UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
ARIZONA
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June 5, 2020

Nicole Kirkley, Superintendent
Legacy Traditional Schools
3125 S. Gilbert Road
Chandler, AZ 85286

Sent via email to XXXXX

Re: Legacy Traditional School, XXX
OCR Case Number: 08-20-1119

Dear Deputy Superintendent Buda:

On December 9, 2019, we received a complaint, which alleged that Legacy Traditional School, XXX (School) discriminated on the basis of disability and engaged in retaliation. Specifically, the complaint alleged that during the 2019-2020 school year the School failed to implement the following accommodations included in the Student's Section 504 plan, denying him a Free and Appropriate Public Education (FAPE):

1. If, during a blood sugar test, the Student's blood sugar is at 300+, the Health Assistant will check his ketones and contact his mom.
2. A sharps container will be available in the Student's classroom.
3. When the Student experiences high or low blood sugar he will be escorted to the health office by a peer or employee of the School.
4. When the Student is absent, parents will be able to pick up work daily.
5. The Student will be given the opportunity to attend tutoring sessions. Tutoring will be made available if the Student needs additional help as the result of an absence.
6. Teachers will upload lessons and assignments to Google Classroom and send them home via email or with the Student.
7. The Student will be allowed extra time to complete tests and quizzes, if needed.
8. If the Student misses one consecutive week/5 school days or more, assignments during that time period will be exempt from his overall grade.

The Complainant further alleged that the School retaliated against her as a result of her advocacy for her son, when it banned her from the School.

The Office for Civil Rights (OCR) is responsible for enforcing 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; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal

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

During our investigation, OCR reviewed documents provided by the Complainant and the School, and conducted interviews with the Complainant, School Principal, School Assistant Principal/Section 504 Coordinator, School Health Assistant, the Student's history/math, Spanish, and music teachers.[1] Below is a discussion of our review of the relevant legal standards, the relevant facts, and an analysis of the complaint allegations.

Legal Standards

Failure to Implement the Student's Section 504 Plan

The Section 504 regulations at 34 C.F.R. Section 104.33(b) states that the provision of a free and appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities. Section 104.35(c)(3) requires that in making placement decisions, school districts must ensure that the placement decision is made by a group of persons that includes persons knowledgeable about the child. Section 104.4 provides that no qualified student with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

Retaliation

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established:

1. an individual engaged in a protected activity, and the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future;
2. an individual experienced an adverse action caused by the recipient; and
3. there is some evidence of a causal connection between the adverse action and the protected activity.

An act is an adverse action if it is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

If all of the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

[1]We interviewed those teachers the Complainant specifically raised as failing to implement the Student's Section 504 Plan. After interviewing those teachers, it was evident that interviewing the Student's English language arts and science teachers would not have changed the findings regarding the School's failure to implement the Plan.

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.

Factual Background and Analysis

Legacy Traditional School, XXX is an Arizona charter school and part of the Legacy Traditional Schools charter school network. Administrative officials above the school level, such as the Superintendent and Deputy Superintendent of Exceptional Student Services/504 Compliance Officer, were identified during our investigation as employees of another entity, Vertex Education. Vertex Education was described as an independent entity contracted with the School to provide management and administrative services at arm's length. However, that distinction is not made in the Parent and Student Handbook, which does not include any mention of Vertex Education. In the Handbook, Vertex Education employees and offices are identified as school district personnel and school district offices, respectively. As a result, in this document we will use the same nomenclature used in the Handbook when referring to Vertex Education personnel and offices.

During the 2019-2020 school year the Student was enrolled in the School as a XXX grade student. The Student had a Section 504 Plan that addressed accommodations related to his diagnosis of type I diabetes. The Student attended the School since kindergarten but the Complainant disenrolled him on January 6, 2020 due to reasons related to her complaint allegations. The School's Principal and Assistant Principal began working at the School in June 2019 and July 2019, respectively.

The Student began the 2019-2020 school year with a Section 504 Plan that was drafted on March 25, 2019. A Section 504 Plan meeting was then held on August 13, 2019. A second Section 504 Plan meeting was held on September 6, 2019. The Section 504 Plan was then revised several times after September 6, 2019. The subsequent revisions were made without a Section 504 Plan meeting and were made between the Complainant and the District's Section 504 Compliance Officer. According to the Complainant, the last revision to the Plan was made in October 2019. The Principal stated that the last revision was in December 2019. In either event, the date on the Section 504 Plan was not updated during the revisions and the Student's current Plan continued to include a date of September 6, 2019.

