



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

July 25, 2016

Cassandra Gallup Bridge  
Director  
Monterey Bay Charter School  
1004 David Avenue  
Pacific Grove, CA 93950-5443

(In reply, please refer to OCR Docket Number 09-15-1514)

Dear Director Bridge:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Monterey Bay Charter School (School). The complainants alleged that the School discriminated on the basis of disability. Specifically, OCR investigated the following issues:

- (1) Whether the School retaliated against the complainants<sup>1</sup> by contacting the father's employer to file a complaint against him because of the complainants' actions and communications related to their children's education and receipt of special education services.
- (2) Whether the School retaliated against the complainants by restricting the mother's communications with School staff and limiting her access to the School and her children's classrooms.
- (3) Whether the School has proper policies and procedures that address discrimination and harassment based on disability.<sup>2</sup>

OCR investigated this complaint pursuant to its authority under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Section 504 and its implementing regulations prohibit discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. Title II and its implementing regulations prohibit discrimination on the basis of disability by public entities. The School receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

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<sup>1</sup>OCR stated the names of the complainants in its notification letter to the School and is not stating them here in the interests of privacy.

<sup>2</sup>This issue was not raised by the complainants but was one identified by OCR during its investigation in this matter.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the complainants and the School. After careful review of the information gathered in the investigation, OCR concluded that the School failed to comply with Section 504 and Title II with regard to issues 1 and 3. With regard to issue 2, OCR did not complete the investigation but found areas of concern. Prior to the conclusion of the investigation, the School entered into a resolution agreement with OCR which, when fully implemented, is intended to address the areas of non-compliance and the concerns raised by the issues investigated. The applicable legal standards, findings of fact, and reasons for OCR's determinations are summarized below.

**Issue #1: Whether the School retaliated against the complainants by contacting the father's employer to file a complaint against him because of the complainants' actions and communications related to their children's education and receipt of special education services.**

and

**Issue #2: Whether the School retaliated against the complainants by restricting the mother's communications with School staff and limiting her access to the School and her children's classrooms.**

#### Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.61, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit schools from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. § 35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the school, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the school can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

#### Findings of Fact

- The complainants have four children who, during the 2014-15 school year, were in XXX, XXX, and XXX grade and XX XXXXXXXXXXXXXXX in the School. All four children

were receiving special education services pursuant to an Individualized Education Program (IEP).

- On May XX, 2015, the mother sent an e-mail message to several administrators and staff at the School, including the special education coordinator and the School director, in which she: stated her concerns with one of her daughter's lack of progress in meeting the goals of her IEP due to inadequate support being provided by special education staff and an insufficiently experienced speech and language pathologist; provided the name and contact information for a speech and language pathologist who she believed was better qualified to provide services; and stated her intent to send a second part to her message in which she would state the roles of each IEP team member in creating and implementing her daughter's IEP according to the Individuals with Disabilities in Education Act (IDEA) and the California Education Code.
- On May XX, 2015, the mother sent the second part of her e-mail message. In it, she stated her disappointment with a recent experience in which her daughter had been improperly excluded from a class play and she blamed the exclusion on the daughter's IEP team and its failure to prepare, plan, and communicate. She then stated, in great detail, the definitions, purposes, and roles of each of the following according to the IDEA and the California Education Code: the IEP; the general education teacher; the special education teacher; and, the behaviorist and paraprofessionals in general. She asserted that it was the general education teacher's failure to perform her responsibilities properly that caused her daughter to be excluded from the class play and other failures that have caused her daughter's difficulties in academics. She also asserted that the tutors were improperly burdened with "creating, modifying, implementing curriculum, evaluating and documenting progress, and overall education," that the special education teacher's failure to assist the general education teacher contributed to her daughter's academic difficulties, and that the behaviorist improperly attempted to modify her daughter's lesson plans. She concluded the e-mail message with:

Since I have taken a significant amount of time outlining and fundamentally defining the various roles we play on [my daughter's] IEP team as according to Federal and California State law, I would like each of us to take time to contemplate our responsibilities to [my daughter], where we have failed, and what we can do to correct the situation. We are very blessed to have such a highly trained and invested team. Very rarely do school systems have such resources at their fingertips. With slightly over a week before the IEP, I look forward to hearing about what can be done to correct the situation and accommodate for [my daughter's] predominately lost school year. In closing, please keep me informed about the status of [XX], the XXX SLP I recommended in part 1 of this email.

