



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

September 9, 2015

Dr. James Brisco
Superintendent
Canyons School District
9151 S. 500 West
Sandy, UT 84070

Re: Canyons School District
OCR Case Number: 08-15-1148

Dear Superintendent Brisco:

In letters dated April 27 and May 29, 2015, we notified you that we were opening for investigation the above-referenced complaint filed against Canyons Unified School District (District). We investigated the Complainant's allegations that the District discriminated against her son (Student) XXX (School) by: 1) denying the Student a free and appropriate public education (FAPE) by disciplining the Student in a manner inconsistent with his IEP and using the ZAP program; 2) retaliating against the Student in response to the Complainant's protected activities: by giving the Student more student disciplinary reports than were warranted, when a teacher wanted the Student to pay for a book the teacher claimed was overdue but was not overdue, when a teacher asked the Student to pay for paper and pencils the Student used while in class, by not allowing the Student to go to lunch with his classmates, and by accusing the Student of possession of marijuana on school grounds; 3) being aware of disability-related harassment by a School's faculty member and by the Student's peers, and failing to appropriately respond to address the harassment; 4) treating the Student differently than his non-disabled peers by disciplining the Student more harshly; and 5) failing to consider information about the Student and whether he should have been provided with a medical plan. We have completed our investigation and are notifying you of our decisions.

We investigated these allegations under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a public entity that receives Federal financial assistance from the Department and is subject to the requirements of these laws and regulations.

In the investigation, we considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed the Complainant and five District witnesses about information relevant to the allegations. Our investigation found insufficient evidence that the District violated Section 504 or Title II with respect to allegations 1, 2, 3, and 4 above. Our investigation did, however, reveal a compliance concern regarding allegation 5.

Background:

The Student is a student with disabilities in the District who receives services pursuant to a Section 504 plan and Individualized Education Program (IEP). The Student attended XXX School during the 2013-2014 and 2014-2015 school years. In the 2015-2016 school year, the Student will attend high school within the District.

The Complainant has had numerous disagreements with the District regarding her son's plans, the contents of those plans, how their plans are implemented, the Complainant's view that her son does not receive the level of consideration necessary, and the Complainant's view that she and her son are being targeted and treated unfairly by the School staff. The District contends that it appropriately determined and implemented the Student's plans, it did everything reasonable to accommodate the Complainant's requests, and treated and disciplined the Student fairly and consistently with District policies and procedures. These disagreements resulted in numerous email exchanges, voice messages, meetings, and at times, a contentious relationship. Regardless, OCR's investigation only addressed the allegations specifically identified at the beginning of this letter.

Analysis:

I. Alleged failure to provide FAPE by disciplining the Student in a manner inconsistent with his IEP and using the ZAP program.

The Section 504 regulation at 34 C.F.R. § 104.33(b) states that the provision of a free appropriate public education includes the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. OCR interprets the Title II implementing regulation at 28 C.F.R. § 35.130 to require public education entities to provide FAPE to the same extent as is required under the Section 504 regulation. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this regulatory requirement. Further, one of the ways in which a district can deny a student FAPE is by failing to properly implement a student's IEP or Section 504 plan.

The Complainant alleged that the District failed to provide FAPE by disciplining the Student in a manner inconsistent with his IEP, specifically using the ZAP program after it was agreed upon that the program was not to be a part of the Student's Behavior Intervention Plan (BIP).

The ZAP program is a lunchtime homework completion program in which students are assigned a working lunch period in the event homework assignments are incomplete. The program is designed to apply to all students at the School, although students with an IEP will typically be given an extra day to complete assignments before they are assigned to ZAP. According to the District, an assignment to ZAP is not logged as a disciplinary incident, as it is only to be used as a supportive learning tool.

The Student's teacher noted on August 18, 2014, as reflected in the IEP Teacher Notes, that "ZAP was not an effective strategy for completing homework for [the Student] as he is highly distracted in an unsupervised setting." The Complainant also made a request that the ZAP program not be used with her son. Subsequently, the Student's BIP was amended to reflect a new direction of using positive incentives and reinforcement tools to help improve the Student's behavior over time. The BIP was reviewed and revised twice before coming to the agreed upon terms. Additionally, administration

informed the Student's teachers that ZAP would no longer be used as a consequence for the Student's incomplete homework assignments.

