



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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February 25, 2022

Andy Abner and Danelle Hiatt
Acting Superintendents
Douglas County School District RE-1
620 Wilcox Street
Castle Rock, CO 80104

By Email only to XX and XX

Re: Douglas County School District
OCR Reference No.: 08-20-1092

Dear Acting Superintendents:

On November 13, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging the Douglas County School District (District) discriminated against students on the basis of sex and disability.

Specifically, the Complainant alleged that the District:

- 1) treated female athletes differently than male athletes, specifically with regard to how the District handles the unprofessional conduct of coaches;
- 2) failed to establish policies and procedures that ensure a prompt and equitable response to grievances under Section 504;
- 3) failed to provide a prompt and equitable response under Section 504 and Title IX to complaints received per the District's internal grievance process; and,
- 4) denied students with disabilities attending Douglas County High School (DCHS) a free appropriate public education (FAPE) when, upon receiving notice of bullying conduct against students with disabilities, it failed to consider the impact of the bullying on the students' ability to receive FAPE.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 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; 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), 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or

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

activity operated by a recipient of federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Investigation Summary

On January 28, 2020, OCR opened the allegations for investigation in accordance with OCR's *Case Processing Manual* (CPM). During its investigation, OCR reviewed documentation provided by the Complainant and the District; interviewed District staff; and went onsite to DCHS.

Allegation 1: Different Treatment

The Complainant alleged that the District treated female athletes differently than male athletes, specifically with regard to how the District handles allegations of unprofessional conduct of coaches.

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. §106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient of Federal financial assistance.¹

To determine whether an individual has been discriminated against on the basis of sex, OCR looks at whether there is evidence that the individual was treated differently than individuals of a different sex under similar circumstances, and whether the treatment has resulted in the denial or limitation of 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 individual's sex.

OCR also examines whether there was any evidence to suggest that the recipient treated the student in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of prohibited discrimination.

¹ Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). However, the Title IX regulation in effect at the time of the underlying events associated with allegation #1 serve as the basis for OCR's determination in this matter, which is available [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html and <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>.

Background

The Complainant represents a number of parents and/or guardians (Parents) of students who attend school in the District. On behalf of the Parents, the Complainant provided information to OCR regarding each of the allegations opened for investigation. Specific to the allegation that the District treated female athletes differently than male athletes, the Complainant provided examples of alleged misconduct by coaches of both female and male sports wherein the disciplined coaches received varying levels of treatment, if any. The information was provided in a spreadsheet which identified multiple high schools in the District, the pertinent teams – including the sex of the teams and associated sport, the status of the resolution of the allegations, and in some cases, relevant documentation such as news articles/reports. The information indicates that coaches of eight male sports teams subject to misconduct investigations were disciplined through firings or forced resignations, while the coaches of twelve female sports teams subject to similar misconduct investigations either remained unresolved (eight), were fired or forced to resign (two), or were not escalated out of fear of retaliation (two).

In the District's initial response to OCR's request for information, it denied that it treated students differently in the handling of allegations of coaching misconduct. During an interview with the District's Title IX Coordinator (Title IX Coordinator), he stated that the District attempts to handle complaints at the local level prior to the District's involvement. He clarified that when making decisions regarding disciplinary actions, the District uses a collaborative approach which usually involves the high school principal, high school athletic director, Title IX Coordinator, District Athletic Director, human resources staff, and legal staff; however, he also stated that the process was informal and usually occurred through a "quick discussion." The Title IX Coordinator restated that the complaints are handled at a lower level, he may not be made aware of them, and that principals have autonomy in their decision-making.

While the Title IX Coordinator stated that complaints handled at the District-level would not take the sex of the team's athletes into account when investigating and handling the complaint, he indicated that it may look differently between the schools in the community. He stated that the District has taken steps to work through these concerns. Further, the Title IX Coordinator indicated that based on the hierarchy of the District and its reporting structure, he works with staff to influence and change behavior, if needed, rather than directing staff specifically, but stated his ability to hold staff accountable is a "gray" area. Finally, the Title IX Coordinator stated the District has not previously conducted a review of its practices internally to ensure equal distribution and handling between male and female athletic teams.