<u>If, during a blood sugar test, the Student's blood sugar is at 300+, the Health Assistant will check his ketones and contact his mom.</u>

According to the Complainant, this accommodation was added to the Section 504 Plan on October 23, 2019. A ketone test involves measuring ketone levels in urine, via a test strip. Based on interviews with the Complainant and Health Assistant, the process for the Health Assistant to check the Student's ketone levels relied on the Student providing his ketone test result to the Health Assistant. It was a Student-initiated task. Once provided with a ketone test result, the accommodation required the Health Assistant to contact the Complainant.

During an interview, the Health Assistant explained her understanding of how the Student checked his blood sugar and ketone levels. She reported that the Student wore an insulin pump, which would notify

the Student when his blood sugar was high or low. That information, along with how the Student was feeling, would trigger the Student to test his blood sugar. The Student would test his blood sugar either in the classroom or in the health office. If his blood sugar was over 300, he would check his ketone levels in the health office bathroom. The Health Assistant reported that the ketone test strips were only kept in the health office. The Student would then show the strip to the Health Assistant, who would compare the color of the strip to a chart, which indicated where his ketone levels were on a spectrum from low, moderate, and high.

The Complainant reported that the Student also kept ketone test strips in his bag and the Student would test his ketone levels in the XXX building bathroom. The Complainant reported that after testing his ketone levels he would notify a teacher or the Health Assistant but that there were times when the Health Assistant refused to look at his test strip. The Health Assistant denied ever refusing to review the Student's ketone test strip.

The Health Assistant reported that she kept a log of every visit the Student made to the health office, along with the reason for the visit. If the Student checked his blood sugar and/or ketone levels during that visit, she would note it in the log. If a teacher notified the Health Assistant of the Student's blood sugar value, she would also log it.[2] The School shared that log with OCR and we noted that from July 23, 2019 through December 18, 2019 the log included 58 entries. Many of the entries indicated a visit to the health office, sometimes more than once a day. There were 51 entries that referenced a blood sugar test. Of those, 47 included a blood sugar value. There were three entries after October 23, 2019 that noted a blood sugar level over 300. Two of the three entries indicated that the Student checked his ketone levels and in each of the three instances, the log notes that a parent was contacted.[3]

Given the nature of the blood sugar test and ketone level test, which are self-administered by the Student, the Health Assistant could not have forced the Student to check his blood sugar or ketone levels. The only part of this accommodation that the Health Assistant could control was contacting a parent if she was notified of a blood sugar test over 300, which the log indicates she did.

In summary, we found insufficient evidence that the Health Assistant failed to review a ketone test strip that was presented to her, failed to log a blood sugar test that was presented to her, or failed to contact a parent, after October 23, 2019, when she was notified of a blood sugar value over 300.

A sharps container will be available in the Student's classroom.

The accommodation regarding the availability of a sharps container in the Student's classroom was included in his March 25, 2019 Plan and therefore would have been in effect at the start of the 2019-2020 school year, on July 22, 2019. The language of the accommodation read in whole, "[the Student] will need to have his blood sugar checked before both lunch and recess. He will be allowed to check in class. A special container will be placed in the classroom for the needles." The parties agree that a sharps container was available in the health office at the start of the 2019-2020 school year. Both parties also agree that sharps containers were not added to any of the Student's classrooms until after the start of the 2019-2020 school year. The Complainant asserted that sharps containers were not

[2] We reviewed 15 emails from the Math/History Teacher to the Health Assistant where the Student's blood sugar values were shared.
[3] Those three instances occurred on October 28, 2019, October 29, 2019, and December 9, 2019.

added to the classrooms until sometime in early to mid-November. The School, however, provided an order form which indicated that the School received six sharps containers on September 13, 2019. The Health Assistant asserted that she added the containers to the classrooms on the same day they were received. The teachers interviewed did not recall the date when the sharps containers were added to their classrooms but acknowledged that the containers were added after the start of the school year, by the Health Assistant.

