



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

January 16, 2020

Ms. Raquel Reedy, Superintendent  
Albuquerque Public Schools  
Post Office Box 25704  
Albuquerque, New Mexico 87125-0704

*via email only to XXXX@XXXX*

Re: **Albuquerque Public Schools**  
OCR Cases 08-20-1001 and 08-20-1019

Dear Superintendent Reedy:

We write to inform you of the resolution of cases 08-20-1001 and 08-20-1019, filed on October 2, 2019, and on October 9, 2019, respectively, with the Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”) against Albuquerque Public Schools (“District”).

In case 08-20-1001, the Complainant alleged that the District, at XXXX Middle School (“School”) failed to evaluate her son (“Student”) in a timely manner prior to September 30, 2019 (“Allegation 1”); and failed to implement the Student’s Section 504 plan on October 1, 2019 (“Allegation 2”). The Complainant also alleged that a teacher at the School subjected the Student to harassment (“Allegation 3”).

In case 08-20-1019, the Complainant alleged that the District retaliated against her children after she filed a disability discrimination complaint (08-20-1001) against the District with OCR. The alleged retaliation involved a teacher at the School: (a) giving her children “death stares” and making them feel “uncomfortable;” and (b) filing a false or misleading report with the New Mexico Children, Youth, and Families Department (CYFD) alleging that the Complainant was abusive toward her children (“Allegation 4”).

We investigated the allegations pursuant to: Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (“Title II”), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The Section 504 regulations also prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II. As a recipient of Federal

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financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

We found a preponderance of evidence to support Allegation 1 and Allegation 2. Before we made a final determination regarding Allegation 3 and Allegation 4, the District expressed an interest in taking voluntary action to resolve those allegations. We determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), to resolve Allegation 3 and Allegation 4 with a Resolution Agreement ("Agreement") without completing the investigation.

On November 19, 2019, OCR sent the District a proposed Agreement that addressed all four allegations. The District sent OCR a fully executed Agreement on January 15, 2020.

This letter sets forth the reasons for our violation findings for Allegation 1 and Allegation 2, and the evidence OCR had prior to entering into an Agreement for Allegation 3 and Allegation 4.

## **I. LEGAL STANDARDS**

### **a. Evaluation**

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation in a timely manner of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. When a school district is aware of a student's disability, or has reason to suspect a student has a disability, and the student needs or is believed to need special education or related services, it is a violation of Section 504 if the school district delays the evaluation.

### **b. Implementation**

The Section 504 regulations, at 34 C.F.R. Section 104.33, require school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii)-(iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations. Implementation of Section 504 plan is one means of meeting the FAPE requirements. A school district's failure to implement a Section 504 plan is typically a violation of Section 504 and Title II.

### **c. Harassment**

The regulations implementing Section 504, at 34 C.F.R. Section 104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. Section 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in a hostile environment – that is, can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or

opportunities.

In determining whether a hostile environment based on disability has been created, OCR examines all the circumstances, including: the type of harassment; the frequency and severity of the conduct; the nature of the student's disability; the age and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the school district; and other relevant factors.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that creates a hostile environment, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504 and Title II, and their regulations, if a student is harassed based on disability by an employee, the school district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the school district must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. If harassment is found, the school district must take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The school district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

#### **d. Retaliation**

In analyzing a retaliation claim, we first determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Section 504 or Title II or believed the individual might engage in a activity protected by Section 504 or Title II in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation, intimidation, or coercion.

## **II. INVESTIGATION**

Our investigation focused on obtaining the evidence necessary to determine whether the District complied with these legal standards. Specifically, our investigation consisted of:

- requesting and reviewing documents and information from the Complainant and the District;
- interviewing the principal ("Principal"), assistant principal ("Assistant Principal"), and dean of students ("Dean") at the School;

- interviewing the Student's sixth grade science teacher ("Science Teacher"), sixth grade social studies teacher ("Social Studies Teacher"), and first seventh grade English teacher ("English Teacher") at the School; and
- interviewing the CYFD social worker ("Social Worker") who handled a report of child abuse made against the Complainant.

### **III. EVIDENTIARY STANDARD**

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.

### **IV. ALLEGATIONS 1 AND 2: EVIDENCE AND ANALYSIS**

The Student matriculated in the District as a XXX student during the 2012-2013 school year (SY). During the 2019-2020 SY, the Student is a XXXX grade student at the School.

