



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

November 4, 2015

Via First Class Mail and Email

Superintendent Edward J. Brown  
Butte Valley Unified School District  
615 West Third Street  
Dorris, California 96023

(In reply, please refer to docket no. 09-15-1322.)

Dear Superintendent Brown:

On May 27, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified you of a complaint against the Butte Valley Unified School District (District). The complaint alleged that the District discriminated against a student<sup>1</sup> (Student 1) on the basis of disability and discriminated against another student (Student 2) on the basis of sex. OCR opened the following issues for investigation:

1. Whether the District failed to provide Student 1 with a free appropriate public education (FAPE) by failing to evaluate him in a timely manner even though it had reason to believe that Student 1 needed special education or related services because of a disability;
2. Whether the District made a significant change in Student 1's placement without considering whether his misconduct was a manifestation of his disability;<sup>2</sup>
3. Whether the District failed to provide procedural safeguards to the Complainant when, after the District declined to evaluate Student 1 for a suspected disability, it did not give the Complainant an opportunity for an impartial hearing; and
4. Whether the District failed to respond appropriately and effectively to notice of the harassment based on sex of Student 2 by another student.

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<sup>1</sup> The District was notified of the identities of Complainant, Student 1 and Student 2 at the beginning of this investigation. We are withholding their names from this letter in order to protect their privacy.

<sup>2</sup> OCR did not originally open this issue for investigation, but we found the issue during the course of the investigation.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal funds. Title II prohibits discrimination on the basis of disability by certain public entities. This complaint was also investigated pursuant to OCR's authority under Title IX of the Education Amendments Act of 1972 (Title IX). Title IX prohibits discrimination on the basis of sex by recipients of federal funds. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, Title IX and their implementing regulations.

OCR gathered evidence through documentation submitted by the Complainant and the District. OCR concluded that there was sufficient evidence to support a conclusion of noncompliance with Section 504, Title II, and their implementing regulations with regard to issues 1, 2, and 3. Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation of issue 4, the District informed OCR that it would voluntarily take steps to address the allegations in issue 4. OCR therefore did not reach a finding regarding issue 4. The District signed the enclosed Resolution Agreement on October 30, 2015. The legal standards, relevant facts, analysis, and conclusion for each issue are described below.

## **I. Legal Standards**

### **A. Section 504 (Issues 1, 2, and 3)**

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

Section 104.35(a) of the regulations requires 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. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Before any subsequent significant change in placement, 34 C.F.R. §104.35(a), requires school districts to evaluate any student who qualifies as disabled, or is suspected of having a disability. Subsection (c) requires that placement decisions be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources that is carefully considered and documented. Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Additionally, section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

#### **B. Title IX (Issue 4)**

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. School districts are responsible under Title IX and the regulation for providing students with a nondiscriminatory educational environment.

Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

Under the Title IX and the regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A school district may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the school fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the district to take action.

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 district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the district does not tolerate harassment and will be responsive to any student reports of harassment. The district also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

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

## **II. Relevant Facts**

In the 2014-15 school year, the District operated five schools for kindergarten to 12<sup>th</sup> grade with an overall student population of 302.<sup>3</sup> Elementary school age children typically attend Butte Valley Elementary School (BVES). The District also operates Picard Community Day School (Picard) for students in kindergarten through eighth grade. According to the Picard's

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<sup>3</sup> California Department of Education, Dataquest report for Butte Valley Unified School District.

Student Accountability Report Card for 2013-14, the school serves students who have been expelled or who “struggle in the mainstream school environment.” In the 2013-14 school year, 5-6 students were enrolled at Picard, and all were in sixth to eighth grade.

**A. Issues 1, 2, and 3**

Student 1 attended kindergarten at BVES from August 2014 until his expulsion in March 2015. In spring 2015, Student 1 was diagnosed with disruptive behavior disorder, and manifests elements of attention deficit disorder and oppositional defiance disorder. He is in treatment with a mental health professional.

Student 1’s parents met with the Superintendent and Student 1’s teacher (“Teacher K”) on October XX, 2014 regarding behavioral difficulties with Student 1 in the classroom. At that meeting, the parents inquired about getting a 504 Plan to help Student 1. The District recalled in its written narrative to OCR that the Complainant “asked about” a 504 Plan, and the Superintendent responded that a 504 would not be appropriate for Student 1 because he lacked a medical diagnosis of ADD or ADHD. The narrative also recalled that Student 1 was acting out at school in the same manner as at home, e.g., he was acting out when he “wasn’t getting his way.” The District did not provide the parents with a copy of procedural safeguards when it denied their request to assess Student 1 for a disability.