By the School's own admission, sharps containers were not placed in the Student's classrooms until September 13, 2019 – roughly seven weeks after the start of the 2019-2020 school year. Therefore, there were at least seven weeks when the School failed to implement this accommodation.

When the Student experiences high or low blood sugar in the class, he will be allowed to go to the health office. The Student will either be escorted to the health office by a peer or employee of the District.

The parties agreed that there were times when the Student was escorted to the health office by a peer when he was experiencing high or low blood sugar. The Complainant asserted that this accommodation was implemented inconsistently by most teachers and the only teacher that consistently implemented the accommodation was the Spanish Teacher. The School asserted that it implemented this accommodation consistently.

During an interview, the Math/History Teacher stated that the Student left his class to go to the health office often but only once or twice did the Student leave because his blood sugar was too high or low. On those occasions he recalled sending a specific student with the Student. However, the teacher also said that usually when the Student left his class for the health office, the Student would not tell him why he had to go to the health office. During an interview, the Music Teacher stated that there were times when the Student would come into class and during the first five minutes of prep time would state he wasn't feeling well and needed to go to the health office. On those occasions the teacher recalled sending a specific student with the Student.

The Complainant said that she did not know whether the Student informed his teachers why he was going to the health office each time but said the teachers should have known because the Student's insulin pump beeps when he has high or low blood sugar. The Complainant acknowledged, after speaking to the Student, that the specific students named by the Music Teacher and Math/History Teacher did accompany the Student to the health office on at least one occasion each.

In summary, both parties acknowledged that there were times when the Student was escorted to the health office by a peer due to high or low blood sugar. The Complainant asserted that it was not done consistently, however, was unable to provide specific instances when the School failed to provide an escort. As a result, we found insufficient evidence that the School failed to implement this accommodation.

When the Student is absent, parents will be able to pick up work daily.

We reviewed several emails between the Complainant and School staff where staff provided the Complainant with the Student's assignments after an absence. We also reviewed several emails

regarding adjustments to grades, exemption from assignments, and the Student's ability to make up assessment and assignments, following an absence.

One representative example is an email exchange between the Complainant and Principal on November 3, 2019 where the Complainant informs the Principal that the Student had to go to the hospital and would miss school the next day. The Complainant asks that she be told what homework and/or classwork the Student will need to complete. The Principal tells the Complainant to continue her communication with teachers and not worry about homework. He wrote that when the Student returned to school they would determine how much work he could handle, so as to not overload him.

The Math/History Teacher explained that when the Student was absent, he would either email the assignments to the Complainant or send assignments home with another student in the class that lived with the Student. The Complainant acknowledged that there were times when work was sent home with this other student. We also reviewed several emails from the Math/History Teacher to the Complainant, where he attached assignments and informed the Complainant that he was sending work home with the other student.

The Music Teacher stated that her class did not include written assignments. When the Student was absent, she would email the Complainant and inform her how much the Student had to practice. The Complainant acknowledged receiving these emails from the Music Teacher.

The Spanish Teacher said that when the Student was absent, she made copies of the day's assignment and brought it to the front office so that the Complainant could pick them up. She also said that there were times when the Complainant would ask her to email the assignments, which she would then scan and email to the Complainant.

In summary, we reviewed several emails between the Complainant and teachers that informed the Complainant of assignments, had the assignments attached, or indicated that the assignments had been sent home with another student that lived with the Student. The Complainant asserted that this was not done in every instance but did not provide documentation that supported her assertion. As a result, we found insufficient evidence that the School failed to implement this accommodation.

<u>The Student will be given the opportunity to attend tutoring sessions. Tutoring will be made available if the Student needs additional help as the result of an absence.</u>

During interviews School staff explained that tutoring was made available by each XXX teacher, for all XXX students. Tutoring was available after the school day, though some teachers, such as the Music Teacher, held additional tutoring or practice during lunch and before the start of the school day. At the start of the school year, tutoring was held on different days of the week, with tutoring for each subject on a different day. Sometime in October 2019, tutoring was centralized to Tuesdays. A sign-in sheet was maintained by most teachers, though the Math/History Teacher stated that he was not aware that he had to maintain a sign-in sheet before tutoring was centralized to Tuesdays, and after it was moved to Tuesdays, his team lead maintained the sign-in sheet.