Administrators admitted that, by way of a teacher oversight, the Student was placed on the ZAP list once in the beginning of the school year and once in the spring. Both times, the parent immediately reminded School personnel of the Student's exemption from the ZAP program. The District maintains that the Student did not serve time in the ZAP program either time, and ZAP attendance logs confirm this. The Complainant maintains that the Student served time in the ZAP program, and more than twice, but did not provide further information to support her position.

Based on this information, we find that there is insufficient evidence that the District failed to provide FAPE by disciplining the Student in a manner inconsistent with his IEP. More specifically, the evidence is inconclusive on whether the Student served time in the ZAP program from November 2014 through May 2015.

II. Alleged retaliation against the Student in response to the Complainant's protected activities.

The Complainant next alleged that in response to her protected activities the District retaliated against the Student:

- a. By giving the Student more Student Disciplinary Reports than were warranted;
- b. When a teacher wanted the Student to pay for a book the teacher claimed was overdue but was not overdue, and when the teacher asked the Student to pay for paper and pencils the Student used while in class;
- c. By not allowing the Student to go to lunch with his classmates; and
- d. By accusing the Student of possession of marijuana on school grounds.

The District denied all allegations of retaliation raised by the Complainant.

Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 and Title II of which the recipient had knowledge; the recipient took adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

The Complainant participated in protected activities when she filed a complaint with the Utah State Office of Education (USOE) on March 11, 2015 and a separate complaint with OCR on March 13, 2015. The District was aware of the protected activities when it was first notified of the USOE complaint on March 12, 2015 and was notified of the OCR complaint on April 27, 2015. The Complainant's USOE complaint alleged that the District failed to properly evaluate the Student's need for assistive technology, failed to properly implement the accommodations from the Student's IEP, and failed to provide adequate corrective action in the form of compensatory education for a prior violation. Because the complaints assert rights granted under Section 504 and Title II, the filing of the complaints qualifies as protected activity.

- a. **Alleged retaliation by giving the Student more Student Disciplinary Reports than were warranted.**

The Complainant alleged that the Student received more disciplinary reports than were warranted by School or District policy, and further, that the Student was being targeted because of the complaints she filed with the USOE (and OCR. The District provided OCR with the School and District policy for Student Conduct and Discipline, the Student's disciplinary records, the District's online reporting system's records of discipline regarding the Student, the accompanying records for each incident (including student and teacher statements, meeting notes from administration, and records of correspondence with the Complainant). The District also provided a record of incidents of similar student misconduct and descriptions of the disciplinary actions taken.

Of the twelve incidents reported, nine occurred before the date the District had actual notice of the complaint with USOE. The three incidents which occurred after the District received notice (i.e. inappropriate language, excessive tardies, and alleged marijuana possession) are discussed in detail later in this letter. OCR reviewed documentation of incidents after the protected activity and evaluated the School's application of its reported policy for student conduct and discipline. We found that all disciplinary actions taken by the School against the Student were warranted and within the bounds of School and District policy. Further, similar misconduct from other students, both with and without disabilities, resulted in commensurate disciplinary action from School administration. We provided the Complainant an opportunity to rebut the District's stated legitimate reasons for disciplining her son on the three incidents in question and she was unable to provide any additional information for us to consider. Based on the available evidence, we conclude that the District provided a legitimate, non-retaliatory, non-pretextual reason for its action. Accordingly, there is insufficient evidence that the School retaliated against the Student in response to the Complainant's exercise of her protected activity by giving the Student more Student Disciplinary Reports than were warranted.

b. Alleged retaliation when a teacher wanted the Student to pay for a book the teacher claimed was overdue but was not overdue, and when the teacher asked the Student to pay for paper and pencils the Student used while in class.

The Complainant next alleged that the District retaliated against the Student when a teacher wanted the Student to pay for a book the teacher claimed was overdue but was not overdue, and when the teacher asked the Student to pay for paper and pencils the Student used while in class.

The District provided a written statement from the teacher reported to have charged the Student and we also interviewed the teacher. The teacher explained that all textbooks for his class are used and kept in the classroom. He further explained that he did not use a checkout system and did not assess overdue charges. Further, the teacher was unable to recall any incident where he demanded payment for any overdue book. The teacher also explained both his and the school's policy for distributing classroom supplies to students, which was explained to be a community supply from which students can "take as needed." According to the teacher, at no point in the year were students charged in order to take from the community supply, nor were they ever charged on an individual basis for supplies. The Complainant stated that the teacher tried to charge for a history book that was checked out the prior school year, and the Complainant maintains that the book was returned the prior school year. The Complainant further explained that she did not pay for the charge.