#### **a. Allegation 1: Failure to Evaluate in a Timely Manner**

On September 11, 2019, the Complainant emailed the Principal to request that the Student "be evaluated for special education services and/or accommodations granted under Section 504 or the Individuals with Disabilities Education Act (IDEA)." The next day, the School's student assistance team chair ("SAT Chair") and Complainant discussed the Complainant's request and concerns. The Student's doctor's office faxed to the School an "Albuquerque Public Schools Provider Order and Medication Authorization Form," which indicated that the Student had been diagnosed with attention-deficit/ hyperactivity disorder (ADHD) and prescribed medication. On September 13, 2019, the SAT Chair invited the Complainant to an SAT meeting for the Student. On September 30, 2019, the School convened an SAT meeting for the Student, at which the Student was found eligible under Section 504 for his ADHD and a Section 504 plan was created.

However, a preponderance of evidence demonstrates that the District should've identified and evaluated the Student sooner. The following evidence shows that District personnel have known that the Student has ADHD since he was in kindergarten:

- From at least December 2013 to February 2014, the Complainant and the Student's teacher exchanged emails about the Student's medical appointments for suspected ADHD.<sup>1</sup>
- On January 2, 2014, a medical doctor diagnosed the Student with ADHD. The diagnosis report reads, "Teacher reports he could do better if she does not have to redirect him all the time. ... Has had two teachers ask [the Complainant] to have [the Student] evaluated for add."

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<sup>1</sup> According to the Complainant, the teacher suggested that the Student be evaluated.

- On February 12, 2014, the Complainant emailed the Student's teacher, "His doctor did diagnose him with ADHD. I wanted to sit down with you to discuss what happens next as far as school. ... I want him to have all the tools and help that he needs to be successful."
- On October 24, 2014, the Complainant emailed the Student's teacher, "We have started [the Student] on medication for his Adhd a couple weeks ago."
- On January 20, 2015, the Complainant emailed a District "IEP Specialist," "I have been told that I should look into [an] IEP for [the Student] due to his ADHD & trouble focusing in class. Can you please advise me on how the program works, if he is eligible & if he is, how to get started." The IEP Specialist replied, "You will need to talk with his teacher. There is a process to go through and she can initiate the paperwork."
- On December 15, 2015, the Complainant emailed the Student's teacher, "... [The Student] has been going to school w/out his medication recently due to frequent changes in my work schedule. This most definitely has played a factor in his behavior."
- A school nurse wrote that, during the 2017-2018 SY, she "did a noon med at school to help [the Student] with focus/behavior."
- On February 15, 2019, the Complainant emailed the School's music director, "I will also be speaking with his doctor to reevaluate his medication dosage as he is ADHD and does have some struggles."
- On March 6, 2019, the Student's doctor's office faxed a "Albuquerque Public Schools Provider Order and Medication Authorization Form" to the School. The form indicated that the Student had been diagnosed with ADHD and prescribed medication, which would need to be taken at 10:00 a.m. ("right before 3rd class").
- From at least March 19, 2019 to the end of the 2018-2019 SY, the School's nurse administered Adderall – a medication used to treat ADHD – to the Student.
- On March 28, 2019, the Complainant emailed the Dean, "I would like to schedule a meeting to discuss [the Student]. He is struggling in some of his classes. ... [The Student] is diagnosed and treated for ADD/ADHD. He recently got an increase of medication due to the issues I've been notified of. ... However, I believe that due to his medical condition, he may need some additional assistance/accommodations to help him achieve this goal. Can you please contact me via email or phone to set up a meeting? I think it would be beneficial to all parties involved if we sit down and discuss our options whether it be a behavior plan or a 504 plan."
- On March 28, 2019, the Complainant emailed the Student's sixth grade science teacher, "As you are aware, [the Student] is diagnosed with ADD/ADHD and despite his recent increase in medication he is apparently still struggling. [The Student] does desire to be a good student in school but I believe he may need some additional assistance/accommodations to help him achieve this goal. I do think it would be best to meet to see what the best plan of action would be whether it be a behavior plan or a 504 plan."
- The Science Teacher told OCR that, during the 2018-2019 SY, she was aware that the Student had ADHD. She said, "His whole demeanor was ADHD."
- The Social Studies Teacher told OCR that, during the 2018-2019 SY, she was aware that the Student had ADHD. She said, "That was apparent."