School staff stated that all students were notified about tutoring in class verbally and/or by posting the tutoring schedule in the classroom. Parents were notified via weekly emails. The School provided OCR with copies of the weekly emails that included the tutoring schedule. The Complainant did not recall

whether she received the weekly emails but acknowledged that the Student was aware of the Tuesday tutoring and at times tried to attend.

The Complainant reported that she requested additional tutoring from the teachers via email but was told that the tutoring available to the Student were the tutoring sessions that were already scheduled. We reviewed an email exchange between the Complainant and School from October 28, 2019, where the Complainant responded to the School's weekly tutoring email and asked if the School might create an additional day of tutoring down the road because the Student was struggling in English language arts, History, Math, and Spanish. The School responded that it did not have plans to create an additional day of tutoring but reiterated that the Student was welcome to attend the tutoring sessions held on Tuesdays. In the email the Complainant did not inform the School that the Student could not attend on Tuesdays and during interviews the Complainant did not indicate why the Student sometimes could not attend tutoring available on Tuesdays. During interviews with School staff, the Student's teachers said they only recalled seeing the Student at tutoring when he was making up an assessment.

The information we reviewed indicated that the School shared with the Complainant the general tutoring schedule for each class, via weekly emails. The Complainant also acknowledged that she was aware of the centralized Tuesday tutoring sessions that were available. The Complainant alleged that the School refused to provide tutoring outside the scheduled tutoring, however, the accommodation as written only required that tutoring be made available, which the School did. Therefore, we found insufficient evidence that the School failed to implement this accommodation.

Teachers will upload class lessons, homework, classwork, PowerPoints, and notes (all when applicable and available per the lesson) to Google Classroom. Materials not able to be entered into Google Classroom, including classwork and homework, will be sent home via email or with the Student.

Each teacher interviewed indicated that they used Google Classroom to a varying degree. The Spanish Teacher stated that she used Google Classroom to post weekly lessons. The Music Teacher said she used it to post announcements. The Math/History Teacher used it to post major assignments but acknowledged that he did not use it a lot during the time when the Student was enrolled at the School. The School Principal indicated that there were some teachers that had to get used to using Google Classroom. Among those teachers were the Math/History Teacher and an English Language Arts teacher that the Student had, who resigned in September 2019.

By the Math/History Teacher's own admission, he did not use Google Classroom as the accommodation specified. He said he did not use Google Classroom much during the time that the Student was enrolled at the School, and only used it to post major assignments. The accommodation as written did not require only major assignments to be posted to Google Classroom; rather, it required that lessons, homework, classwork, PowerPoints, and notes be uploaded to Google Classroom. While the accommodation includes a caveat that the aforementioned will be uploaded "when applicable and available per lesson," none of the teachers interviewed indicated that as a reason for why they did not upload everything required by the accommodation. Therefore, the evidence indicated that the School failed to implement this accommodation.

The Student will be allowed extra time to complete tests and quizzes, if needed.

The Complainant alleged that in every class except for English language arts, the Student would get push back from teachers when he asked for extra time.

The Math/History Teacher reported that he never informed the Student that he had extra time. He assumed the Student knew because it was in his Section 504 Plan, and the Student attended the Section 504 Plan meeting. The Math/History Teacher said that the Student could have had extra time if he had asked for it but that he never asked. The Spanish Teacher said that if the Student needed extra time on an assessment, he would ask her, and she would allow him to finish the assessment another day. She stated that she provided the Student with as much extra time as needed. The Music Teacher said that there was only one written assignment in her class, but it was ungraded.

Based on our interviews with School staff, it is evident that the Student was only provided with extra time when he made a request for extra time. However, accommodations are School-initiated adjustments that ensure that the Student has access to the curriculum. The Math/History Teacher said that he never offered the Student extra time or otherwise notified him that he had extra time available. The Spanish Teacher similarly stated that she only provided the Student with extra time if he asked for it. Therefore, the evidence indicated that the School failed to implement this accommodation.

If the Student misses one consecutive week/5 school days (or more), assignments during that time period will be exempt from his overall grade

We reviewed an email from the Complainant to the Principal, dated September 6, 2019, where the Complainant asked for all grades to be exempt if the Student was absent for more than a week. This accommodation was then added to the Section 504 plan.