OCR requested information and documentation from the District regarding complaints the District received of unprofessional coaching conduct in the 2017-18, 2018-19, and 2019-20 school years. In its initial response, the District provided six investigation files. OCR provided additional details regarding fourteen incidents which were not addressed in the initial response; however, the District indicated the details were too vague and it was unable to identify whether it had received complaints for each incident or had additional investigative files available.

Analysis

As outlined above, due to a lack of documentation, OCR’s investigation into this allegation was limited to the review of few investigative files and the information provided by the Title IX Coordinator. Based on the available information, OCR has concerns about the District’s compliance with Title IX as it pertains to the discipline of its coaches.

First, the District’s Title IX Coordinator indicated the use of a collaborative approach in determining discipline, though he reiterated that the District defers to staff at the local level. However, based on the structure of the District, the Title IX Coordinator lacks the authority to hold staff accountable at the local level. Further, based on the autonomous control of administrators at each site and the lack of formal documentation, the Title IX Coordinator may not be made aware of complaints related to coaches and could not assure OCR that the sex of the coach’s team would not be taken into consideration at the local level.

Second, the District was unable to provide documentation responsive to the allegation. While OCR notes that some of the examples that the Complainant provided lacked the name of coaches or complainants, the District did not have a way to determine whether a complaint existed, or a corresponding investigation resulted, without conducting interviews of relevant staff at each site implicated. This affirmed the autonomous operation at each site and demonstrated a lack of available information to determine whether different treatment was occurring with regard to the discipline of its coaches based on the sex of the team.

After OCR discussed its concerns with the District and requested additional information regarding the alleged incidents of disciplined coaches, on January 28, 2021², the District notified OCR that it was interested in resolving this allegation. The District voluntarily agreed to address the allegation by signing the enclosed Section 302 resolution agreement (Agreement) on February 9, 2022.

Allegation 2: Policies and Procedures – Section 504

The Complainant alleged that the District failed to establish policies and procedures that ensure a prompt and equitable response to grievances under Section 504.

Legal Standard

Under Section 108(k) of OCR’s CPM, OCR will dismiss a complaint allegation when OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved.

² The District initially notified OCR of its interest in resolving the allegations opened for investigation under complaint no. 08-20-1092 on January 28, 2021; however, OCR needed more information to determine if a 302 resolution agreement was appropriate.

Recipients of Department funds that employ fifteen or more persons are required to designate at least one person to coordinate its efforts to comply with Section 504's requirements and adopt grievance procedures (that incorporate appropriate due process standards) that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 (34 C.F.R. § 104.7). Title II's implementing regulation at 28 C.F.R. § 35.107(b) has similar requirements for the prompt and equitable resolution of disability discrimination complaints.

Background

Specific to the allegation that the District failed to establish policies and procedures ensuring a prompt and equitable response as required by Section 504, the Complainant described concerns regarding the District's presentation of its procedural safeguards and internal grievance procedures. The Complainant submitted a sample of the text provided to parents and/or guardians which demonstrates that the information regarding an "impartial hearing" (i.e., due process hearing) is immediately followed by information regarding an "informal hearing" (i.e., option provided under the District's grievance procedures). Based on alleged violations of Section 504, the Complainant described concerns around the lack of impartial hearings and conflation between the procedural safeguards and grievance procedures.

