



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 17, 2016

Mr. Michael Heffernan
Executive Director
Pine Forest Charter School
1120 Kaibab Lane
Flagstaff, AZ 86001

Re: Pine Forest Charter School
Case Number: 08-15-1293

Dear Mr. Heffernan:

On August 3, 2015, the Office for Civil Rights (OCR) received a complaint alleging that Pine Forest Charter School (the School) discriminated on the basis of disability and sex and engaged in retaliatory behavior. Specifically, the Complainant alleged that the School discriminated against her son (the Student): (1) on the basis of disability when, after the Complainant requested the Student be evaluated for a known or suspected disability, the School did not conduct an evaluation or inform her of its decision not to conduct the evaluation via a Prior Written Notice (PWN); and (2) on the basis of sex when the XXXX gave preferential treatment to girls over boys. The Complainant also alleged that the School retaliated against her for her advocacy on behalf of the Student when she was constructively discharged after XXXX years of satisfactory employment.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education; 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; and Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 or Title IX are protected from intimidation or retaliation by 34 C.F.R. §§ 104.61 and 106.71, both of which incorporate 34 C.F.R. § 100.7(e). The School, a public charter school, receives Federal financial assistance from the Department and is subject to these laws and regulations.

During our investigation, we interviewed the School's business manager, the current student support services director, the former special education teacher and coordinator, the counselor, the choir teacher, the principal, and the Student's former teacher. We interviewed the Complainant prior to initiating the investigation and have been in communication with her through the investigation.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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 or is insufficient to support the conclusion.

Failure to Evaluate

The Complainant alleged that the School failed to evaluate the Student for a suspected disability after she requested an evaluation on several occasions, starting in January 2015.

Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104, establish procedural requirements that are important for the prevention and correction of disability discrimination. Specifically, Section 104.8 requires recipients to issue notice that disability discrimination is prohibited, and Section 104.7(b) requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination. Further, Section 104.7(a) requires that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.

The Section 504 regulations found at 34 C.F.R. § 104.33, requires recipients of Federal financial assistance to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of a Section 504 Plan developed is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the regulations requires recipients to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of a disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under § 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented.

Further, Section 104.36 requires recipients to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student.

Factual Findings: Policies and Procedures

At the start of its investigation, OCR asked the School to provide the name, title, and contact information of the School's Section 504 Coordinator and a copy of the School's policies and procedures regarding the referral, evaluation, and placement of students who are suspected of having a disability. In response to this request, the School provided the names of its previous special education coordinator and current student support services director, a copy of School Board Policy IHB, and a copy of the 2015-2016 Parent/Student Handbook.

A review of these materials revealed that while the School's Board Policy Manual Sections 803.00-805.00 and the 2015-2016 Parent/Student Handbook both include information pertaining to special education and the Individuals with Disabilities Education Act (IDEA), neither reference Section 504. Additionally, the identity of the School's Section 504 Coordinator is not published or otherwise publicly available. Finally, OCR's review also revealed that the School Board Policy Manual ambiguously defines "change of placement."¹

Factual Findings: Section 504 Evaluation

On December 6, 2012, a Multidisciplinary Evaluation Team assembled to refer the Student for a comprehensive psychoeducational evaluation due to social emotional difficulties. The psychoeducational evaluation took place on December 10, 2012. On February 12, 2013, Prior Written Notice was sent to the Student's parents stating that the Student was evaluated in all areas related to the suspected disability and the team decided that the "student **does not** meet the criteria as a child with a disability under the IDEA" (emphasis in original). Despite these findings, the psychoeducational report states that the Student indicated an at-risk level of concern with XXXX and also that the Student should receive support so that he could XXXX of which were seen at home by the Student's parents but not at school by the Student's XXXX.

On January 20, 2015, the Complainant sent an email to the School's XXXX to ask several questions and request that the Student be evaluated to determine whether he was eligible for special education or related services. Specifically, the Complainant asked whether the background of the person who diagnosed the Student with XXXX affected the Student's ability to obtain "504 support."