As indicated above we reviewed several emails that indicated that the Student was exempt from assignments and assessments. We also reviewed a copy of the Student's final semester grades, which included individual assignment grades. We noted that several assignments and assessments had been exempted and we did not note a single grade of zero. The Complainant acknowledged that a zero had not been factored into a final semester for any class. However, she explained that zeroes had been factored into progress reports earlier in the school year.

During the investigation we noted at least one occasion when the Complainant requested that this accommodation not be fully implemented. In an email exchange between the Complainant and Math/History Teacher on November 17 and 18, 2019, the Complainant asked the teacher to provide the Student with partial credit for homework lessons 45-51. The teacher responded that he could not do that because the Section 504 Plan required him to exempt any assignments that took place when the Student was absent five or more consecutive days. The Complainant responded that other teachers over the past three school years had allowed the Student to only be exempt from testing but graded any homework he turned in after an absence and added the grade to their gradebook. The Complainant indicated that her concern was that by exempting all assignments, as required by the accommodation, it would be harder for the Student to maintain a passing grade.

On December 13, 2019 the Principal sent an email to the Student's teachers reminding them that before they finalize grades for the first semester they should double check that they had exempted any grades that occurred while the Student was absent for five consecutive days, per his Section 504 Plan.

The information we reviewed, including the Student's final semester grade report, indicated that several assignments were exempted during the semester and the final semester grades did not factor in a grade of zero on any assignment. Therefore, we found insufficient evidence that the School failed to implement this accommodation.

Alleged Retaliation

On October 24, 2019, the Complainant and Health Assistant had an encounter in the health office that resulted in the School banning the Complainant from the School. The Health Assistant characterized the October 24, 2019 incident as a shouting match where both she and the Complainant shouted at one another. The Principal arrived at the incident after it started but he reported that he did not witness yelling by either party; he described the interaction as animated. The Complainant asserted that the Health Assistant yelled at her, but she did not yell at the Health Assistant.

The Health Assistant reported that the encounter escalated when the Complainant shared her concern that a staff member who was not certified as a health assistant had been filling in while the Health Assistant was on her lunch break. Once the Principal arrived, he escorted the Complainant to his office and the encounter ended. The Health Assistant also reported that later that same day, the Complainant posted a message on a Facebook group, created and used by School parents, asking if any other parents had issues with the Health Assistant.

The Principal explained that he had been on his way to the main office when he was informed that the Health Assistant and Complainant were having a heated discussion in the health office. When he arrived, he heard the Complainant telling the Health Assistant that she was going to call the police on the Health Assistant for child neglect. The Health Assistant said go ahead, call the police, go ahead report me for neglect. The Complainant then said she would sue the Health Assistant and get her fired. The Health Assistant said go ahead sue me, go ahead and get me fired. The Principal then asked the Complainant to speak with him in his office. As they walked out of the health office and into the hallway the Complainant said, "I am so tired of that fucking health assistant." The Principal said he asked the Complainant not to use that language because there were students and staff in the hallway. Once in the Principal's office, the Complainant asked him to call the Superintendent. He then said that while she was still in the School the Complaint continued to say "fucking" in front of students.

The Complainant reported that the encounter escalated when she brought up her concern that a substitute health assistant had refused to provide the Student with services. The Complainant reported that she remained calm during the encounter, but the Health Assistant began yelling at her and said that she would not help the Student if he were on the floor dying. The Complainant said she responded that if that were the case then she should be fired. The Complainant acknowledged that as she left the health office she said, "this is fucking ridiculous." She denied using the work "fucking" at any other time during the incident. The Complainant also acknowledged that she posted a message on the parent Facebook group on October 24, 2019. In the posting she asked other parents to contact her if they had experienced any issues with the Principal because she was gathering information for a news story. The

Complainant said she only did that after a news agency reached out to her. It was the Complainant's understanding that a teacher at the School contacted the news agency who then reached out to the Complainant. As a result of the October 24, 2019 incident the Health Assistant and Complainant filed Injunctions Against Harassment against one another.