Further, even if a teacher were to ask for a fee related to a book or use of a classroom's school supplies, given that the Complainant did not pay these fees, any such actions would not rise to the level of an

adverse action. Therefore, based on the evidence, OCR found that the District did not subject the Student to an adverse action as alleged.

c. Alleged retaliation by not allowing the Student to go to lunch with his classmates.

The Complainant alleged a further claim of retaliation by the District when it did not allow the Student to eat lunch with his classmates. The District provided OCR with a record of all times the Student was kept from eating lunch with his peers, along with its policy for using lunch detention as a consequence for student misconduct.

In the first instance, which occurred on September 18, 2014, the Student served lunch detention for “sluffing” (cutting) class. This consequence is in accordance with both School and District policy. The second instance of the School holding the Student from lunch, which occurred on November 12, 2014, was in response to the Student’s excessive tardies. Pursuant to the School’s tardy policy, the School assigns lunch detention to students after six tardies, with notice first given after five tardies. The School notified the Student and his parents of his excessive tardies and the consequence in the event of a sixth tardy. Both of these incidents occurred before the protected activities, so could not be retaliatory.

The School also withheld the Student from lunch with his peers on three separate days when the Student’s performance on his Behavior Trackers fell below 50%. This consequence was part of the Student’s BIP and previously agreed upon by the School and the Complainant to be an appropriate method to motivate positive behavior. Finally, in response to an incident where the Student and a non-disabled peer used “inappropriate and vulgar language” towards other students at lunchtime, the School decided to indefinitely limit the students to eating lunch inside only. It was determined that inside lunch for both students was an appropriate consequence for the inappropriate conduct, as the necessary level of adult supervision could only be provided when the students remained inside for lunch. Commensurate consequences and levels of supervision were previously used to deal with students in similar situations, and there is no indication that the other student participated in a protected activity. We could not find and the Complainant was unable to provide any information to contradict the District’s stated legitimate basis for giving the Student lunchtime detention or otherwise limiting or restricting his lunchtime privileges. Based on the available evidence, OCR found the District provided a legitimate, non-retaliatory, non-pretextual reason for its actions. Accordingly, there is insufficient evidence to support this specific claim of retaliation.

d. Retaliation by accusing the Student of possession of marijuana on school grounds.

Finally, the Complainant alleged the District retaliated against the Student by accusing him of possession of marijuana on school grounds. The District provided OCR with verbal and written statements from the administrators who investigated the incident, written statements from the Student and peer witnesses, the School and District policy regarding drug-related interrogations, searches and arrests, and an audio recording of the interrogation and search of the Student. OCR reviewed all of the evidence provided by the District and interviewed the administrative staff members responsible for the investigation.

According to the evidence, one of the Student’s peers reported to the School Principal that the Student had a substance that this peer thought was marijuana which was shown to him by the Student in the school bathroom. This same peer also reported marijuana possession on different occasions for two other students, who were subsequently searched by school officials and found to possess marijuana. The Principal and an Assistant Principal interviewed the Student and had the Student empty his pockets.

Marijuana was not found. The Principal immediately called the Complainant to report what had occurred.

It is our determination that because the alleged drug-possession was first reported by a credible student, the School not only had reasonable grounds to believe that the search would turn up evidence of a violation, but also that the School's investigation into drug-possession cannot be viewed as retaliatory, as it was not initiated by a party with knowledge of the Complainant's protected activity or a party in a position to treat the Complainant adversely. Further, the investigation was executed within bounds of School and District policy and the same procedures were followed to address instances of reported drug possession with other students.

Based on this evidence, OCR found the District provided a legitimate, non-retaliatory reason for its action and we could not find any evidence to contradict the District's stated legitimate basis for its actions. Accordingly, there is insufficient evidence to support this specific claim of retaliation.

III. Alleged failure to appropriately respond to disability-related harassment by the School's faculty members and by the Student's peers.