After the meeting, according to the Complainant, Student 1’s parents decided it would be helpful to have Student 1 evaluated by a medical professional since his behavior at home and in the classroom caused them to suspect that he had a disability. The Complainant told OCR that the parents notified the Superintendent that they were pursuing an evaluation of Student 1, and that they believed that the evaluation would show that Student 1 had ADD or ADHD.

In January 2015, the Complainant submitted a complaint about the Superintendent to the District. The complaint alleged that when the Complainant spoke with the Superintendent about the continuing disruptive behavior of Student 1, the Superintendent “threatened” to call Child Protective Services because of Student 1’s “bizarre behavior.” The Complainant told OCR that the Superintendent said that the fact that Student 1 was having tantrums made him believe that something was wrong at Student 1’s home. The complaint was withdrawn by the parents on February XX, 2015.

The next day after the Complainant filed his complaint with the District, on January XX, 2015, the Superintendent emailed the county school psychologist (“Psychologist”). His email stated that Student 1 “has frequent tantrums throughout the day, which are usually triggered anytime he doesn’t get his way or has to be corrected. The tantrums are escalated [sic] this week to the point he hit the teacher and ran down the hallway kicking on classroom doors to find his older sister yesterday.” The email also stated that the parents were not willing to go to school to help with Student 1, and that “[the parents] have repeatedly requested a 504 for him. I told him to get him to counseling and/or a child psychologist to get a diagnosis. Then we could talk 504.” The Superintendent’s email requested that the Psychologist conduct an observation of

Student 1, which she agreed to. When the Psychologist asked in the email if there were any times of day when Student 1's behaviors seemed to be worse, the Superintendent responded that "[h]e can go off at a moment's notice any time of the day."

According to the District's written narrative to OCR, the Superintendent requested that Student 1 be observed by the Psychologist "out of an excess of caution, since [Student 1] was still having difficulty complying with directions in class."

The Psychologist completed her observation of Student 1 on January XX, 2015. Her observation notes stated that Student 1 seemed to have "minor behavior difficulties" when he was not getting attention, and that this seemed to be "learned behavior." Nevertheless, she made four recommendations for addressing Student 1's disruptive behavior: (1) work with teacher on behavior management strategies that will benefit Student 1 in the classroom; (2) use a behavior chart to reinforce appropriate behaviors by Student 1 and work on a list of consequences for inappropriate behaviors with Student 1; (3) allow him to work on a topic of his choice which would give him the chance to gain attention from peers and teacher in a positive way when presenting his project; and (4) meet with teacher weekly to discuss what is working and what needs to be modified.

Between January XX and February X, Student 1 was suspended for four days and disciplined in other ways for behavioral incidents including: throwing a fit, banging his fists on the table, throwing chairs, hitting Teacher K with his fists; running out of the kindergarten classroom; banging his fists on the hallways and other classroom doors; yelling; kicking; screaming; throwing his pencil box; throwing his writing journal; ignoring repeated commands; hitting another teacher; refusing to do work; tearing up his assignment and throwing it; and opening and closing the classroom door.

On March XX, the District suspended Student 1 again. This time the suspension was effective through March XX, 2015 (8 days), because the District referred Student 1 for an expulsion hearing. The suspension document stated that "multiple" dates of incidents occurred in which there were "[m]ultiple offenses of hitting classmates, throwing objects such as scissors creating a danger to classmates and staff, and severely inhibiting the learning of his classmates and others in the school." On March XX, 2015, the school board voted to expel Student 1. The expulsion order stated that Student 1 could petition the Board for readmission to BVES after the first semester of the 2015-16 school year; in the interim, Student 1 was assigned to Picard.

On March XX, 2015, Student 1 began seeing a psychologist for behavioral management therapy and was subsequently diagnosed with Disruptive Behavior Disorder, Attention Deficit Disorder and Oppositional Defiance Disorder. The Complainant had informed the District at the end of March 2015 that he expected a diagnosis for Student 1 to be forthcoming.

Student 1 did not attend school from March XX through the end of the school year.

In August 2015, the parents provided the District with a letter from Student 1's mental health professional stating that he was in continuing therapy and would begin taking medications for his diagnoses prior to the beginning of the school year. The letter stated that, "It is felt he would likely do well with the combined interventions of therapy and medications as well as school based support at his current school."