Additionally, dating back to first grade, the Student has a lengthy history of behavioral struggles at school. Many of his behaviors are considered common manifestations of ADHD. During our investigation, we obtain records showing the following incidents before the Student was evaluated:

- On January 15, 2014, the Student's teacher emailed the Complainant, "I have had to talk to [the Student] quite a bit these last couple of days. He is talking a lot and always out of his seat."
- On January 22, 2014, the Student's teacher emailed the Complainant, "I am having to talk to [the Student] every day about not being in his chair, being off task, talking to others, walking around the classroom, not walking in line and talking out. ... He is constantly talking and not paying attention. ... I just need him to pay attention. ... This maybe [sic] helpful for his next doctor's appointment."
- On May 2, 2014, the Student's teacher emailed the Complainant, "[The Student] has not been listening, his attention span is very short and I am having to remind him to do daily activities that we have done all year. On the field trip yesterday, he kept going off the path, picking up rocks (after I had told him not to) and again just not listening."
- On September 2, 2014, the Student slapped another student across the face.
- On September 16, 2014, the Student typed the "f-word" and held up his middle finger.
- On October 3, 2014, the Student's teacher emailed the Complainant, "The counselor has come to talk to [the Student] 2 times to speak with him regarding his behaviors."
- On November 18, 2014, the Student put his hand into a bag of Skittles that were not his.
- On November 19, 2014, the Student sprayed people with water at recess.
- On November 19, 2014, the Student's teacher emailed the Complainant, "[The Student] had a rough couple of days. ... So I was wondering if anything with his medication had changed or if you were experiencing this at home? I have asked him repeatedly to follow my rules and the school rules and he continues to not listen to me."
- On September 25, 2015, the Student's teacher emailed the Complainant, "... [T]he art teacher is having an extremely hard time with [the Student]. He is being completely disrespectful, mocking her, and getting no art done."
- On February 2, 2016, the Student was roughhousing with another student – *i.e.*, pushing the student and putting his arms around the student's neck.
- On February 6, 2016, the Student's teacher emailed the Complainant, "... I am still seeing issues with [the Student] ... arguing with the librarian, ... hands on others, ... issues at recess."
- On October 18, 2016, the Student tackled another student.
- On May 11, 2017, the Student punched another student.
- On October 9, 2017, the Student got into a disagreement with another student.
- On October 30, 2017, a "Student Contact Log" entry by an assistant principal read, "Called mom concerning the number of times and issues I have seen [the Student] for. concerned that he ... stirs up trouble with his peers when he is bored."
- On January 24, 2018, the Student hit a female student.
- On May 7, 2018, the Student threatened to fight another student.
- On December 10, 2018, the Student was repeatedly disruptive and distracting, including leaving his seat to talk to other students when they were supposed to be working.

- On December 12, 2018, the Student slapped another student in the face.
- On January 11, 2019, the Student refused to follow directions, talked with other students in the library, and would not remain seated.
- On January 29, 2019, the Student repeatedly refused to stop talking during an assignment and shouted out an answer.
- On February 15, 2019, the Student was “talking during a quiet activity,” after the teacher warned the class not to talk.
- On March 28, 2019, the Student did not follow a teacher’s directions and attempted to trip another student.
- On April 1, 2019, the Student drank in computer class and then lied to his teacher about it.
- On April 18, 2019, the Student ate in computer class.
- On May 15, 2019, the Student had to be redirected several times, became argumentative, and raised his voice.
- On August 12, 2019, the Student “cut” the lunch line.
- On September 5, 2019, the Student instigated a fight.
- On September 11, 2019, the Student allowed a non-student to enter campus.
- On September 16, 2019, the Student was off-task and cursing.
- On September 30, 2019, the Student would not listen or stay on task, and was excessively talking and being a distraction.

Moreover, since the Student was in kindergarten, District personnel have commented about the Student exhibiting symptoms of ADHD (in addition to the aforementioned behavior incidents). For example:

- On May 13, 2013, the Student’s kindergarten teacher wrote as a “summary comment,” “[The Student] is a very active child. He needs a lot of reminders to stay on task and not to be involved in what others are doing. Academically he can do the work at grade level when he is isolated and focused on the task.”
- In January 2014, three of the Student’s teachers completed the NICHQ Vanderbilt Assessment Scale (“Scale”) for him.<sup>2</sup> The Scale listed 35 “symptoms” of ADHD. The teachers indicated that the Student “often” or “very often” exhibited nine symptoms, 16 symptoms, and 17 symptoms, respectively.
- On May 14, 2014, the Student’s first grade teacher wrote as a “summary comment,” “[The Student] is a very busy boy. He likes to know what is going on with everyone in the class. He needs to slow down on his work. [The Student] needs structure and daily routines to keep him on task.”
- In May 2015, the Student’s second grade teacher wrote as a “summary comment,” “He needs to be encouraged to stay focused on his tasks but he is capable of doing the work. [The Student] works best in small group with a teacher to help monitor his progress, completion of tasks, and behavior. He can become distracted by his peers and needs to be redirected.”
- On May 16, 2016, the Student’s third grade teacher wrote as a “summary comment,” “[The

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<sup>2</sup> “The NICHQ Vanderbilt Assessment Scales are used by health care professionals to help diagnose ADHD in children between the ages of 6- and 12-years.”

Student] can be impulsive and needs reminders to think before he acts. He also needs boundaries inside and outside the classroom.”

- On May 17, 2017, the Student’s fourth grade teacher wrote as a “summary comment,” “[The Student] is very outgoing, very social, and excited easily. ... He has a quick temper which he sometimes does not keep under check ... .”
- On October 30, 2017, a “Student Contact Log” entry by an assistant principal read, “Called mom concerning the number of times and issues I have seen [the Student] for. [C]oncerned that he mixes up details and order of events when talking to me[.]”
- The Science Teacher told OCR that “all the time” during the 2018-2019 SY, the Student was “wiggly” more than most other students, had to be redirected, and joked around a lot.
- The Social Studies Teacher told OCR that, during the 2018-2019 SY, the Student needed movement, breaks, redirections, and refocusing.

A school district must evaluate students who are suspected of having a disability. School districts violate Section 504 when they delay conducting an evaluation of a student when it would have been reasonable for a staff member to have suspected that a student has a disability and needs special education or related services because of that disability. In this instance, as demonstrated by the facts above, District personnel had actual and constructive notice that the Student has ADHD, and needs accommodations, at least six years before initiating an evaluation of the Student. Since the District took an unreasonable amount of time to initiate an evaluation of the Student after its Child Find duties were triggered, the District violated Section 504.

#### **b. Failure to Implement**

The Student’s Section 504 plan – created on September 30, 2019, and effective October 1, 2019 – included the following accommodations:

1. “Teacher will seat [the Student] in a quiet location in the classroom where he may avoid distraction or distracting others during independent work;”
2. “[The Student] will receive chunked directions on all tasks, along with written directions when available;”
3. “[The Student] will be allowed moving breaks once per class period (at a time the teacher deems appropriate)” during which time he “walk to the restroom, water fountain, or down the hall and back;”
4. “[The Student] will be allowed to use of noise-canceling headphones (to be provided by parents) when working independently in class, as needed ... headphones may not be utilized during direct teacher instruction;”
5. “[The Student] will use doodles or coloring pages to allow for physical activity;” and
6. “[The Student] may visit the Redirector during the day if he is not able to calm down enough to participate appropriate in classroom activities.”

The Complainant alleged that, on October 1, 2019, the English Teacher failed to follow the Student’s Section 504 plan in four ways.

First, the Complainant alleged that the English Teacher rotated the Student's desk to face toward "a wall" and "away from the teacher, the board and the rest of the students." Then, when the English Teacher was giving instructions to students and the Student turned to face the English Teacher, she told him that he must "face forward" and is not allowed to "twist and turn." According to the English Teacher: she did not have space in her classroom to move the Student; she turned the Student's desk sideways, facing the wall, moving the desk "maybe one foot;" and she never told the Student that he must "face forward" and must not "twist and turn." Therefore, we find that the English Teacher failed to implement the first accommodation in the Student's Section 504 plan.

Second, the Complainant alleged that the English Teacher "placed a trash can next to the seat of the desk which blocked [the Student] from being able to exit his desk without moving the trash can;" and "informed [the Student] that he has no reason to leave his seat during class." The Complainant said she observed the English Teacher's classroom and saw a tall, gray trashcan next to the Student's desk. According to the English Teacher, she told the Student that he had permission to leave the classroom, if necessary; she asked the Student if he wanted to leave the classroom, but he said "no;" and there was a trash receptacle approximately three feet from the Student, but it had been there the entire school year and was utilized to store extra papers. None of the records or other witnesses provided clarification about whether the third accommodation in the Student's Section 504 plan was implemented. Therefore, we found insufficient evidence that the English Teacher failed to implement the third accommodation in the Student's Section 504 plan.