On January 27, 2015, the School's XXXX responded to the Complainant's January 20, 2015 email. The XXXX wrote, "I spoke with XXXX yesterday and in order for us at PFCS to move

¹ School Policy I-2361 refers to the discipline of students with disabilities and related changes of placement from Page 6 through Page 10; the language is inconsistent and it states, in part, "On a case-by-case basis . . . school personnel may remove a child with a disability who violates a student code of conduct from his or her current placement . . . for not more than ten (10) consecutive school days . . . and for additional removals of not more than ten (10) consecutive school days in that same year for separate incidents of misconduct." The School Policy goes on to state, "A change of placement occurs if: the removal is for more than ten (10) consecutive days; or the child has been subjected to a series of removals that constitute a pattern."

forward with any kind of sped services, even a 504, you need to bring [the Student] back to them. The data they have is too old for us to work with. . . . Once I have a proper diagnosis of XXXX, then I can move forward.”

On February 18, 2015, the Student’s XXXX sent home a second progress report. In that report, the Student’s grades had substantially declined in all areas except for Language Skills

On March 11, 2015, the Complainant sent an email to the Student’s XXXX to express her concern about the Student’s sudden drop in grades and missing homework.² In that email, the Complainant wrote, “My next step is to request a 504 accommodation for his behaviors. He has D’s because he can not [sic] follow through on doing his school work and turning it in.” Later that same day, the principal responded to the Complainant’s email and wrote, “I am willing to create a Change of My Behavior Plan and/or a 504. The 504 takes more time as we follow similar guidelines as for a special education IEP process. Pine Forest and all teachers who work with [the Student] will support a 504 plan if one is developed.” The XXXX also responded on March 11, 2015; in her response, she wrote that she spoke to the XXXX to obtain information about the Student’s diagnosis, and that the XXXX told her that the Student needed to return to receive a final diagnosis by a physician. OCR found no further evidence of the School responding to the Complainant’s request for an evaluation of the Student after this date.

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On March 28, 2015, the Complainant wrote to XXXX. The Complainant wrote, “Would XXXX be able to do a XXXX evaluation on [the Student]? I need get one done in order to get him an IEP/504. We do not have mental health coverage, but will pay her cash. I trust her and would like to be quick on getting this eval done. Please keep in touch. [The Student] lied and has no remorse about his actions. My soul aches for him.”

On April 2, 2015, the School Principal met with the Student and his parents to discuss what occurred. XXXX Following the Student’s explanation, the Principal told the Student and his parents about the definition of XXXX and explained the possible legal and school consequences, and then made the decision to suspend the Student for ten (10) school days beginning XXXX and ending XXXX.³ These dates were intentionally decided upon because they were the dates of the Student’s XXXX class trip to XXXX. The Student’s parents believed that the Student’s behavior was a manifestation of an undiagnosed disability, and because of that belief, asked the Principal to reconsider the dates of the Student’s suspension. The Principal responded that his decision was final. When the Principal was asked by OCR whether the consequence would have been the same if the incident had occurred earlier in the school year rather than in March, the Principal responded, “It probably wouldn’t have been the same outcome. We would have had a similar meeting...if there had been no remorse, there would have been a different decision. It wouldn’t have been not going on the class trip, it would have been, ‘let’s figure out how to get this kid some help.’”

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³ The Complainant also sent the email to the Principal, XXXX, XXXX, and her husband via carbon copy.

In his November 19, 2015 interview, the Principal stated that the Student was not evaluated “by the school and the school did not contract with [their] school psychologist” following the Complainant’s January 20, 2015 and March 11, 2015 requests. On December 3, 2015, the School’s XXXX separately told an OCR staff member that the student was not evaluated and that the School did not issue Prior Written Notice.

Legal Analysis and Conclusion

The School’s 2015-2016 Parent/Student Handbook does not include a nondiscrimination statement of any kind, nor does it indicate that disability discrimination is prohibited. Further, the Handbook does not contain grievance procedures or identify the School’s Section 504 Coordinator. A search of the School’s webpage revealed that this information is not otherwise publicly available.

Despite a substantial change in the Student’s academic performance, a pattern of unusual behavior, and numerous requests for an evaluation from the Complainant, the School admitted that the Student was not reevaluated after his initial psychoeducational evaluation in 2012. The School also acknowledged that it had received the Complainant’s requests for an evaluation and did not respond to the Complainant’s requests for evaluations.

OCR finds that it has sufficient evidence to establish the School’s noncompliance with the Section 504 regulations found at 34 C.F.R. § 104. Specifically, based on a preponderance of the evidence, OCR finds that the School is not in compliance with 34 C.F.R. § 104.8 because the School has not issued notice that disability discrimination is prohibited. OCR further finds that the School is not in compliance with 34 C.F.R. § 104.7(a) or § 104.7(b) because the School has not publicly designated at least one employee to coordinate compliance with the regulations nor has the School adopted and published grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination.