The District offered to provide Student 1 with an aide to assist him at Picard, but refused to allow him to attend first grade with his classmates at BVES. After OCR began negotiating a resolution agreement with the District, the District developed a plan to keep him in the restrictive environment of Picard with a gradual increase in time at BVES if Student 1 behaved.

#### **B. Issue 4**

Student 2 was in 5<sup>th</sup> grade at BVES last year. The Complainant alleged to OCR that Student 2 was physically attacked and called names such as "pig", "whore", "bitch", and "stupid" by a male student in her class ["M.S."<sup>4</sup>]. The Complainant stated that Student 2 had loved going to school, but she stopped wanting to go to school anymore and became distraught because of M.S.'s harassment.

The District's narrative to OCR stated that it first became aware of possible bullying of Student 2 in October 2014 when she told her teacher ("Teacher F") that M.S. was bothering her and asked to be moved. Teacher F reportedly observed Student 2 and M.S. rather than immediately separating them, and observed that Student 2 was interacting with M.S. by such behaviors as taking M.S.'s paper and flicking M.S.'s pencil onto the floor. Teacher F felt that these behaviors were "not serious, but rather typical friendly interactions between students." Although Teacher F determined that the behaviors were not serious, she moved Student 2. Student 2 and M.S. did not sit next to each other for the rest of the school year.

The Complainant alleged that he notified the District on several more occasions that M.S. was bullying Student 2. The problem appeared to abate until February and March 2015, when Student 2 reportedly was subjected to additional bullying by M.S., including name-calling and physical attacks. In response, according to the District, the Superintendent spoke with Teacher F, who explained that she had only observed Student 2 bothering M.S. and not vice versa. Teacher F reported to the Superintendent that she had separated the two students.

### **III. Analysis**

#### **A. Issues 1, 2, and 3**

##### **1. Identification**

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<sup>4</sup> We are using fictitious initials for the student in order to protect his privacy.

Public school districts are required to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. Sections 104.32-104.33(a) of the regulations state that a school district must identify all students with disabilities and take appropriate steps to notify parents of the school district's duty to provide a FAPE, regardless of the nature or severity of a student's disability.

In the case at issue, the facts show that Student 1's ability to participate and make progress in his education was significantly inhibited by his behavioral disruptions in the classroom. Student 1's behaviors included tantrums, throwing items in the classroom, running out of the classroom, banging his fists or kicking doors, and hitting adults. According to his parents, Student 1 exhibited similar behaviors at home.

The District asserted that it had no reason to suspect that Student 1 had a disability. However, a review of the information provided by the parents and the District's own documentation and explanation show that the District was well aware of the parents' request for assessment for a disability affecting his ability to participate in his education, and that District staff also suspected that Student 1 may have a disability. These facts include:

- In October 2014, Student 1's parents, his teacher (Teacher K), and the Superintendent met in October 2014 to discuss Student 1's behavior. At that meeting, Student 1's parents first "asked about" a 504 Plan for the student. The Superintendent explained incorrectly that a 504 Plan wouldn't apply unless the student had a medical diagnosis of ADD or ADHD.
- Sometime between October 2014 and March 2015, the Complainant informed the Superintendent that he and Student 1's mother were pursuing an outside evaluation of Student 1.
- In January 2015, in a complaint filed with the District, Student 1's parents alleged that the Superintendent told Student 1's mother that because of Student 1's "bizarre behavior," the Superintendent believed he should refer the family to CPS.
- Also in January 2015 the Superintendent asked a county Psychologist to conduct an observation of Student 1. Notably, this was done without the parents' consent. His email to the Psychologist stated that the parents "have repeatedly requested a 504 for him. I told him to get him to counseling and/or a child psychologist to get a diagnosis. Then we could talk 504." He also told the Psychologist in email that Student 1's disruptive behavior was unpredictable: "[h]e can go off at a moment's notice any time of the day."
- Based on her observation, the Psychologist concluded that Student 1 had "some minor behavior difficulties when attention was not solely focused on him." She recommended four actions that she believed would help manage his behavior and reinforce appropriate behavior.

- The parents provided information on Student 1's diagnoses in August 2015 in their effort to have Student 1 returned to his School and assessed by the District.