In her OCR complaint, the Complainant alleged that the School administrators discriminated against her son based on his disability by being aware of instances of alleged disability-related harassment by two school staff members and two of the Student's peers and doing nothing to stop the harassment. Specifically, the Complainant alleged the District failed to appropriately respond to the following incidents: 1) a conversation in the school's office on March 18, 2015 in which a staff member allegedly used derogatory terms such as "retard" in reference to the Student; 2) an Assistant Principal allegedly using profanity towards the Student while interrogating him about an incident of misconduct on November 11, 2014; 3) a reported physical altercation between the Student and a peer (Peer 1); 4) two separate instances of reported physical assault on the Student by a peer (Peer 2).

Our *Case Processing Manual* provides that when the same complaint allegations have been investigated through a recipient's internal grievance procedures, generally we will not conduct our own investigation. Instead, we review the results of the recipient's investigation to determine whether all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet our standards. With respect to the allegations investigated by the District, we find its investigation provided a comparable process and met our standards.

a. School Faculty Members

1. The District provided us with its policies and procedures for handling verbal and written complaints of discrimination based on disabilities and the titles of District personnel responsible for ensuring its compliance with Section 504 and Title II at the District and school levels.

After receiving notice from OCR about the alleged incident on March 18, 2015, the District investigated the Complainant's concerns, documented the administrators' investigation, reviewed the information gathered, and made a determination based on the evidence collected. Due to a history of contentious relations with the Complainant, the staff member had previously been asked to inform the Principal and office staff whenever the Complainant contacted her. The Principal took witness statements from three other District staff members present. Each of the witness statements support that the staff member had not engaged in any conduct or made any statements that could be considered harassment or derogatory of the Student. All

witnesses attested that not only was the word “retard” never used by any party within the conversation, but that the staff member had merely provided information to the office staff that the Complainant called the school upset about the use of the ZAP program. The Principal’s findings were reported to the Complainant. We find that the evidence is insufficient to conclude that the District’s investigation and response to a claim of disability harassment was not prompt and adequate.

OCR was unable to interview the staff member regarding this incident, as she is no longer an employee of the District and she did not provide forwarding contact information. We did not find and the Complainant did not identify any witnesses we could interview to determine if the staff member called the Student a “retard.” The Complainant stated to OCR that other students said that the staff member made a derogatory reference about her son, but the Complainant did not want to provide the names of the students. Based on our review of the evidence collected by the School in its investigation and our interview of the Assistant Principal regarding the incident we found insufficient evidence to conclude that the staff member discriminated against the Student. The Complainant was surprised and pleased that the staff member no longer worked at the School.

2. Regarding the Complainant’s allegation of an Assistant Principal using profanity towards the Student, OCR reviewed the evidence available (including discipline logs that included student statements) and interviewed the Assistant Principal. According to the evidence, the conversation between the Assistant Principal and the Student was in response to an incident of misconduct in which the Student was found improperly videotaping and using inappropriate language towards other students during class. A meeting was held with the Student and the Complainant after this incident. During that meeting the Complainant confirmed that it was the Student’s voice on the videotape recording, and the Student stated that he did not remember what he said. Subsequently, the Assistant Principal reminded the Student that he had used the word “Fucker” repeatedly. The Assistant Principal stated that she never used profanity towards, yelled at or harassed the Student during this meeting.

Based on the available evidence, OCR found insufficient evidence to conclude that the District harassed the Student as alleged.

b. Student’s Peers

1. The Complainant alleged that the District did not adequately respond to a complaint of disability harassment by the Student’s peers. The first incident of alleged disability-related harassment raised by the Complainant, took place on or around October 15, 2014. The Student and Peer 1 were reported to have been “messaging around” in the hallways when their interaction escalated into a physical altercation. The Complainant alleged that the other student bullied the Student. The Assistant Principal investigated the incident and took written and verbal statements from both students. The Assistant Principal determined that both students should be suspended for the remainder of the school day. Peer 1 served his suspension out of school and the Student served his suspension in school. The Assistant Principal also determined based on the students’ statements that the altercation was not related to the Student’s disability. Our review of the documentation about the incident shows that it does not have anything to do with the Student’s disability.

OCR closely reviewed all of the evidence collected by the School in its investigation and also interviewed the Assistant Principal regarding the incident. Based on this evidence, OCR found insufficient evidence to conclude that the School failed to appropriately respond to the complaint of disability-related harassment. Rather, the School conducted an adequate investigation in accordance with District policy, applied the appropriate investigative standards, and administered a fair and disciplinary consequence to both students.