On October 24, 2019, the Complainant was notified via a Maricopa police officer that she was no longer allowed on School property. The Principal reported that notice was sent via a police officer because that was his understanding of the School's procedure. The Parent and Student Handbook states that if a parent's behavior on campus reduces the School's ability to effectively service students or causes a disruption to the learning environment, the School may ban the parent from the campus during the school day and/or after school events, report the incident to law enforcement, or report the incident to law enforcement for trespassing enforcement.[4]

On October 29, 2019, the School, via its attorney, sent the Complainant a letter informing her that the ban was lifted, and she was again allowed on School property. The letter noted that the decision was based on the collaborative communication it recently had with the Complainant. The letter also set out the following conditions, the Complainant could not have contact with the Health Assistant, and she had to refrain from yelling, using obscenities, or acting in an abusive or aggressive manner towards School employees.

On November 11, 2019, the School, again via its attorney, sent the Complainant another letter, which again banned the Complainant from School property. The letter stated that the reason for the School's reversal was the Complainant's testimony at a November 7, 2019 court hearing regarding the Injunction Against Harassment the Health Assistant filed against the Complainant. The School wrote in the November 11th letter that at the hearing the judge upheld the injunction and found that the Complainant had exhibited a pattern and history of harassment. The letter allowed the Complainant to utilize the "Driveline" to pick-up and drop-off the Student. The letter only addressed the Complainant and the Principal stated that the ban did not apply to the Complainant's husband. The School also reported that in the past two school years, the Complainant was the only parent banned from School property.

We reviewed an email exchange between the Complainant and the School's Assistant Principal/504 Coordinator (AP) where the parties considered scheduling a meeting to discuss the Student's eligibility for an Individualized Education Program (IEP) as well as changes the Complainant wanted in the Student's Section 504 Plan. The AP offered to hold the meeting via phone or video conference and provided three dates in November. The Complainant responded that she and husband would not participate via video conference anymore because it made them uncomfortable. The Complainant then suggested that the meeting be held at a local library or the District's office. The parties acknowledged that the meeting was subsequently held at the District's office.

In another email on November 18, 2019, between the Complainant and the Principal regarding the Student's need for snacks in the health office, the Complainant notified the Principal that due to the School's ban she was unable to go to the School and deliver snacks. The Principal replied that he would be more than happy to sit down and discuss the School's ban with the Complainant at any time. He also reminded the Complainant that she was able to drop-off supplies via the Driveline. The Complainant

[4] Page 63 of the Parent and Student Handbook

responded that she was not able to use the Driveline because she and her family feared for her safety. During an interview, the Complainant elaborated that she was afraid of the Principal.

The Principal and Complainant reported that some time at the end of November 2019 the Complainant's husband asked the Principal if the Complainant could attend a band recital that was to take place in early December 2019. The Principal allowed the Complainant to attend the recital. The Principal also attended the recital, and based on accounts from both parties, the recital took place without issue. Both parties also reported that sometime later the Complainant's husband asked the Principal if the Complainant could attend a Breakfast with Santa event. The Principal did not allow the Complainant to attend that event. The Principal explained that he did not allow it because there had been a continued practice of abusive calls and emails and he did not feel comfortable with allowing the Complainant to attend. We reviewed a December 13, 2019 email from the Principal to the Complainant where the Principal again offered to meet with the Complainant, at a time of her convenience, to discuss the ban.

We also reviewed a recorded call between the Complainant and Principal that took place on December 13, 2019. During the call, the Complainant stated that she was willing to meet with the Principal but was not comfortable meeting at the School due to the injunction. The Principal replied that he was willing to meet at another location. Both parties acknowledged that a meeting never occurred. The Principal said that after the call he had an in-person meeting with the Complainant's husband to discuss the ban. During that meeting the Principal said he explained to the Complainant's husband the two factors that were necessary to lift the ban. These were 1) for everyone, including the Complainant, to sit down at a meeting to discuss the issues and get on the same page, and 2) for the Complainant to treat the front office staff with respect. The Principal said that during the meeting the Complainant's husband said that the Complainant would not agree to meet with the Principal. He did not specify why she would not meet with the Principal.

As reviewed above, to find a *prima facie* case of retaliation, we must first determine whether the School knew that the Complainant engaged in a protected activity or believed the Complainant might engage in a protected activity in the future. This can be answered in the affirmative because the evidence we reviewed makes clear that throughout the period at issue, the Complainant advocated for the Student's Section 504 rights via email, phone calls, and meetings with the School.