- On June X, 2015, the mother arrived at the School to participate in three IEP team meetings for three of her children. Attending the first IEP team meeting were: the

special education coordinator (coordinator); the special education teacher; the general education teacher; a supervising behavior analyst; and, the School director (director). OCR reviewed an audio-recording of the IEP meeting. At the beginning of the meeting, the coordinator stated that, before doing anything else, the team would “define our roles as teachers here that were defined by you [the mother].”

- An interaction then took place involving the coordinator, the director, and the mother. The interaction involved the mother being questioned for her prior email in a combative tone. For example, she was asked by the coordinator, “Tell us what [sic] you feel you were able to define my roles as a special education teacher, [X]’s role as a general education teacher, and [X]’s role as the supervisor of our program. Okay, so go ahead. You have two minutes.” She was also asked by the director, “Why do you believe that it is your role to dictate to the members of the staff and to the teachers what our jobs are? What capacity do you find that you have that right?” She was also told that she should have previously informed the School that she was including an attorney in her email correspondence with the School.
- At one point, the director described the mother’s email that she sent prior to the meeting as “inflammatory and confrontational.” As a result, the director stated that she instructed staff and teachers to no longer communicate with the mother by email. She further stated that the School would require that the mother put any concerns in writing and deliver or mail them to the office. She further stated that the mother would not have “access to campus to readily pop in and confront staff members because I think that could be the nature of your communication based on the email communication we’ve received.” She further informed her that she would be required to comply with the visitor policy and during the course of the meeting stated to the mother that she had been provided with the School’s Uniform Complaint Policy and the visitor policy.
- After further discussion regarding the mother’s email, the general education teacher sought clarification about whether the mother could email her about homework if the student was absent a day. The director clarified that for “simple questions” it was fine for the mother to email staff. He stated that “concerns and complaints” could not be made through email.
- The mother determined that she did not want to proceed with the meeting based on what had just occurred. She stated that she believed her rights had been violated and she desired to consult with her attorney before proceeding any further with the meeting.
- The meeting had a combative and argumentative tone throughout its duration. The meeting lasted only 14 minutes, nothing related to the IEP was discussed, and no IEP was developed.
- Less than two hours after the mother cancelled the IEP team meetings, at approximately X:XX a.m., the coordinator placed a phone call to a program that

assists XXXXXXXX XXXXXXXX XXX XXXX XXXXXXXX XXXX XXXXXXXXXXXXX and that was located at XXX XXXXXXXX facility at which the father was working. He left a message requesting that the program director return his call.

- At approximately XX:XX a.m. on June X, 2015, the director of the XXXXXXXX program returned the coordinator's call and left him a voice mail message stating she was out of the office and requesting that the coordinator contact her through e-mail.
- As such, later on June X, 2015, the coordinator sent the following e-mail message to the director of the XXXXXXXX program and the director of the School:

From: [Coordinator]  
Date: XXXXXX, June X, 2015  
Subject: Complaint email  
To: [Director of XXXXXXXX program] [Director of School]

Dear [Director of XXXXXXXX program],

Thank you for returning my call today.

I thought email might be a better way to explain what is happening at our school.

[The complainants] are communicating in an extremely confrontational way that is creating a hostile work environment for at least one teacher, our SLP and myself. Her allegations in the email that I will forward to you include inflammatory characterizations about our teaching staff with allegations that are factually incorrect and are defamatory.

It is not clear what her motive is in defining the job descriptions of each individual in our school when her statements that precede this are factually incorrect and were not brought to the school in compliance with school policy vis-a-vis the "Complaint Policy" for an appropriate investigation and response.

It could be interpreted that her objective is to conduct personnel evaluations with the intent of having school staff terminated or at the very least reprimanded. The email that I will forward to you describes my role, the Resource Teacher's role and the teacher's role, and our school's Director, (our supervisor) [XXX], is included in this communication along with an attorney in XXXXXXXXXXXX.