Third, the Complainant alleged that the English Teacher told the Student "that if he is seen doodling, he will get a 'big fat zero.'" According to the English Teacher, she has a "classroom policy" that students cannot doodle on their "professional work;" students are allowed to Doodle on other paper; and she did not direct her comment about doodling and receiving a "zero" at the Student specifically. According to the Assistant Principal, a "trustworthy student" in the English Teacher's class, who the Assistant Principal found credible, reported that the English Teacher, when instructing students not to doodle, singled out the Student and told him specifically not to doodle. Therefore, we find that the English Teacher failed to implement the fifth accommodation in the Student's Section 504 plan.

Fourth, the Complainant alleged that "[The Student] was not given chunked or written directions" by the English Teacher. According to the English Teacher, she chunked and wrote directions for all students in the class. We were unable to identify any other evidence regarding whether this provision of the Student's Section 504 was implemented in English Teacher's class on October 1, 2019; therefore, we found insufficient evidence to support the allegation.

#### **V. ALLEGATIONS 3 AND 4: FACTS TO DATE**

During the first seven weeks of the 2019-2020 SY, the Student was in the English Teacher's class.

##### **a. Harassment**

On September 20, 2019 – six weeks into the 2019-2020 SY – the English Teacher contacted the Complainant for the first time, writing in an email:

Your son ... is in my English & Literature class. His behavior is not consistent with my classroom norms or nor [sic] with [the School].

[The Student] feels the need to be disruptive in class every day. He rarely works on class assignments, unless I am constantly asking him to be on task. He will make disparaging remarks to almost everything said in class [sic] teacher or classmates. He will find anything to do to be disruptive to other students around him. When speaking with him, he challenges me to the point of being combative. [The Student] talks backs to me continuously – be it a comment, concern or redirection given to him.

[The Student] has been given multiples times to correct his disruptive behavior. ... [The Student] has not made any attempts to correct any of the above[-]mentioned issues.

This is notification that I will begin the process of formally entering my concerns of his unacceptable behavior with the Administration/Dean of Students immediately.

The Complainant requested additional details and clarification from the English Teacher. The English Teacher replied, in part: “[The Student] talks back to me constantly;” “he will argue with me on ANYTHING that I may say;” and “he continues to talk and not work.” The English Teacher claimed that other students did not want to sit next to the Student and wanted to transfer out of the class to be away from the Student. The English Teacher’s response ended, “On my end, as a teacher, I have an obligation to ALL my students. They have a right to the “educational process”.” The Complainant replied to point out that the English Teacher’s tone was problematic. The English Teacher responded to defend her tone. That email ended, “If you would like to schedule a conference, you may contact administration and arrange a day and time. Please be advised I am only able to meet during school hours.”

On the same day that the English Teacher contacted the Complainant for the first time, she emailed the SAT Chair:

I became clear [sic] to [the Complainant] once I told her I would continue to assign consequences. No student is exempt from not [sic] following the school rules and policies.

Personally, I do not care to meet with [the Complainant]. I have addressed everything I need to with this student. She just wants to rehash and I do not feel the need. My perspective will not change.

... If [the Complainant] insists on meeting she can make the contact with administration. I never meet with parents individually.

Also on September 20, 2019, the Complainant emailed the Dean of Students that she believed moving the Student out of the Teacher's class was "necessary." On September 25, 2019, the Complainant emailed the Dean of Students, "I have major concerns about this situation and I am requesting that [the Student] be changed classes as soon as possible."

On September 27, 2019, according to the Complainant, she went to the School and spoke with the Assistant Principal, who said that the Student would be moved out of the English Teacher's class.

On October 1, 2019, the Complainant emailed the SAT Chair, Principal, and Dean:

I have a major concern about the way one of [the Student's] teachers, [the English Teacher], is handling his accommodations. [The Student] informed me that he has been put at a desk in the corner of the classroom facing a wall. He is facing away from the teacher, the board and the rest of the students. She placed a trash can next to the seat of the desk which blocked [the Student] from being able to exit his desk without moving the trash can. This is a safety hazard.

During the period of time that [the English teacher] was giving instructions to the class [the Student] turned to face [the English Teacher] and was told he must face forward and is not allowed to "twist and turn" in her class. [The Student's] accommodation is being used to ostracize him from his peers.