2. The final allegation of disability-related harassment raised by the Complainant to the District stems from two separate incidents involving the Student and Peer 2: the first, where Peer 2 struck the Student with a belt in the hallway on October 20, 2014, and the second, where Peer 2 allegedly kicked the Student in the hallway on November 3, 2014.

Regarding the first incident, the School investigated and took written and verbal statements from both students, in which Peer 2 admitted to taking the Student's belt and striking him with it. The Student confirmed that the strike was a "playful one, not a real one." Nevertheless, Peer 2 was suspended from school for an assault on another student. The School also contacted the police about the assault. At the completion of the School investigation, the School found no evidence to support a determination that the assault was disability-related.

In response to the second incident involving the Student and Peer 2, the School again took written and verbal statements from both students. Based on the information gathered from those statements, the School reviewed the hallway's security camera recording for the reported time and location of the alleged assault. The Student did not appear on the recording at all during this time. Further, Peer 2's classroom teacher for that school period confirmed that Peer 2 was in class at the time of the alleged assault. Accordingly, the School determined that because the allegation could not be verified, there was no action it could take against Peer 2. In an interview with OCR, the School's administration stated that it continued to closely monitor the students' interactions with one another after the close of the investigation, and there were no further incidents.

Based on this evidence, OCR found insufficient evidence to conclude that the School failed to appropriately respond to either complaint of disability-related harassment. Rather, in both cases, the School conducted adequate investigations in accordance with District policy, applied the appropriate investigative standards, and administered fair and equal disciplinary consequences to all relevant parties where necessary.

IV. Alleged different treatment by disciplining the Student more harshly than his non-disabled peers.

Next, the Complainant alleged the District discriminated against her son on the basis of his disability by disciplining him more harshly than his non-disabled peers. The District denied all allegations of different treatment.

In evaluating an allegation of different treatment, we determine what action the recipient took against the alleged injured party, whether it followed its policies and procedures for taking such action and whether similarly situated non-disabled individuals were treated differently. If the alleged injured party was treated differently, we determine whether the recipient has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for discrimination.

The District provided OCR with the School and District policy for Student Conduct and Discipline, the Student's full disciplinary record entered into Skyward, its school discipline database, as well as the accompanying records for each incident, which included student and teacher statements, meeting notes from administration, and records of correspondence with the Complainant. The District also provided a record of incidents of equivalent student misconduct by the Student's disabled and non-disabled peers along with the disciplinary action taken by the School for each incident.

OCR reviewed the documentation of each incident prior to the Utah State Office of Education complaint and evaluated the School's application of its reported policy for Student Conduct and Discipline. We found that all disciplinary actions taken by the School against the Student were warranted and within the bounds of School and District policy. Further, similar misconduct from other students, both with and without disabilities, resulted in commensurate disciplinary action from the administration. For example, on September 11, 2014, in accordance with District policy, the Student was suspended for the remainder of the school day when he was found with a facsimile weapon, a switchblade comb. During the prior school year, one of the Student's non-disabled peers was suspended and sent to a District-level hearing when she brought a facsimile weapon to school, a cap gun. Thus, the Student received commensurate disciplinary action for similar misconduct. As a further example, on November 11, 2014, the School ordered the Student to serve two days of lunch detention for videotaping and using inappropriate language towards other students. The District provided several examples of incidents where other non-disabled students who used similarly inappropriate language towards others were placed on in-school suspension. The Student's treatment was therefore not harsher than his non-disabled peers. Finally, for all reported incidents where the Student was disciplined for misconduct involving another student, the School took essentially the same disciplinary action for all student parties (a suspension).

Therefore, it is our determination that there is insufficient evidence that the District treated the Student differently by disciplining him more harshly than his non-disabled peers.

V. Alleged failure to consider information about the Student and whether he should have been provided with a Medical Plan.

Finally, the Complainant alleged that the District discriminated against the Student by failing to consider information about him and whether he should have been provided with a medical plan. We investigated whether the District failed to carefully consider the individual needs of the Student in determining if he needed special education or related services.

