else; XXXXX was the only other person standing up and XXXXX was in regular clothes, not "PE clothes."

Teacher 3, who was XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX at the other end of the gym during the incident, testified at the XXXXX XX, XXXX board hearing that he saw the Student hit XXXXX XXXXX and run out of the gym.

Teacher 4, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, testified at the board hearing that the Student's designated place in physical education class was in XXXXX XXXXX and that she was not aware of any ongoing conflict between the Student and anyone else sitting in the Student's assigned place during class. Rather, Teacher 4 stated that for two or three days in a row, she directed the Student to go to her designated place in XXXXX XXXXX because the Student was sitting XXXXX XXXXX XXXXX talking with a friend.

The superintendent testified at the XXXXX XX, XXXX hearing, explaining his reasons for suspending the Student from school for the remainder of the first semester and requiring her to attend school in the long-term suspension room at the alternative school for the second semester of the 2014-15 school year. According to the superintendent, he considered this consequence to be appropriate because of the severity of the offense of XXXXX XXXXX XXXXX, and because XXXXX XXXXX expressed concern for her own safety if the Student returned to school. Additionally, the superintendent said he gave careful consideration to the reasons the Student struck XXXXX XXXXX offered by the Student, her family and XXXXX. One asserted reason was that the District was responsible for the altercation resulting in the Student striking XXXXX XXXXX because Teacher 4 failed to address the ongoing conflict between the two students over assigned spaces. The superintendent testified that he learned from Teacher 4 the Student was not involved in an ongoing conflict over assigned spaces in the Student's physical education class, and that the Student had at times sat in another student's assigned place. The other asserted reason was that the Student did not realize she was striking XXXXX XXXXX. The

superintendent testified that he spoke with XXXXX XXXXX and learned it was unlikely the Student did not realize she was striking XXXXX XXXXX because XXXXX XXXXX was standing alone and was wearing regular clothes rather than “PE clothes.”

In his interview with OCR, the superintendent acknowledged he was aware that the Complainant told the assistant principal she withdrew the Student from the District in XXXXX XXXX because the superintendent did nothing about the Student’s alleged rape at XXXXX XXXXX XXXXX and said the Student XXXXX XXXXX. He further acknowledged he was aware of the Complainant’s assertion against him before he imposed a long-term suspension on the Student but denied saying the Student XXXXX XXXXX XXXXX XXXXX or anything that could have been misunderstood as such. The superintendent stated neither the Complainant’s allegation that the Student was sexually assaulted nor the Complainant’s accusation that he said the Student XXXXX XXXXX XXXXX sexually assaulted had an impact on his decision to impose a long-term suspension on the Student for striking XXXXX XXXXX in XXXXX XXXX. He explained that he has been a superintendent for 16 or 17 years and this incident is only the second time he could recall that a student assaulted XXXXX XXXXX in this District. The first time was a few years ago and he recommended a long-term suspension in that instance as well.

In response to OCR’s request for records, the District identified two students who were disciplined by the District for striking XXXXX XXXXX, providing for each of the two students a copy of the superintendent’s letter outlining the results of their respective disciplinary hearings. The letter regarding Student 2 stated that, pursuant to a XXXXX XX, XXXX discipline hearing conducted by the superintendent, Student 2 was suspended from the District for 180 days with no educational services. The letter regarding Student 3 stated that, pursuant to a XXXXX X, XXXX discipline hearing conducted by the superintendent, Student 3 was suspended from the District for 180 days with no educational services for striking XXXXX XXXXX. The letter stated the superintendent would reconsider reinstating educational services for Student 3 in XXXXX XXXX.

Legal Analysis and Conclusion

As noted above, OCR first considered whether the Complainant engaged in a protected activity and the District had notice of it. An individual has engaged in a protected activity if the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted under one of the laws OCR enforces. An individual has also engaged in a protected activity if the individual has opposed any act or policy that is believed to be unlawful under one of the laws enforced by OCR. The preponderance of the evidence established the Student and Complainant reported an alleged sexual assault of the Student to the District in XXXXX XXXX. Thus, OCR determined the Complainant engaged in a protected activity and the District had notice of it.

Next, OCR considered whether the District took adverse action against the Student subsequent to or contemporaneous with the Complainant’s participation in a protected activity. As noted above, the Complainant engaged in a protected activity in XXXXX XXXX. The preponderance of the evidence established that on XXXXX XX, XXXX, the District suspended the Student

from school for 10 days for striking XXXXX XXXXX. The preponderance of the evidence also established that, pursuant to an informal hearing on XXXXX X, XXXX, the superintendent extended the 10-day suspension through XXXXX XX, XXXX and required the Student to attend class in the long-term suspension room at the alternative school for the second semester of the 2014-15 school year. Based on the above, OCR determined the District took adverse action against the Student subsequent to the Complainant's participation in a protected activity.