In addition to being put in a corner [the Student] was also told that if he is seen doodling he will get a "big fat zero". To my understanding [the Student's] accommodations aren't a recommendation they are supposed to be followed by all of his teachers.

I feel that [the Student] is being mistreated and/or discriminated against by this teacher. I feel this is retaliation related to the previous issues involving [the English Teacher].<sup>3</sup>

Due to the previous issues with [the Teacher] I spoke with [the Assistant Principal] this past Friday and she informed me that [the Student] would be moved out of this classroom. I am requesting for that to happen sooner rather than later as the situation is obviously getting worse. This is completely unacceptable. [The Student] should be receiving support from his teachers not being treated like a nuisance.

I would prefer if [the Student] did not have to endure another day in this class. He shouldn't have to continue to be in this class stuck in a corner facing a wall or threatened with a failing grade for following his accommodations. If someone can get back to me as soon as possible I would greatly appreciate it.

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<sup>3</sup> Notably, it appears that the District did not comply with its procedural directives ("Discrimination and Harassment: Students" and "Disability Harassment: Students") in response to the complaint from the Complainant.

On October 2, 2019, the English Teacher emailed the SAT Chair, “As you probably know, [the Student] is no longer in my class. Parents are highly upset because I followed the 504 and moved his seating (literally two feet from where he was). The need to come and see and possibly photograph where he was sitting. I followed the 504 and now they are upset with me. I believe a good decision [sic] to move him out of my class.” The School moved the Student out of the English Teacher’s class.

Notably, according to the Principal, the English Teacher has a history of being difficult, combative, curt, defensive, and “toxic to school culture.” The Principal also reported that the English Teacher creates discord and is not a team player, and others have difficulty getting along with her. Moreover, the Principal shared that the Complainant is not the first parent to complain about the English Teacher. Finally, the Assistant Principal said that the emails between the Complainant and the English Teacher appear to show that the Complainant was trying to be proactive and collaborative, whereas the English Teacher was frustrated and unwilling to work toward solutions.

#### **b. Retaliation**

The Complainant alleged that, after she filed the complaint in case 08-20-1001, the English Teacher gave her children “death stares” and made them feel “uncomfortable.” During an interview with OCR, the English Teacher denied staring at the Complainant’s children or making the Complainant’s children feel uncomfortable. Notably, according to the Principal, she would not be surprised if the English Teacher was giving the Student dirty looks.

The Complainant also alleged that, after she filed the complaint in case 08-20-1001, the English Teacher filed a false or misleading report with the CYFD alleging that the Complainant was abusive toward her children. During an interview with OCR, the English Teacher refused to confirm or deny whether she made a report to the CYFD regarding the Complainant. The other School staff members interviewed by OCR reported that they did not know who made the report to the CYFD. Notably, the Principal said that she assumed that English Teacher made the report.

According to the Social Worker, someone filed a report that the Complainant was physically abusive toward the Student – specifically, that she hit him in the head with a “chancla” (flip-flop or slipper, in Spanish). The Social Worker could not share the source of the report. She did share, however, that: (a) the report was made on October 7, 2019; (b) the report included language that mirrored the language in an email between the English Teacher and the Complainant; and (c) she contacted the English Teacher regarding the report, but no other staff members. Notably, the alleged “chancla” comment was made by the Student to the English Teacher on or before September 20, 2019, but the report was not made until weeks later, the first school day after we notified the District that OCR was opening for investigation the allegations in case 08-20-1001

#### **VI. CONCLUSION**

We thank the District for being willing to address the allegations. Attached is a copy of the signed Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor

implementation of the Agreement through periodic reports from the District demonstrating that 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. The Complainant will be copied on our monitoring letters. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of these complaints 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. The cases are now in the monitoring phase. The monitoring phase of these cases will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of these cases is complete, OCR will close these cases and send a letter to the District, copied to the Complainant, stating that these cases are closed.

This letter sets forth OCR's determination in individual OCR cases. 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and the District's staff extended to us during the investigation and resolution of these cases. If you have any questions, please contact Jason Langberg, the attorney assigned to this complaint, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Lisa Zanussi, Director, Equal Opportunity Services (XXXX@XXX)  
Christine Archibeque, Specialist, Equal Opportunity Services (XXXX@XXXX)  
Michelle Armijo, Principal (XXXX@XXXX)  
Ryan Stewart, Secretary Designate of Education (XXXX@XXXX)