In the District's initial response to OCR's request for information, it further denied that it failed to establish policies and procedures that ensure a prompt and equitable response to grievances under Section 504. The District provided copies of its Board Policies related to Section 504, as well as other documents related to Section 504, including the following:

- Board Policy AC: Nondiscrimination/Equal Opportunity
- Complaint Form AC-E-1: Nondiscrimination/Equal Opportunity Report Form
- Board Policy GBA: Open Hiring/Equal Employment Opportunity
- Board Policy JBB: Nondiscrimination on the Basis of Disability
- Board Policy JBB-E-1: Section 504 ADA Form A
- Board Policy JBB-E-2: Section 504 ADA Form B
- Board Policy JBB-E-3: Section 504 ADA Form C
- Board Policy JBB-R: Nondiscrimination on the Basis of Disability Definitions
- Board Policy JBB-R-1: Section 504 Due Process Hearing Procedure
- Section 504 Procedural Safeguards

The District also indicated in its response that during the 2017-18, 2018-19, and 2019-20 school years, it did not receive a request for an impartial hearing. During an interview with the District's Section 504 Coordinator (Section 504 Coordinator), the District distinguished between the impartial hearings requested pursuant to Section 504 and the Individuals with Disabilities Education Act (IDEA) and indicated, again, that it had not received a request for an impartial hearing pursuant to Section 504. The District disputed the extent of OCR's jurisdiction with regard to matters pertaining to IDEA, but indicated that in a given year the District may receive four to five requests for a due process hearing pursuant to IDEA, most of which are settled and therefore do not proceed through the full hearing process. The District explained that a due

process hearing requested under IDEA is initiated at the state level and the District does not play a role in the hearing process, but rather is notified by the state after the request is received.

The District further distinguished between its internal complaint procedures under Section 504 and IDEA. The Section 504 Coordinator stated that the District has received one formal complaint under Section 504 regarding the implementation of accommodations within a Section 504 plan, while those received pursuant to IDEA cover a broad range of topics, including Child Find concerns, discipline decisions, least restrictive environment, and placement decisions. After OCR clarified that students receiving FAPE under IDEA are also protected by Section 504, the District indicated that many IDEA concerns are resolved informally through the IDEA dispute resolution process at the IEP team level.

The Section 504 Coordinator said that parents and/or guardians are provided notice of the District's procedural safeguards at least once per year and any time the District receives a request or question from the parent and/or guardian.

On May 12, 2021, the District provided OCR with updated copies of its Board Policies related to Section 504, including:

- Board Policy JBB: Nondiscrimination on the Basis of Disability
- Board Policy JBB-R: Nondiscrimination on the Basis of Disability Definitions
- Board Policy JBB-R-1: Section 504 Due Process Hearing Procedure
- Board Policy JBB-R-2: Nondiscrimination on the Basis of Disability in Nonacademic or Extracurricular Programs or Activities

Board Policies JBB and JBB-R-2 were updated and adopted, respectively, in August 2020, while Board Policies JBB-R and JBB-R-1 were last revised in October 2002. Board Policy JBB describes the requirements under Section 504 and Title II regarding nondiscrimination on the basis of disability. It includes explanations regarding who is protected under Section 504 and Title II, the District's provision of FAPE, and distinguishes the opportunity to file a complaint of discrimination from the request for a due process hearing. Board Policy JBB-R defines the term "complaint" to address allegations of discrimination on the basis of disability. Further, it outlines the District's complaint procedure under Section 504, which includes multiple opportunities for appeal and review. The final decision rests with the District's Board of Education. Board Policy JBB-R-1 explains the "due process hearing" requirements, pursuant to 34 C.F.R. § 104.36, and the process for engaging in a hearing.

Finally, OCR independently reviewed the District's website and, based on a simple search, located the contact information for the Section 504 Coordinator, as well as the name for each building level coordinator.

Analysis

Early in correspondence with the District regarding the investigation, the District indicated to OCR that it was updating its Board Policies. OCR's review of the District's Board Policies

indicate that the District provides a process for the prompt and equitable resolution of complaints received pursuant to Section 504 and adequately distinguishes this process from the request for a due process hearing. Further, the District readily provides the contact information for its Section 504 Coordinator on its website.

While the Complainant speculated that the placement of the description of an “impartial hearing” and “informal hearing” may have resulted in a lack of requests for impartial hearings, the assertion was not accompanied by examples of students or parents who elected not to pursue either option as a result of the placement. Moreover, the concerns raised by the Complainant regarding the District’s failure to provide a prompt and equitable response specific to individual student/parent complaints are addressed in allegation #3.