[Mother] has repeatedly accused our school and staff of various infractions, but never followed through with any factual evidence that her allegations are true.

I look forward to speaking with you about the emails that I am forwarding to you -- other addressees include multiple staff at [support services facility] one week prior to her daughter's IEPs,

I hope to speak with you by phone once you read this.

Regards, [Coordinator]

At the same time, the coordinator also sent to the XXXXXXXX program director the mother's May XX and May XX e-mail messages to the School administrators and staff.

- Later that day, according to the complainants, the XXXXXXXX program director informed the father that the School had contacted her and expressed a desire to file a complaint against him. She told him she had received a phone call and e-mail messages from the School to initiate the complaint process.
- The next morning, on June X, 2015, the XXXXXXXX program director sent an e-mail message to the director and the coordinator in response to the coordinator's June X e-mail message. In that email, the XXXXXXXX program director stated, per the School's e-mail correspondence, that she forwarded the School's email to several employer representatives and to the XXXXX XXXXXXXX XXXXXXXX (XXX) office and copied the legal office on the e-mail correspondence. She further stated that the "XXX office assists in handling grievances with XXXXXXXXXXXXXXXXXXXX when a legal representative is involved". Her email also stated that the XXX office would coordinate with the School and that a copy was furnished to the father. She further stated that "Please note prior to legal involvement my department can facilitate litigations to assist in amiable resolution for all parties involved. However, once legal concerns are addressed this is handled by our XXX office." She expressed a hope that an "amenable solution" could be reached.
- Later that day, on June X, 2015, the XXXXXXXX program director sent another e-mail message to the coordinator and director and copied other XXXXXXXX personnel that stated: "You requested a point of contact for your school's possible grievance/legal action against the XXXXXXXXXXXXXXXXXXXX [father] and his spouses [sic] actions." She provided an address for the XXX contact if this was still the School's intention.
- Neither the coordinator nor the director responded to either of the June X e-mail messages from the XXXXXXXX program director.
- According to the School, on June X, 2015, the coordinator called the XXX office and spoke with a receptionist. The receptionist requested that the coordinator forward to the XXX office the e-mail messages that he previously sent to the XXXXXXXX program director and, later on June X, the coordinator sent an email noting that he

was forwarding the original e-mail message sent to the XXXXXXXX program director as well as the mother's two emails sent to the School previously.

- On June X, 2015, the complainants informed the School that they were represented by an attorney and all communication regarding their children's education had to be addressed to their attorney.
- On June XX, the father was informed by the XXX office that the School had contacted it with the intent of filing a complaint/grievance against him.
- On June XX, 2015, the coordinator contacted the XXXXXXXX program director to obtain an update on the matter with the School and the director requested that he direct all of his questions to the XXX office. As such, later the same morning, the coordinator called the XXX office and spoke with the same receptionist that he spoke with the first time he called the office. She referred him to another staff member in the XXX office and he left a message for the individual requesting a return call.
- On June XX, 2015, the father was informed by his supervisor that the School had contacted him and the father's XXXXXXXXXX in order to file a complaint/grievance against him.
- According to a written narrative provided to OCR by the School, the coordinator did not receive a return phone call from the other individual in the XXX office and, thus, on June XX, 2015, the coordinator again contacted the XXX office and spoke with a third individual. He requested that someone from the office return his call and the third individual indicated he would have someone call the coordinator. According to the School, no one called the coordinator back and the School had no further contact with the XXX office or the XXXXXXXXX program director.
- On June XX, 2015, the coordinator resigned his employment with the School.
- From June X, 2015 until August X, counsel for the complainants communicated with the School to request complete copies of the children's educational files and to reschedule the IEP team meeting.
- According to the complainants, on August X, 2015, by phone, counsel for the complainants informed the School that the complainants were withdrawing their children from the School because of the retaliatory actions of the School and the hostile environment created by them.
- The School asserted to OCR that the coordinator's communications with the father's employer were not complaints or intended to be complaints against the father but were, instead, attempts to have the XXXXXXXXX program director help facilitate better communication between the complainants and the School.

- The complainants have homeschooled their children since withdrawing them from the School.