OCR finds that the District had abundant notice that Student 1 had a suspected disability that was inhibiting his classroom participation, and failed to act accordingly. The District's argument that the parents merely "asked about" a 504 Plan and didn't ask for an assessment is disingenuous at best, given that the Superintendent later told the Psychologist that the parents had repeatedly asked for a 504 Plan. In addition, once Student 1 was expelled for his disruptive behavior, the District still did not initiate an assessment of whether he qualified for services through a 504 Plan or IEP. For these reasons, OCR finds that the District is out of compliance due to its failure to identify Student 1 as having a suspected disability.

## 2. Evaluation

When there is reason to suspect that a student needs special education or related aids and services because of a disability, school districts are obligated to conduct an evaluation of the student consistent with the implementing regulations for Section 504, including providing appropriate procedural safeguards.

The District told the parents on more than one occasion that they needed a medical diagnosis before Student 1 could be evaluated for Section 504 eligibility. In addition, the District told the parents that they should get an outside medical evaluation then bring it back to the District; then the District could consider whether or not he qualified as a student with a disability for the purposes of Section 504. These assertions –i.e., that the parents were obligated to get a medical diagnosis and that it would be at their own expense before the District could proceed – are legally incorrect. Section 504 requires that a student with a disability be offered a free appropriate public education, including an evaluation without cost to the parents.

OCR has recognized that for some disabilities, such as diabetes or ADHD, districts often require a medical evaluation as an element of the broader disability evaluation process, and that a medical diagnosis is often helpful to a full understanding of the disabled student's needs. However, even if a medical evaluation is a professionally accepted, reasonable element of an evaluation, a district cannot – as happened here – delay or deny an evaluation because it was waiting for the parents to produce a medical diagnosis and it cannot require a parent to fund such a medical assessment. In fact, in many instances, a medical diagnosis will not sufficiently identify the impact of the identified disability on learning and other school related activities. In addition, in this case, Student 1's diagnosed disabilities are complex behavioral disorders which may require psychoeducational testing, behavioral surveys, and other assessments in order to determine how to provide Student 1 with a FAPE.

In this instance, the parents were able to obtain an evaluation without out-of-pocket expenses for the evaluation. The District was unaware of this yet there is no evidence that the District offered to arrange and pay for the medical assessment that it insisted was necessary before it could take any action. By the time that the parents provided a medical diagnosis, Student 1 had

been expelled from kindergarten. Furthermore, the District's violation of its obligation to evaluate Student 1 did not end with his expulsion. Although Student 1 was expelled from kindergarten, he remained a student of the District and was given the option to attend Picard. The parents opted to keep Student 1 out of school for the remainder of the 2014-2015 school year after he was expelled.<sup>5</sup> However, the District made no effort to proceed with an evaluation even at that point. The District finally offered to evaluate Student 1 during the week before the first day of the 2015-2016 school year in consideration of the parents withdrawing their OCR complaint.

An entire year has now passed since the parents first requested an evaluation of Student 1. OCR therefore concluded that the District failed to provide Student 1 with a free appropriate public education (FAPE) by failing to evaluate him in a timely manner even though it had reason to believe that he needed special education or related services because of a disability.

OCR notes that in other cases, parents sometimes opt to obtain a medical evaluation at their own expense after an informed discussion with the district about the district's obligations. If a parent volunteers to obtain a medical evaluation with informed consent about the district's evaluation obligations – including its responsibilities regarding cost – then this is an appropriate and acceptable decision reached through parent to district communications.

### 3. Discipline

The District was on notice once the parents inquired about a 504 Plan that his parents believed his disruptive and sometimes aggressive behavior could be due to a disability. He was suspended for at least 12 school days<sup>6</sup> before his expulsion hearing. The circumstances leading to the suspensions involved the same types of disruptive behavior by Student 1 in each instance, indicating that Student 1 was being disciplined through exclusion for behaviors that were part of his suspected disabilities. These exclusions constituted a significant change in placement. Student 1's expulsion and the subsequent involuntary transfer to the highly segregated setting of Picard with a small group of much older students also constituted a significant change in placement. The District did not recognize its responsibility to consider whether Student 1's misconduct was caused by, or was a manifestation of the student's disability. OCR therefore also concluded that the District failed to act in compliance with Section 504 with respect to the suspensions and expulsion of Student 1.

### 4. Procedural safeguards

Finally, with respect to the issue of whether or not the parents were given a copy of their procedural safeguards when the District declined to evaluate Student 1, the District asserted that there was no obligation to provide procedural safeguards because they were not denying a

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<sup>5</sup> Below the age of six, education is not compulsory in California.