Based on the foregoing information and the documentation provided to OCR, OCR has determined that, during the course of the investigation, the District has taken steps to address the allegation raised in the complaint, and therefore the allegation is no longer appropriate for investigation. Accordingly, OCR is dismissing this allegation pursuant to Section 108(k) of the CPM as of the date of this letter.

Allegation 3: Prompt and Equitable Response – Section 504 and Title IX

The Complainant alleged that the District failed to provide a prompt and equitable response under Section 504 and Title IX to complaints received per the District’s internal grievance process.

Legal Standard – Section 504

Section 504 and Title II’s regulations contemplate an internal investigative or resolution process for allegations of disability discrimination that are prompt and equitable, and afford elements of due process, including notice to the recipient of the allegations, investigation of all allegations, information gathered from relevant witnesses identified by both the complainant and the recipient, and the application of acceptable legal standards to the relevant facts.

Background – Section 504

The Complainant stated that: parents had difficulty escalating complaints; that the District refused parents the opportunity to meet with the Superintendent, despite receiving multiple requests to do so; and that the District was “stonewalling” the students’ ability to pursue recourse. Further, the Complainant said that the District failed to address complaints of Section 504, providing specific examples of students for which complaints were filed and allegedly went unaddressed or insufficiently addressed.

In the District’s initial response to OCR’s request for information, it again denied that it had failed to provide a prompt and equitable response, as required by Section 504. The District

provided documentation of the internal investigations it conducted, including responses specific to the examples provided by the Complainant.³

During the interview with the Section 504 Coordinator, she explained the process for receiving and investigating complaints of discrimination on the basis of disability, as well as its site-based administration approach. The Section 504 Coordinator confirmed that the complaints take a variety of forms, ranging from a conversation with a principal to escalating the issue to the Superintendent.

Finally, as described in allegation #2 above, the District indicated it only received one formal complaint pursuant to its internal grievance procedures under Section 504 during the 2017-18, 2018-19, and 2019-20 school years.

Legal Standard – Title IX

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students, parents of elementary and secondary students, and employees of the procedures, including where complaints may be filed;
- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- 3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;
- 5) notice to both parties of the outcome of the complaint and any appeal, if available; and

³ During the course of the investigation, OCR received and opened for investigation complaint no. 08-21-1097. The facts and circumstances underlying this complaint are substantially similar to one of the examples addressed in allegation #3 of the current complaint. While complaint no. 08-21-1097 framed the allegation as retaliation, the primary dispute at issue is whether the Complainant was provided a prompt and equitable response via the District's internal grievance procedures. OCR determined that the resolution of the current complaint provides specific redress for the Complainant's concerns in complaint no. 08-21-1097; specifically, the remedies require review of the internal complaint at issue in 08-21-1097 and training which addresses the requirement to provide a prompt and equitable response to complaints received pursuant to the District internal grievance procedures and the prohibition against retaliation.

- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

Background – Title IX

In addition to the Complainant’s allegations regarding Section 504, he also stated the District failed to address complaints of Title IX violations which allegedly went unaddressed or insufficiently addressed.

The District further denied the allegation that it failed to comply with the prompt and equitable response requirements under Title IX. In its initial response to OCR, the District provided a list of complaints under Title IX which OCR had opened for investigation during the 2017-18, 2018-19, and 2019-20 school years. OCR subsequently clarified the request and again asked for copies of complaints the District had received under Title IX pursuant to its own internal grievance procedures.⁴ During the course of the investigation, OCR learned that the District had recently updated its Title IX policies and procedures, in response to and as required by the updated Title IX regulations.

During an interview with the District’s Title IX Coordinator, OCR inquired about the Title IX Coordinator’s ability to direct building-level staff regarding the implementation of District policies and procedures. The Title IX Coordinator indicated that he may direct staff; however, it was not the District’s culture to operate in this manner and that he would likely work with the Director of Schools if these concerns arose. He expressed concern about the ability to hold staff accountable, though he attributed this to a “unique” culture in the District and stated that District-level staff use a variety of leadership strategies to ensure compliance.