### Analysis and Conclusions of Law

To constitute protected activity, OCR must find that: 1) an individual communicated, formally or informally, a belief that a recipient's act or policy is discriminatory on the basis of disability; 2) the manner of the opposition is reasonable; and 3) the complainant has a good faith and objectively reasonable, though perhaps mistaken, belief that he or she was opposing unlawful discrimination. It is irrelevant whether the individual in fact erred, as a matter of fact or a matter of law, in his or her belief that illegal discrimination occurred.

The information obtained by OCR establishes a prima facie case of retaliation. The e-mail messages of May XX and May XX and the participation in and statements made at the June X IEP team meeting were clear advocacy by the complainants to ensure that their children with disabilities received a FAPE. The e-mail messages and statements at the IEP team meeting expressed the complainants' dissatisfaction with the School's provision of special education services to the complainants' children, expressed their belief that School staff were not fulfilling their responsibilities and obligations to provide an appropriate education and related services to their children with disabilities, and provided recommendations and suggestions on how to better provide their children with an appropriate education and related services. The mother had a good faith belief that the children were not being served, which she supported with specific information related to IEP implementation.

While the coordinator at the IEP meeting asserted that the complainants' actions were unreasonable and created a hostile environment, the District itself has not made that assertion. Moreover, OCR notes that such an assertion would generally only provide justification for the School imposing a ban on the mother's email communications and visits and not on its actions in contacting the father's employer to make a complaint. For these reasons, OCR finds that the mother's complaints, criticisms, and recommendations related to her children's receipt of an appropriate education were protected activity under the provisions of Section 504, Title II, and their implementing regulations.

The School disputed that its communications and actions with the father's employer were materially adverse because it asserted they were an attempt to obtain assistance in facilitating better communication with the complainants and not a complaint or grievance against the father. However, the written record refutes the School's assertions. The School's very first written communication with the father's employer, the June X e-mail message, stated "complaint" as its subject line. Additionally, the content of the June X e-mail message is not consistent with one that would seek assistance in establishing better communication, since it only includes allegations of misconduct and improper actions by the complainants, does not once state any desire



to establish better communication with the complainants, and does not make any request for assistance in establishing better communication with the complainants.

Moreover, the father's employer understood that the School's communications were intended to be a complaint against the father as the employer's first written communication with the School on June X in an e-mail message, stated that she forwarded the School's email to the XXX office and that the XXX office "assists in handling grievances with XXXXXXXXXXXXXXXX when a legal representative is involved in the process." The second written communication, also a June X email from the father's employer to the School described the School's communication as requesting a point of contact and described the School as seeking a "possible grievance/legal action against the XXXXXXXXXXXXXXXX [father] and his spouses [sic] actions."

Significantly, both the School's director and its special education coordinator received both June X e-mail messages from the father's employer and, despite the notice to them that the employer believed the School was filing a complaint against the father, there is no evidence that either of them took any action to correct the employer's understanding that the School was filing a complaint against the father. The School asserts that the individual from the father's employer who was originally contacted was introduced and brought to an IEP meeting as a liaison. However, the lack of any attempt to correct the employer's understanding of the School's intent is consistent with the School's intent being to file a complaint against the father. Further, the failure of the director or coordinator to correct what they assert is the employer's incorrect understanding of the School's actions can be considered an adoptive admission by the School of the employer's understanding of the School's intent since such an incorrect understanding of a significant fact would be something that reasonable persons would seek to correct.

Further, there is evidence that the coordinator expressed resentment regarding the mother's advocacy. For example, she was asked, "Tell us what [sic] you feel you were able to define my roles as a special education teacher, [X]'s role as a general education teacher, and [X]'s role as the supervisor of our program. Okay, so go ahead. You have two minutes." She was also asked by the director, "Why do you believe that it is your role to dictate to the members of the staff and to the teachers what our jobs are? What capacity do you find that you have that right?" She was also told that she should have previously informed the School that she was including an attorney in her email correspondence with the School.

The coordinator's resentment and dislike of what the mother had communicated is consistent with an intent to retaliate and cause difficulty for the complainants by filing a complaint with the father's employer and is inconsistent with a stated intent of trying to establish better communication with the complainants by requesting assistance from the father's employer.