OCR next considered whether there is an inferable causal connection between the Complainant's participation in a protected activity and the adverse action. As noted above, OCR will take into consideration the proximity in the time between the protected activity and the adverse action to determine whether an inferable causal connection exists. In this case, the adverse action occurred on or about XXXXX X, XXXX, approximately eight months after the Complainant reported the alleged sexual assault of the Student in XXXXX XXX. OCR will presume, for the purpose of advancing this analysis, that an inferable causal connection exists between the Complainant's participation in a protected activity and the adverse action.

Having established a *prima facie* case, OCR next determined whether the District articulated a legitimate non-retaliatory reason(s) for the adverse action and, if so, whether there is evidence the District's reason is a pretext for retaliation. According to the superintendent, he extended the Student's 10-day suspension for two reasons: the severity of the infraction—striking XXXXX XXXXX; and the invalidity of the Complainant's and Student's asserted justifications for the Student's behavior. There is no evidentiary dispute that the Student struck XXXXX XXXXX on XXXXX XX, XXXX. Nor is there any dispute that the superintendent considers striking XXXXX XXXXX to be a very serious offense. The District determined that the Student's justifications for striking XXXXX XXXXX were refuted by credible hearing testimony, provided by Teacher 4 and Teacher 2. Although the Student and Complainant asserted the incident was the result of the Student's unresolved conflict with another student who repeatedly sat in the Student's assigned space in PE class, Teacher 4's testimony refuted that assertion. Teacher 4 was not aware of such a dispute and further testified that at times the Student sat in the wrong squad and had to be redirected to her assigned space in the proper squad. Thus, the incident was not likely the result of Teacher 4's failure to address an ongoing dispute evolving from another student sitting in the Student's assigned space in PE class. Moreover, it is unlikely, as the Complainant and Student asserted that the Student mistook XXXXX XXXXX XXXXX XXXXX XXXXX and did not realize she hit XXXXX XXXXX because XXXXX XXXXX was the only other person standing and was not wearing "PE clothes." The preponderance of the evidence established the District articulated legitimate, non-retaliatory reasons for imposing a long-term suspension of the Student.

In order to determine whether the District's articulated reasons for taking adverse action are pretext for retaliation, OCR considered whether the District's actions were consistent with its stated policies and procedures and whether there is any other evidence of discrimination. Under the District's discipline policy, assault of a student or staff member has a minimum consequence of a principal/student conference and a maximum consequence of a 10-day out-of-school suspension with possible referral to the superintendent for further disciplinary action up to and including a 180-school-day suspension or expulsion. The duration of the Student's long-term suspension was well within the range allowed by District policy. Further, the District identified

two other instances in which a District student struck XXXXX XXXXX. In both instances, the superintendent imposed 180-day suspensions without educational services. In contrast, the Student's suspension was less than 180 days in duration and she was offered educational services throughout the suspension. Neither the Complainant nor the District identified any District student who struck XXXXX XXXXX and received a less severe disciplinary consequence than the Student. The preponderance of the evidence established that the District's discipline of the Student for the XXXXX XX, XXXX incident was consistent with District policy and that there is no other evidence of discrimination relevant to the Complainant's retaliation allegation. Based on the above, OCR determined the District's articulated reasons for imposing a long-term suspension on the Student were not pretext for retaliation.

OCR concluded there is insufficient evidence to support a finding that the District retaliated against the Student in violation of Title IX as alleged by the Complainant. Accordingly, as of the date of this letter, OCR is closing allegation 1 of the complaint.

Allegations 2 and 3

Legal and Policy Standards

The Section 504 regulation at 34 C.F.R. § 104.3(j) defines a person with a disability as any person who: (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The Section 504 regulation at 34 C.F.R. § 104.3(l)(2) defines a qualified person with disabilities for secondary educational services as a disabled person of an age during which nondisabled persons are provided such services.

The Section 504 regulation at 34 C.F.R. § 104.33 requires a recipient to provide a free appropriate public education to each qualified person with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. A free appropriate public education is regular or special education and related aids and services that: (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements pertaining to educational setting, evaluation and placement, and procedural safeguards at 34 C.F.R. §§ 104.34, 104.35, and 104.36.

The Section 504 regulation at 34 C.F.R. § 104.35 requires school districts to evaluate any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to initial placement of the person or any subsequent significant change in placement. This regulation states that when interpreting evaluation data and making placement decisions, school districts must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and ensure that placement decisions are made by a group of persons knowledgeable about the person with disabilities, the meaning of the evaluation data, and the placement options.