Analysis – Section 504 and Title IX Grievance Responses

OCR’s investigation of this allegation, under both Section 504 and Title IX, was limited to a review of complaints specifically raised in the OCR complaint.⁵ Based on the lack of additional documentation and disputes between the District and the Parents, OCR has concerns about the District’s compliance with the prompt and equitable response requirements under Section 504 and Title IX.

It is unclear how the District determines whether it is receiving a formal complaint pursuant to Section 504 or Title IX. Specifically at issue, the Complainant alleges that multiple complaints were received pursuant to internal grievance procedures required under these laws and

⁴ OCR and the District began negotiating the Agreement shortly after OCR’s clarifying request related to the Title IX complaints and the District did not provide a response prior to entering into the resolution agreement.

⁵ OCR notes that it also received complaints during the course of the investigation into this allegation, which were subsequently dismissed under Section 108(m) of the CPM because it raised the same or similar allegation(s) based on the same operative facts currently being investigated by OCR. OCR incorporated those individual allegations into its investigation of this complaint.

regulations⁶; however, the District asserted it had only received one formal complaint under Section 504 and it is unknown whether the District internally received Title IX complaints besides the complaints that were also filed with OCR.

The Title IX Coordinator also expressed concerns to OCR about the District's ability to hold staff accountable, which is concerning when contrasted against the District's profound deference to and reliance upon conflict resolution occurring first at the local level.

After OCR discussed its concerns with the District, the District notified OCR that it was also interested in resolving this allegation. The District voluntarily agreed to address the allegation by signing the enclosed Agreement.

Allegation 4: Failure to Provide FAPE upon Notice of Bullying

The Complainant alleged that the District denied students with disabilities attending DCHS FAPE when, upon receiving notice of bullying conduct against students with disabilities, it failed to consider the impact of the bullying on the student's ability to receive FAPE.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide FAPE to all students with disabilities in their jurisdictions. Section 104.35(a) of the regulations require school districts to conduct an evaluation 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. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services.

Under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives FAPE services through IDEA or Section 504, continues to receive FAPE. In the case of a student with a disability who is being bullied, if a school has reason to suspect that the student's needs have changed such that they are no longer receiving FAPE, the Section 504 or IEP team must determine the extent to which additional or different services are needed and ensure that any needed changes are made promptly. A student who has experienced bullying may experience, for example, adverse changes in academic performance or behavior. These types of changes may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE.

When investigating whether a student who was bullied was denied FAPE under Section 504, OCR considers several factors, including but not limited to:

⁶ OCR notes that the District provided documentation of investigations it conducted in response to complaints received on behalf of the students specifically named in the OCR complaint. However, it is unclear whether the District considered these as Section 504 or Title IX complaints at the time of receipt.

- Did the school know or should it have known that the effects of the bullying may have affected the student’s receipt of IDEA FAPE services or Section 504 FAPE services? For example, did the school know or should it have known about adverse changes in the student’s academic performance or behavior indicating that the student may not be receiving FAPE? *If the answer is “no,” there would be no FAPE violation. If the answer is “yes,” OCR would then consider:*
- Did the school meet its ongoing obligation to ensure FAPE by promptly determining whether the student’s educational needs were still being met, and if not, making changes, as necessary, to his or her IEP or Section 504 plan? *If the answer is “no,” and the student was not receiving FAPE, OCR would find that the school violated its obligation to provide FAPE.⁷*

Background

The Complainant provided examples of four students with disabilities who attended DCHS and were allegedly subject to bullying and harassment. The Complainant stated that the District failed to conduct “credible” investigations, both for the four student examples provided and “institutionally,” which in turn resulted in the District’s avoidance or failure to consider the effect of the bullying on the students’ ability to receive FAPE.