<sup>6</sup> Student 1 was given a one-day suspension January XX, a three-day suspension February X, and an eight-day suspension March XX.

request for a 504 Plan; and that even if they did have an obligation, the parents received their procedural safeguards along with all the other parents at the beginning of the school year when the provide copies of the student handbook.

As discussed above, the District knew or should have known that the parents were requesting an evaluation pursuant to Section 504 beginning in October 2014. The District was required to inform the parents of their procedural safeguards in a reasonable time following that refusal. The District's own policies correctly reflect what the District should have done: "If it is determined that an evaluation is unnecessary, the principal or 504 coordinator shall inform the parents/guardians in writing of this decision and of the procedural safeguards available."<sup>7</sup> Further, the District requires that the Superintendent or designee notify the parents "of all the procedural safeguards available to them if they disagree with the district's action or decision, including an opportunity to examine all relevant records and an impartial hearing in which they shall have the right to participate."<sup>8</sup> Providing all parents with a handbook at the beginning of the school year is insufficient to notify individual parents of their procedural rights with respect to Section 504. Therefore, OCR concludes that the District failed to provide Student 1's parents with procedural safeguards on the multiple occasions where it declined to evaluate Student 1 for a suspected disability.

In conclusion, OCR found sufficient evidence to support a noncompliance finding regarding issues 1, 2, and 3, and concluded that the District failed to provide Student 1 with a free appropriate public education.

#### **B. Issue 4**

Under the Title IX and the regulations, once a school district has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately.

The facts as alleged by the Complainant and the documentation provided by the District show that the District was first put on notice that student M.S. was "bothering" Student 2 in October 2014 when Student 2 told her teacher. Student 2 and the Complainant told the District (Teacher F and the Superintendent) on additional occasions thereafter that Student 2 was being bothered by M.S. in such ways as pulling her hair, chasing her, and calling her names. The District took action by separating the students and also speaking directly with M.S. and his mother, and the District asserted that the problems then ended. However, the Complainant alleged that the behavior of M.S. resulted in severe adverse impacts on Student 2. The parents notified OCR that they were able to obtain counseling for Student 2 through local services.

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<sup>7</sup> District Administrative Regulation 6164.6(b)

<sup>8</sup> District Administrative Regulation 6164.6(d)

As noted above, before OCR completed its investigation of issue 4, the District indicated it was willing to resolve the allegations through a 302 agreement. OCR agreed to enter an agreement related to issue 4 without reaching a conclusion on that allegation.

## **VI. Conclusion**

The District entered into the attached agreement to resolve the allegations in the complaint. In the agreement, the District agreed to: place Student 1 back at BVES; expunge Student 1's expulsion from his disciplinary record; evaluate Student 1 pursuant to IDEA and Section 504; implement its SST process if Student 1 is ineligible for services under IDEA and Section 504; use the SST process if the student is also ineligible for a 504 Plan; provide the parents with notice of their procedural safeguards, as required, if the student is not eligible for an IEP or a 504 Plan, including the right to pursue due process; develop of an interim plan to accommodate the student while he is being evaluated, in consultation with the parents, Student 1's psychiatrist, and others; meet to determine whether compensatory educational services are appropriate for Student 1 and provide such services if so; develop a memorandum for District and school staff regarding their responsibilities under Section 504, and provide training to them about those responsibilities; attend OCR training at the District free of charge during the 2015-2016 school year regarding discriminatory harassment and its effects.

When fully implemented, the resolution agreement attached hereto will address all of OCR's concerns with respect to compliance with respect to this complaint. OCR will monitor the District's implementation of the agreement until the recipient is in compliance with the statute(s) and implementing regulations at issue in this case.

This concludes OCR's investigation of the complaint 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. OCR is closing this complaint as of the date of this letter, and notifying the Complainant simultaneously.

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 complainant may have the right to file a private suit whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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, personally identifiable

information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the cooperation of you and your staff in resolving this complaint. We would also like to thank your legal counsel, Ms. Aimee Perry, for her assistance. If you have any questions about this letter, please contact Laura Welp, OCR attorney, at (415) 486-5577.

Sincerely,

/s/

Anamaria Loya  
Team Leader

Enclosure

Cc: Aimee Perry, Esq.  
Lozano Smith, Attorneys At Law  
(Via email only)