Pursuant to OCR policy, a disciplinary suspension of a student with a disability that exceeds 10

consecutive days constitutes a significant change in placement requiring reevaluation. In the reevaluation process a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options must determine whether the student's misconduct is caused by the student's disabling condition, which is sometimes known as making a manifestation determination. The group making this determination must have information that a competent professional would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the student's current behavior. If the student's misconduct is caused by the student's disabling condition, the evaluation process continues in order to determine whether the student's current placement is appropriate. If the student's misconduct is not caused by the student's disabling condition, then the student may be excluded from school in the same manner as similarly situated nondisabled students.

The Title II regulation does not set a lesser standard than the standard established under the Section 504 regulation. Accordingly, OCR interprets the Title II regulation to require public entities to provide a free appropriate public education to persons with disabilities to the same extent as is required under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

Preliminary Findings of Fact

The District conducted a comprehensive evaluation of the Student in XXXXX XXXX to determine whether the Student was eligible for special education services under the Individuals with Disabilities in Education Act (IDEA) in the categories of XXXXX XXXXX XXXXX, XXXXX, and XXXXX XXXXX. The information considered during the evaluation included medical records showing the Student at some point may have been diagnosed with XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, and XXXXX XXXXX XXXXX XXXXX; that she was seen at XXXXX during June, August, September, October and November 2013; and that she was being treated with prescription medications for her condition(s). The District determined the Student was not eligible for special education services in any of the three categories considered, notified the Complainant of its determination, and provided the Complainant notice of its procedural safeguards, including the Complainant's right to challenge the District's determination in a due process hearing. Although the District started gathering information to support a possible staff referral for a Section 504 evaluation, the District was unable to complete that process because the Complainant withdrew the Student from the District in XXXXX XXXX.

When the Student reenrolled in the District in XXXXX XXXX, the Complainant requested an Individualized Education Program (IEP) for the Student. The Complainant allegedly requested an IEP because the Student had been diagnosed with XXXXX. According to the Complainant, the Student's XXXXX informed the District of the Student's XXXXX diagnosis in a letter and the Complainant gave the middle school principal a handwritten note requesting an evaluation of the Student based on the XXXXX diagnosis. In interviews with OCR, the XXXXX denied writing such a letter to the District and the middle school principal denied receiving a handwritten note from the Complainant requesting an evaluation of the Student based on a diagnosis of XXXXX. All District staff interviewed by OCR denied having any knowledge that

the Student had been diagnosed with XXXXX. The District declined to evaluate the Student on XXXXX XX, XXXX, citing no reason to suspect the Student had a disability based upon the XXXXX XXXX evaluation and teacher input indicating they did not know the Student well enough to identify concerns, and provided the Complainant notice of its procedural safeguards, including the Complainant's right to challenge the District's decision in a due process hearing.

Although the District may not have been aware of a possible XXXXX diagnosis at the time of the XXXXX XX, XXXX disciplinary incident, in XXXXX XXXX, the District did have information indicating that the Student at some point may have been diagnosed with XXXXX XXXXX, XXXXX XXXXX, XXXXX, and XXXXX; that she was seen at XXXXX during June, August, September, October and November 2013; and that she was being treated with prescription medications for her condition(s). Further, the District started gathering information to support a possible staff referral for an evaluation under Section 504 before the Complainant withdrew the Student from school in XXXXX XXXX.

After the District assigned the Student to the long-term suspension room at the alternative school for the second semester of the 2014-15 school year, the Complainant and the Student's XXXX XXXXX XXXXX XXXXX decided the long-term suspension room was not an appropriate place for the Student. The Student did not return to school in the District in January 2015, and to date, has not attended school in the District since that time.

Resolution

On May 19, 2017, the District expressed to OCR an interest in engaging in resolution negotiations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.³

Prior to the completion of OCR's investigation into this complaint, the District submitted a signed Agreement (copy enclosed) on August 22, 2017, that, when fully implemented, will address allegations 2 and 3 of this complaint. If the Student reenrolls in the District, the Agreement requires the District to conduct an evaluation of the Student to determine her current eligibility and placement under Section 504; determine whether the District had a reason to suspect the Student had a disability prior to XXXXX XX, XXXX; and if so, determine whether the conduct for which the District suspended the Student on XXXXX XX, XXXX, was related to her disability(ies). If the District determines the Student's XXXXX XX, XXXX conduct was related to her disability, the District will expunge the Student's discipline records regarding the XXXXX XX, XXXX incident. Please consult the Agreement for further details.

OCR considers allegations 2 and 3 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 investigating the complaint.

³ The *Case Processing Manual* is available on OCR's website at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. 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.

If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Kelli Douglas
Supervisory Attorney

Enclosure