In the District’s initial response to OCR’s request for information, it again denied that it failed to consider the effects of bullying on the students’ ability to receive FAPE. The District also provided copies of its Section 504 policies and procedures, the Section 504 Handbook, and policies related to student conduct. The Section 504 Handbook addresses the District’s grievance procedure to address scenarios in which a student has been discriminated against or harassed “on the basis of a disability.” It does not specifically address scenarios in which a qualified student with disabilities is bullied or harassed on a basis other than disability. Further, in the District’s response, it indicated that it does not maintain separate policies or procedures specifically related to bullying, rather incidents of bullying are addressed as misconduct pursuant to board policy or the student code of conduct.

During an interview with OCR, the Section 504 Coordinator explained the District’s expectations regarding whether and how school-level staff should consider bullying incidents and the receipt of FAPE. The Section 504 Coordinator stated multiple times that bullying issues unrelated to a student’s disability do not necessitate involvement of the Section 504 or IEP team. The District’s counsel (District’s Counsel) clarified that often, there is no way to know whether a single incidence of bullying occurred and that staff often need to “wait and see” to determine the appropriate interventions for each student. District Counsel reiterated that each building operates independently, and that the mechanism for ensuring FAPE is not denied may look differently in each building.

⁷ See OCR 2014 Dear Colleague Letter on Bullying of Students with Disabilities, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

In a subsequent response to OCR's request for more information, the District provided copies of Behavior Incident Reports, which lead to OCR's request for a subsequent onsite visit to DCHS. During the onsite visit, the Principal explained that in bullying situations, the focus is mainly on the student aggressor, rather than the victim, and that there is not necessarily a process in place to systematically ensure follow-up occurs regarding whether FAPE has been denied.

Analysis

Based on the information gathered during OCR's investigation, OCR has concerns about the District's compliance with Section 504 as it relates to the provision of FAPE to qualified students with disabilities who have been subjected to bullying behavior.

First, the investigation identified an absence of District policies and procedures which specifically address situations of bullying and its impact on the receipt of FAPE. While OCR does not require this as a matter of compliance, the Section 504 Coordinator repeatedly confirmed that she instructs her staff not to address bullying situations if the qualified student's disability is not implicated in the harassment. In other words, the Section 504 Coordinator indicated that if it is not disability-based harassment, it is not a concern for the Section 504 or IEP team. This is not an accurate recitation or understanding of the requirements under Section 504.

Further, while onsite, OCR learned that the victims of bullying may go unaddressed as it relates to their disability. Though it is proper that the District addresses whether the harassing students' conduct is a manifestation of his/her disability, if applicable and appropriate, it is evident that there is a gap in the staff's understanding that it should promptly determine whether the effects of bullying have affected the victim's ability to receive FAPE.

Finally, while the District's continued deference to local control at each site may be appropriate under its organizational structure, the inability to articulate the mechanism which ensures each site makes a determination to ensure FAPE is not denied as a result of bullying raises a compliance concern for OCR.

After OCR discussed its concerns with the District, the District notified OCR that it was also interested in resolving this allegation. The District voluntarily agreed to address the allegation by signing the enclosed Agreement.

Conclusion

Allegation 2

As previously discussed, OCR determined that, during the course of the investigation, the District has taken steps to address the allegation raised in the complaint, and therefore the

allegation is no longer appropriate for investigation. Accordingly, OCR is dismissing this allegation pursuant to Section 108(k) of the CPM as of the date of this letter.

Allegations 1, 3-4

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that allegations #1, #3-4 may be appropriately resolved through an agreement under Section 302 of the CPM.

As noted above, on February 9, 2022, OCR received the District's signed Agreement (enclosed). The provisions of the enclosed Agreement are aligned with the complaint allegations and information obtained by OCR to date in its investigation, are consistent with the applicable regulations, and when fully implemented will address the compliance concerns described in this letter. Accordingly, this complaint is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title IX, Section 504, and Title II, and the implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in 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. The complainants may have the right to file a private suit in federal court whether or not 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

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

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If you have any questions, please contact XX, the attorney assigned to this complaint, at XX or by email at XX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Ms. Wendy Jacobs, Esq.
Deputy General Counsel
By Email only to XX