Filing a complaint against the father with his employer is an adverse action for retaliation purposes. A wide range of potential disciplinary actions at work that could

result from such a complaint are significantly adverse enough to potentially dissuade an individual from engaging in protected activity since they threaten the very livelihood of the complainant and his family.

Additionally, even if no disciplinary action were to result from the complaint filed with the employer, the complaint itself created unnecessary, unwarranted, and unwanted attention being brought to the father by various individuals at his place of employment. Because of the significance that employment plays in an individual's livelihood and ability to materially provide for himself and his family, an external attempt to place in jeopardy or otherwise compromise the individual's employment is a significant adverse action and one prohibited by Section 504 and Title II when done in response to protected activity.

The final step of the prima facie case in this matter, causation, is shown through direct evidence. There is no need to infer causation in this matter as the School's communications with the father's employer specifically referenced the protected activity. The content of the School's initial e-mail message to the employer shows that the motivation for the School's communications with the employer were the protected activity of the complainants since the e-mail message discusses in specific detail the content of the May XX and May XX e-mail messages and that it is the reason for the School's contact with the employer. Additionally, the School sent the protected communications themselves to the father's employer when it forwarded the e-mail messages of May XX and May XX.

As previously indicated, the School's legitimate non-retaliatory justification for contacting the employer was asserted to be in order to obtain assistance in establishing better communication with the complainants. As described above, the written record refutes this justification. Thus, for the same reasons that were stated above, there is insufficient to rebut the prima facie case of retaliation in this matter.

Because the School failed to provide a legitimate non-retaliatory reason for contacting the father's employer, as to allegation 1, OCR found that there was sufficient evidence to support the allegation that the School retaliated against the complainants by contacting the father's employer in order to file a complaint against him in violation of Title II and Section 504 and their implementing regulations.

With respect to allegation 2, the complainants assert that the School retaliated against them by restricting the mother's communications with School staff and limiting her access to the School and her children's classrooms. During the IEP meeting, the director communicated that the mother would need to communicate with the School through written communication that is delivered or mailed. She was told that staff would not respond to email communication from her. When clarified during the meeting, she was told that her complaints and communication regarding "curriculum" and "people's jobs, roles, and responsibilities" would not be accepted through email, but that other regular communication would be permitted through email. She was also told that she would need to adhere to the visitor's policy. The mother informed the director that she

did not understand why the director was stating this to her as she had always complied with School policies.

OCR is concerned with the nature and timing of the statements made by the director to the mother that she would impose a ban on the mother's ability to communicate by e-mail message and limit her visitation to the School since they could be viewed as additional retaliation. The statements were in response to the mother's e-mail communications, which, as noted herein, were protected communications under Section 504 and Title II.

Although protected communication may become unprotected if it is done in a manner that is disruptive, harassing, threatening, or otherwise improper, the e-mail messages from the mother do not rise to this level. Although the e-mail messages were lengthy, they were sent on only one occasion and not repeatedly; there was nothing in either of them that could be viewed as threatening or harassing. While the messages obviously frustrated school staff because the mother was expressing displeasure with services provided to her child and making directive statements, the fact that a message causes a reaction in its recipient does not automatically transform that message into a disruptive communication.

OCR notes that if the complainants had not withdrawn their children from the School and OCR had investigated and found that the ban on e-mail communication and limitation on visitation had been imposed, OCR may have found that the actions were improper retaliation since they were in direct response to the protected communications of the complainants and would have impacted the mother's access to her children's education, ability to participate in the Section 504 processes, and ability to advocate on behalf of her children. Prior to completing its investigation as to issue 2, the School expressed its interest in resolving this allegation by way of the enclosed resolution agreement.

**Issue # 3: Whether the School has proper policies and procedures that address discrimination and harassment based on disability.**

Legal Standards

Notice of Nondiscrimination: The Section 504 regulations, at 34 C.F.R. § 104.8(a) and (b), require a recipient employing 15 or more persons to take appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability. The notification must also identify the responsible employee designated under 34 C.F.R. § 104.7(a) to coordinate its efforts to comply with the regulations.