Section 504 requires public elementary schools to identify and locate every qualified person with a disability within its jurisdiction and take appropriate steps to notify parents of this obligation. 34 C.F.R. § 104.32. Additionally, public elementary schools shall conduct an evaluation of any person who needs or is believed to need special education or related services before taking any action with respect to initial placement of the person in regular or special education. 34 C.F.R. § 104.35. Public elementary schools shall provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33(a). The regulation implementing Section 504, at 34 C.F.R. § 104.35(c), *provides*:

Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background,

and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34. (Emphasis added).

Typically, districts must make a reasonable effort to acquire and then consider information provided by a student's parents, along with other relevant information, before making a placement determination.

The School had notice of the Student's medical conditions when the Complainant spoke with a School nurse for approximately 45 minutes about the Student's varied health issues. The Complainant expressed her concern that the Student was frequently missing school because of his migraines and IBS and that when the Student was in attendance, his ability to participate in a meaningful way was significantly impaired. Further, the Complainant expressed her concern that, although certain accommodations were in place for the Student such as access to ibuprofen and the bathroom as needed, the School was not doing everything it could to help her son. In the same phone call, the Nurse told the Complainant that conditions like migraines and IBS are not conditions the school typically writes a medical plan for, and that the Student did not need a medical or Section 504 Plan since these were not written for other students. Later, the Complainant provided documentation from the Student's pediatrician which detailed the diagnosis of IBS and a history of migraines. The School nurse's notes states: "Most of the issues he is experiencing are not something that I would normally write a health care plan for. I could write a plan for the asthma, migraines, and GI issues. I am happy to do this if the school feels that they need one to know how to help Chandler at school." The District also received multiple notes from the Student's pediatrician between August and November of school year 2014-2015 that explained the Student's absences due to migraines. Nonetheless, the School only provided the medical accommodations typically provided to other students with similar conditions, namely the student could use his inhaler, take medication, and use the restroom for a limited period of time. The accommodations didn't cover tardies or absences because of the medical conditions. The Complainant did not request a formal evaluation of the Student for a medical plan to help with his persistent migraines and intermittent irritable bowel syndrome (IBS). However, a school's obligation to evaluate a student for a suspected disability does not depend on a formal parental request. The Recipient is obligated to identify and locate every qualified person with a disability within its jurisdiction. It is contrary to the requirements of Section 504 to require a parent to submit a formal request before a recipient will consider whether a student may need an official medical plan to accommodate any health related issues. Rather, the District is required to evaluate and appropriately place any student who needs or is believed to need special education or related services.

Based on the above facts, we conclude that the School was sufficiently aware of the Student's medical conditions and did not conduct an individualized evaluation that carefully considered his potential disability-related needs for his diagnosed IBS and migraines. Rather, the School's determination of the Student's medical needs and the appropriate accommodations was based solely on the Nurse's assessment of what had previously been done to accommodate other students with similar conditions. The District assumed that because similar medical conditions of past students had not warranted a formal medical plan, that it need not consider the Student's individual conditions, and further that any accommodations used for past students would be sufficient for the Student as well. However, without fully assessing the specific information about the Student's condition and needs, the District lacked adequate information to determine whether its actions were appropriate and likely to be effective.

As a result, we find that the Recipient failed to carefully consider information about the Student regarding his eligibility for a medical plan and did not develop a plan that would require accommodations specific to the Student's disability-related needs, as required by Section 504 and Title II.

After the compliance concerns became apparent, the District entered into an agreement to resolve it through a signed Resolution Agreement (enclosed). When the Agreement is fully implemented, the compliance concern we identified will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. We will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

Conclusion:

As explained previously in this letter, we find that there is insufficient evidence that the District violated Section 504 or Title II with respect to allegations 1, 2, 3 and 4. Our investigation did, however, reveal that the District violated Section 504 and Title II with respect to allegation 5. With respect allegation 5, we are pleased that the District voluntarily entered into the enclosed Resolution Agreement to address the allegation. This concludes our investigation of this complaint.

This letter addresses only the issues discussed above and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504, Title II or other Federal civil rights laws in any other regard. Please note that complainants may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. If the Complainant and participants feel that such actions have occurred, they may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

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.

If you have any questions or concerns, you may contact Jason Sinocruz, Attorney Advisor, at (303) 844-4321 or by e-mail at Jason.Sinocruz@ed.gov. You may also contact me at (303) 844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez

Supervisory General Attorney

Enclosure – Resolution Agreement

Cc: Daniel Harper, District General Counsel

Brad C. Smith, Utah State Office of Education, Superintendent of Instruction