OCR also finds that the School is not in compliance with 34 C.F.R. § 104.35 because the School did not conduct an evaluation of the Student, who was believed to need special education or related aids and services because of a disability. Further, OCR finds that the School violated 34 C.F.R. § 104.36 when it failed to provide procedural safeguards to the Student’s parents when it made the decision not to evaluate him for a suspected disability⁴.

Preferential Treatment on the Basis of Sex

The Complainant alleged that the XXXX gave preferential treatment to girls over boys.

Legal Standard

⁴ The regulatory provisions of Title II do not generally impose greater protections on the basis of disability than those already offered by the Section 504 regulations. Correspondingly, OCR relied primarily on the regulatory language of Section 504 for our analysis. While the violations of Section 504 in this case also represent violations of Title II, the remedial actions that the School has agreed to undertake will similarly remediate those provisions of Title II that the School failed to follow in this matter.

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination. The requirements found at 34 C.F.R. § 106.9 and 34 C.F.R. § 106.8(b), respectively, include the issuance of a policy against sex discrimination and the adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination. Further, Section 106.8(a) requires that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.

Under the Title IX regulations at 34 C.F.R. § 106.31(a), a recipient may not treat individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities it provides. Section 106.31(b) states that a recipient may not, on the basis of sex: (ii) provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; (iii) deny any person an aid, benefit, or service; or (iv) subject any person to separate or different rules of behavior, sanctions, or other treatment in providing an aid, benefit, or service.

To determine whether a student has been discriminated against on the basis of sex under Title IX, OCR looks at whether there is evidence that the student was treated differently than students of the other sex under similar circumstances, and whether the treatment resulted in the denial or limitation of education services, benefits, or opportunities. If there is such evidence, OCR examines whether the recipient provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the recipient's actions were based on the student's sex.

Factual Findings

The School does not have a designated Title IX Coordinator, nor has it published a notice of nondiscrimination or adopted grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

The Complainant stated that the XXXX gave preferential treatment to female students based on statements that she heard from XXXX and from statements that the Student made to this effect. There were three specific facts that the Complainant provided in support of this allegation: (1) that male students had disproportionately left the XXXX class; (2) that the Student was excluded from participating in an outdoor field trip because of his sex; and (3) that the XXXX took the Student's winter hat for a long period of time.

Many of the facts regarding the Complainant's allegation that the XXXX gave preferential treatment to female students are disputed. While the Complainant alleged that she had been told by other students that the XXXX preferred girls over boys and that the Student began telling her that XXXX didn't like boys when he was in fifth-grade, OCR did not discover evidence to corroborate these statements.

In investigating the Complainant's statement that several XXXX grade male students left the School during the 2014-2015 school year, OCR found that XXXX of XXXX male students left

the Student's classroom from 2014 to 2015. The School provided reasons for each of the students leaving and explained to OCR that it is not uncommon for students to leave the school during their middle school years. [X – Portions of this paragraph related to facts regarding enrollment data have been redacted to protect the privacy of involved parties. – X]

The Complainant and School agree that there was one particular instance when the Student was told that he could not participate in a walking field trip without a jacket. The XXXX told OCR that there was also a female student in the class who was told that she needed a jacket to participate, as well. The School's 2015-2016 Parent/Student Handbook allows and encourages students to borrow clothing from the School's Lost and Found if the student is in need of a jacket or mittens and does not have any with them at school on a particular day. Both students were given the opportunity to borrow from the Lost and Found to find the clothing they needed in order to participate in the walking field trip, and both students were ultimately allowed to participate in the field trip with the appropriate attire.

Consistent with the Complainant's allegation that the XXXX took the Student's winter hat away from him and kept it for a long period of time, XXXX told OCR that the Complainant was correct. She explained that any items that distracted students, whether male or female, were confiscated and kept for safekeeping. The XXXX was apologetic that she misplaced the Student's hat and that it took her so long to return it to him. There were no facts to indicate that the Student was targeted by XXXX because of his sex or that similarly situated female students were treated more favorably.

Legal Analysis and Conclusion

The School acknowledged that it does not have a Title IX Coordinator. A review of the School's Board Policy Manual and 2015-2016 Parent/Student Handbook revealed that the School has not published a notice of nondiscrimination or adopted or issued grievance procedures related to complaints of discrimination on the basis of sex.