We next determine whether the Complainant experienced an adverse action caused by the School. We find that the Complainant did experience an adverse action when she was banned from the School. The ban no longer allowed the Complaint to access the School grounds and it required her to ask for permission to attend School events, she was unable to attend at least one School event, and she had to make alternate plans to attend Section 504 Plan and IEP meetings.

Finally, to establish a *prima facie* case of retaliation we must determine whether there is some evidence of a causal connection between the adverse action and the protected activity. The original ban on October 24, 2019 resulted from the Complainant's encounter with the Health Assistant, which began when the Complainant raised concerns regarding the Student's receipt of health accommodations from a certified health assistant. The reestablishment of the ban on November 11, 2019 was due to the Complainant's testimony at a court hearing, a court hearing that was born out of the original encounter with the Health Assistant. We find that link sufficient to create a causal connection.

With a *prima facie* case of retaliation having been established; we must next consider whether the recipient presented a facially legitimate, non-retaliatory reason for taking the adverse action. We find that the School did. The School indicated that it banned the Complainant from School property due to what it described as abusive, inappropriate, and harassing behavior towards School staff, that was disruptive to the School environment. Once a facially legitimate, non-retaliatory reason has been presented, we must determine whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action. We find that the School's reason for the ban was not pretext for retaliation.

We reviewed an email from as early as September 6, 2019 where the Principal contacted District staff and requested support for what he described as harassment and threats from the Complainant. As a result of the email, the District's Deputy Superintendent of Exceptional Student Services/504 Compliance Officer took over Section 504 Plan revisions and began working directly with the Complainant regarding her revision requests. During interviews, while some staff characterized their interactions with the Complainant as pleasant or pleasant but a bit demanding, others described them as at times abrasive. Other staff described their interactions as causing them stress and made them fearful of going to work. These descriptions together with the incident on October 24th, and the Complainant's Facebook post seeking other parents that have had issues with the Principal, lend credence to the School's assertion that the Complainant's behavior was disruptive to the School environment.

The evidence we reviewed also indicated that the School offered the Complainant several opportunities to meet and resolve the issues that led to the ban. However, the Complainant refused to meet. During an interview, the Complainant stated that she was scared of the Principal and that is why she refused to meet. However, after the ban the Complainant asked, through her husband, to attend a band recital, where the Principal would also be present. Both parties stated that the band recital occurred without issue. Afterward, the Complainant's husband again asked if the Complainant could attend a second event at the School, Breakfast with Santa. Additionally, during a phone call on December 13, 2019 the Complainant stated that she would be willing to meet with the Principal, but her concern was meeting at the School, due to the injunction. The Complainant's requests and statements at the time do not indicate that she was fearful of the Principal.

Of final note, throughout the period of the ban, the Complainant's husband was allowed on School property and we reviewed emails where the Complainant's husband communicated directly with School staff and many other emails where he was copied. As a result, we do not find that the ban negatively impacted the parents' ability to participate in their son's education.

Conclusion

We find that the School did violate Section 504 of the Rehabilitation Act of 1973 when it failed to implement the Student's Section 504 Plan regarding the availability of a sharps container in the Student's classrooms, the use of Google Classroom to upload lessons and assignments, and the provision of extra time on tests and quizzes, thereby denying him a FAPE. There is insufficient evidence for OCR to determine that the School failed to implement the other accommodations that were alleged to have not been implemented. We also find insufficient evidence that the School engaged in retaliation.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, this

allegation will be resolved consistent with the requirements of Section 504 of the Rehabilitation Act of 1973, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the School about the status of the Agreement terms. We will provide the School written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the School fails to implement the Agreement, we will take appropriate action, as described in the Agreement. We will provide the Complainant with copies of our monitoring letters.

The Complainant has a right to appeal OCR's insufficient evidence determinations within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please note that the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please also be advised that the School may not harass, coerce, intimidate, or discriminate anyone because a complaint was filed or for participating in the OCR investigation. If this happens, a complaint alleging such treatment can be filed with our Office.

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.

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 your attention to this matter and for the assistance of XXX. If you have any questions, please contact XXX at XXX or by email at XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc (via email): David Garner, School's attorney, Osborn Maledon;
Amanda Buda, Deputy Superintendent, Vertex Education;
Kathy Hoffman, Superintendent, Arizona Department of Education