The Title II regulations, at 28 C.F.R. § 35.106, similarly require a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulations. Under 28 C.F.R. § 35.107(a), public entities employing 50 or more persons must also

notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

**Compliance Coordinator:** The Section 504 regulations, at 34 C.F.R. § 104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. The Title II regulations, at 28 C.F.R. § 35.107(a), contain a similar requirement for public entities that employ 50 or more persons to designate a compliance coordinator. The public entity shall make available to all interested persons the name, office address, and telephone number of the employee(s) designated as the compliance coordinator.

**Grievance Procedures:** The Section 504 regulations, at 34 C.F.R. § 104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. § 35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

### Findings of Fact & Analysis

#### Notice of Nondiscrimination

OCR reviewed the School's policies that were sent to it by counsel for the School and also the policies found at the School's website and was unable to locate a notice of nondiscrimination. Although the School's employment policies have at their beginning an "Equal Employment Opportunity Policy" that could qualify as a notice of nondiscrimination, there is no notice of nondiscrimination anywhere else in the policies including those that apply to students, parents, and the public

#### Designation of Compliance Coordinator

OCR could not find any designation of a coordinator of Section 504 or Title II within any of the School's policies.

#### Grievance Procedures

During the course of the IEP team meeting, the director instructed the mother to use the School's complaint procedures whenever she had a concern or issue with the provision of special education services for her children. In an attempt to determine the policies to which the director was referring, OCR reviewed the School's policies in order to find any policy that could be used by a parent when complaining about discrimination. OCR reviewed complaint policies identified for student complaints, employee policies, and the School's Uniform Complaint Procedures (UCP).

The Student Complaint policy encourages students to use conflict resolution skills to address complaints against other students. The employee policies at section (II)(A) of

titled "Prohibition of Harassment and Protection Against Retaliation," provide for a discrimination and harassment procedure for employees to use. The policy prohibits harassment by employees against other "employees, third party vendors or students." A parent who believes that a teacher or staff member has discriminated against a child may utilize the employee complaint procedure to lodge a complaint of discrimination against the individual. The policy also provides that should the Director become aware of conduct that constitutes "sexual harassment, discrimination or other prohibited behavior ..." The School's UCP limits its application to programs and activities of the School that receive state funding without any mention of federal funding. It is almost identical to the employee policy with regard to process.

With regard to these three different policies, OCR finds that it may be unnecessarily confusing for someone attempting to file a disability discrimination complaint to know which policy to use, and whether the policy discussing "sexual harassment" and "discrimination" is meant to be used for disability-related complaints. Similarly, it may be difficult for a person to know whether policies identified for those that receive state funding also apply to federally funded programs.

The School also fails to comply with the requirements of Section 504, Title II, and their implementing regulations in several ways:

- It does not provide proper notice of nondiscrimination in all bulletins, announcements, publications, catalogs, application forms, or other recruitment materials that are made available to participants, students, applicants, or employees.
- It does not designate an individual by name or title and contact information who coordinates the School's compliance with Section 504 and Title II and thereafter also inform parents, students, and others of the individual in that notice or otherwise.
- It does not provide complete and accurate information related to federal law and the jurisdiction of federal agencies over potential complaints arising under federal law.

### Conclusion

Based on the foregoing, OCR found sufficient evidence that the School failed to comply with Section 504 and Title II with regard to issues #1 and #3. OCR's investigation raised concerns with respect to issue #2. To address the issues that were the subject of this complaint investigation, the School, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations, OCR's findings and concerns, and information obtained by OCR during its investigation. In the resolution agreement, the School agreed to create, revise, and implement Section 504 and Title II policies and procedures; provide guidance and training to School staff regarding retaliation; provide letters to the father's employer

stating that the communications about the complainants' advocacy regarding their children from the School to the father's employer should not have occurred and were improper; and provide a payment to the complainants representing costs associated with homeschooling.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainants concurrently. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the School is in compliance with the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Please be advised that the School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainants 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you and counsel for the School for your cooperation in resolving this case. If you have any questions regarding this letter, please contact me at (415) 486-5566.

Sincerely,

/S/

James M. Wood  
Team Leader

encl.

cc: XXXXXXXX XX XXXXXXXX, Esq., Counsel for the School