Nearly all of the evidence obtained regarding the Complainant's allegation that the XXXX gave preferential treatment to female students over male students is anecdotal and uncorroborated. In order for OCR to determine whether a student has been discriminated against on the basis of sex under Title IX, OCR first looks at whether there is evidence that the student was treated differently than students of the other sex under similar circumstances, and whether the treatment resulted in the denial or limitation of education services, benefits, or opportunities. In this allegation, the Complainant provided three examples to support her position. The first involved enrollment data of boys and girls in the teacher's classroom. While the evidence that OCR reviewed showed that more boys had left the XXXX class than girls, the overall enrollment was comparable to the enrollment in other XXXX grade classrooms in the School over a seven year span of time. The second example involved an alleged exclusion from a walking field trip because the Student did not have a jacket. However, the School described a similarly situated female student who was also going to be excluded from the field trip for the same reason. Both students were ultimately allowed to participate in the field trip with appropriate attire. Because both students were treated the same, irrespective of their sex, OCR is unable to conclude that this example demonstrated differential treatment on the basis of sex. Finally, the Complainant stated

that the XXXX had taken the Student's hat for an excessive amount of time. The information that OCR gathered indicated that the XXXX did confiscate the Student's hat, but that this action was consistent with the XXXX stated XXXX policies. The XXXX did acknowledge that she had temporarily misplaced the hat and was apologetic for not returning the hat sooner. The preponderance of the evidence in this instance did not suggest that the XXXX was targeting the Student because of his sex or was acting in a manner inconsistent with XXXX policies. Taken together, the preponderance of the evidence did not support the Complainant's allegation of different treatment. Correspondingly, OCR has an insufficient factual basis to find that the School is not in compliance with Title IX regulations at 34 C.F.R. § 106.31(a) and § 106.31(b).

However, OCR has sufficient evidence to find that the School is not in compliance with the procedural requirements of Title IX. Specifically, the School is not in compliance with 34 C.F.R. § 106.9, § 106.8(a), or § 106.8(b) because the School does not have a policy against sex discrimination, has not adopted and published grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination, and does not have a Title IX Coordinator.

Retaliation

The Complainant alleged that the School retaliated against her for her advocacy on behalf of the Student when her employment contract was not renewed after XXXX years of satisfactory performance.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(e) by reference) prohibits retaliation and intimidation by those who report advocate for a person with a disability or participate in an OCR investigation. The regulation implementing Title II has similar prohibitions discussed at 28 C.F.R. § 35.134. Further, the regulation implementing Title IX, at 34 C.F.R. § 106.71 (incorporating 34 C.F.R. § 100.7(e) by reference) prohibits retaliation and intimidation by those who report sexual harassment or participate in an OCR investigation.

When investigating a retaliation claim, OCR must determine whether: (1) the individual engaged in a protected activity; (2) the recipient had notice of the individual's protected activity; (3) the individual was subjected to an adverse action contemporaneous with or subsequent to the protected activity; and (4) there was a causal connection between the protected activity and the adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements are established, then OCR considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. While OCR would need to address all of the elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established.

In order for an activity to be considered to be “protected,” the individual must have either opposed conduct prohibited by one of the laws that OCR enforces or participated in an investigation conducted under the laws that OCR enforces. Notice of the protected activity to the recipient, and not necessarily to the alleged individual retaliator(s), is sufficient to establish the notice requirement. In determining whether an action taken by the recipient is adverse, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse. Generally, the more time in between the protected activity and the adverse action, the weaker the presumption of a causal connection. Additional evidence that would demonstrate a causal connection includes: a change in treatment of the individual before and after engaging in the protected activity; treatment of the individual that is different from treatment of other similarly situated individuals; and deviation from established practice or procedure.

Factual Findings

The Complainant worked at the School from XXXX until XXXX. She first served as a XXXX and later as a XXXX.

On January 20, 2015, the Complainant emailed the School’s XXXX and requested that the Student be evaluated to determine whether he was eligible for special education or related services. On March 11, 2015, the Complainant made the same request for the second time, in an email she sent to the Student’s XXXX, the Principal, the XXXX, and the XXXX.

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On April 2, 2015, during the meeting XXXX, the Complainant told the Principal that she was unhappy with the decision to prevent the Student from going XXXX and again told the Principal that she believed that the incident was a manifestation of his undiagnosed disability.⁵

Following the April 2, 2015 meeting, the Complainant told both the Student’s teacher and the XXXX that she was unhappy with the way this situation had been handled and that she was upset that the Student had not been evaluated for a suspected disability. On April 22, 2015, the Principal wrote a Letter of Reprimand and Direction to the Complainant. In the letter, the Principal stated, “This is a written reprimand and formal letter of direction resulting from unprofessional conduct that occurred between April 2nd and April 22nd, 2015. Specifically, it has been brought to my attention that you have approached fellow employees during school hours to discuss circumstances and opinions regarding the recent disciplinary action decided for your son.”

As indicated above, at the April 27, 2015 Governing Board meeting, the Board decided that all current contract teachers, with the exception of the Complainant and the XXXX, were recommended to continue with their current contract. The meeting minutes state that the Complainant’s contract was excluded pending pre-school program revisions. At this same meeting, the Complainant requested that her XXXX payment for the Student’s class trip be

⁵ The Complainant and Principal both told an OCR staff member, at different times, that the Complainant communicated this message during the meeting.

returned because the School's chosen consequence for the tablet incident kept the Student from traveling XXXX with his class. The next day, on April 28, 2015, the Complainant received an email from the Principal stating that her contract renewal was pending.

On April 29, 2015, the School's XXXX sent an email to an Education Program Specialist at the Arizona Department of Education stating that the Complainant "...is claiming that XXXX did not provide appropriate special education services to her son." This email contained other information that portrays the Complainant in a negative light.

Although the "Board shall offer contracts for certified personnel by May 1 for the following school year," the Complainant was not offered a contract by that date.

The Complainant addressed the Governing Board at their May 18, 2015 meeting. At that meeting, the Complainant again requested that her XXXX payment be returned.

On June 1, 2015, after she understood that she was no longer a part of the School community, the Complainant wrote to the Principal and XXXX to express her gratitude for her experience as an employee at the School. The School's XXXX said that the Complainant worked until school was out for the summer.

The Complainant's contract was not ever renewed and the Principal told an OCR staff member that he did not have any intention of renewing her contract because "sometime after the disciplinary meeting in April" he spoke to a potential employer out of state and thought that the Complainant might want to move. However, the Principal also acknowledged that it wouldn't be uncommon for a teacher whose contract was pending at the end of April to begin looking for alternative employment in the event that the contract was not renewed and that searching for a job, alone, wasn't a reason not to renew a teacher's contract.

The School proffered an explanation as to why the employment of the Complainant was not continued. Before OCR had the opportunity to investigate this explanation and determine whether it was legitimate or pre-text for retaliation, the School requested to voluntarily resolve this matter.

Legal Analysis and Conclusion

The ability of individuals to oppose discriminatory practices, and to participate in OCR investigations and other proceedings, is critical to ensuring equal educational opportunity in accordance with Federal civil rights laws. Discriminatory practices are often only raised and remedied when students, parents, teachers, coaches, and others can report such practices to school administrators without the fear of retaliation. Individuals should be commended when they raise concerns about compliance with the Federal civil rights laws, not punished for doing so.

As indicated above, during OCR's investigation of this complaint and before OCR had sufficient evidence to make findings, the School asked OCR if it could voluntarily resolve the allegation

that it retaliated against the Complainant pursuant to Section 302 of OCR's *Case Processing Manual*. OCR agreed that a 302 Agreement is appropriate with respect to this allegation.

The School has signed an Agreement which, when fully implemented, will resolve this allegation. OCR will monitor the implementation of the Agreement until all terms are fulfilled.

Conclusion

OCR found evidence to establish that the School discriminated against the Student on the basis of disability when it failed to evaluate him for a suspected disability and that the School is not in compliance with the procedural requirements of Section 504 and Title IX. In accordance with Section 302 and Section 303(b) of the CPM, the provisions of the Agreement signed by the School on March 8, 2016 are aligned with the allegations and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will actively monitor the School's implementation of the Agreement until the School fulfills the terms of the Agreement and is in compliance with the statutes and regulations at issue in this case. If the School fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement. A copy of the Agreement is enclosed.

OCR has provided written notice to the Complainant that the School has entered into this Agreement, and we provided the Complainant with a copy of the Agreement.

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

Please be advised that the School 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. In addition, the Complainant may have the right to file a private suit in Federal court, regardless of whether OCR finds a violation.

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.

If you have any questions, you may contact Allison Morris, the attorney assigned to this case, at (303) 844-2559 or by email at allison.morris@ed.gov.

Sincerely,

/s/

Stephen Chen
Supervisory Attorney

Enclosures – Signed Resolution Agreement

cc (without enclosures): Diana Douglas, Superintendent of Public Instruction