



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

August 13, 2018

Jim Hogeboom
Superintendent
Novato Unified School District
1015 7th St.
Novato, California 94945

(In reply, please refer to Docket # 09-17-1139.)

Dear Superintendent Hogeboom:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Novato Unified School District. OCR investigated whether the District failed to respond adequately to an internal complaint filed by the Student's¹ parents on July XX, 2016, which alleged that the Student had been harassed by a District employee based on disability and the District failed to implement the Student's Section 504 Plan.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the District and the Complainant, and an interview with the Complainant. With regard to the issue investigated by OCR, while OCR found that the District's response to the parents' internal complaint was adequate, equitable, and reliable, OCR found that it did not comply with the requirements of Section 504 and Title II in that it was not prompt. Below is a summary of the facts and OCR's resolution of this matter.

¹ OCR identified the Student in its notification letter to the District and is withholding his name from this letter to protect his privacy. The Complainant in this case is the attorney for the Student's parents who filed this complaint on behalf of the Student and the Student's parents. The Complainant's name is also being withheld from this letter to protect her privacy.

LEGAL STANDARDS

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.

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to discrimination 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 discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The District must also take steps reasonably calculated to prevent the discrimination from recurring.

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 discrimination and will be responsive to any student reports of discrimination. The District also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the district is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to harassment will differ depending upon circumstances. However, in all cases the response must be tailored to stop the harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

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. 34 C.F.R. §104.33(b)(2). 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.

FACTUAL FINDINGS

Background Information

The Student was in XXX grade during the 2015-2016 school year and he attended an Elementary School in the District (the Elementary School). The Student has disabilities including Attention Deficit Disorder (ADD), Anxiety, and Sensory Integration Disorder and he had a Section 504 plan in place during the 2015-2016 school year.

The first day of school was August XX, 2015. The Student's prior District had developed a Section 504 plan for the Student but the District and Complainants agree that the first Section 504 plan was in place until December XX, 2015, at which time an updated Section 504 plan was put in place (second Section 504 plan).

The second Section 504 plan for the Student provides him with services to help him with his attention, focus, self-regulation, access to curriculum, and motor skill development. The Section 504 plan states that the classroom teacher and other school staff will provide the following services for the Student from December 2015 - December 2016:

- 1) establish a discrete check in system to develop self-regulation skills,
- 2) allow the Student to chew gum with tasks that require focus and before going outside,
- 3) provide the Student with movement breaks as needed including big movement breaks and heavy work activities such as walking to the office on an errand, moving a chair or carrying a stack of heavy books,
- 4) optional standing station or TheraBand at a sitting desk,
- 5) frequent, discrete reminders to access water and bathroom,
- 6) preferential seating in the classroom with student and parent input,
- 7) no homework on Monday evenings,
- 8) opportunities to run around and play at recess time; recess time will not be used to complete classwork or other stationery tasks, and
- 9) a Chromebook or Ipad will be available to perform writing tasks in class work or homework.

The Student attended the Elementary School until the June X, 2016, the last day of 2015-2016 school year. Sometime during June 2016, the Student's parents disenrolled the Student from the District and enrolled him in another school district.

Internal Disability Discrimination Complaint & the District's Investigation of the Complaint

On July X, 2016, the Student's parents filed a written complaint with the District complaining that: 1) the Student's XXX grade teacher (Teacher) discriminated against the Student based on

his disability by treating him differently and inflicting a harsh, punitive, and dismissive attitude towards him, and 2) the Teacher consistently failed to implement the accommodations outlined in the Student's Section 504 plan. In this complaint, the Student's parents claimed that the Teacher continually ignored and or failed to fully implement his accommodations and made any use of the accommodations uncomfortable for him. For example, the Student's parents complained that when the Student attempted to use a tool or strategy approved by his 504 plan, such as chewing gum, the Teacher embarrassed the Student by drawing attention to him, giving him a stern look, or publicly chastising him in front of the class for his needs. The complaint also alleged that the Teacher subjected the Student to disability harassment in retaliation against the Student's parents for advocating on the Student's behalf.

On July X, 2016, upon receipt of the Complainant's disability discrimination complaint regarding the Student, the District Superintendent designated the District's Assistant Superintendent of Human Resources as the compliance officer responsible for the investigation of the complaint under the District's Uniform Complaint procedure. Shortly after receiving the complaint, the District retained an attorney investigator (Investigator) from a private law firm to investigate the complaint.

On August X, 2016, the Complainant initiated settlement discussions with the District and provided them with a draft version of a disability discrimination complaint that she was planning to submit to OCR in the event that the parties were unable to reach settlement. In this draft OCR complaint, the Complainant provided specific examples of the Teacher's alleged discrimination and harassment of the Student on the basis of disability, including alleged comments the Teacher made to the Student in which she called attention to him and his need for individualized assistance. In the draft OCR complaint, the Complainant also alleged that the Student's teacher failed to implement the accommodations in the Student's 504 plan relating to; 1) preferential seating, 2) not giving homework on Mondays, 3) allowing the Student to take movement breaks as needed, bathroom breaks, and drink breaks, 4) giving the Student the opportunity to move at recess, and 5) allowing and encouraging the Student to use a slant board (not in the Section 504 plan), TheraBand, Chrome Book/Ipad, and chewing gum. In addition, the Complainant stated that the Student's XXXXXXXXX XXXXXXXXXX (XXXX) teacher yelled at and benched the Student on several occasions and it appeared that the XXXX teacher was not informed of the Student's disabilities or 504 plan.

On August XX, 2016, the Student started attending XXX grade at an elementary school in another school district.

On August XX and XX, 2016, the Investigator began interviewing witnesses in connection with the investigation of the disability discrimination complaint relating to the Student. On these dates, the Investigator interviewed the Student's parents.

On October XX and XX, 2016, the Investigator completed the last witness interview in connection with the investigation of the disability discrimination complaint relating to the Student.

On December XX, 2016, the Complainant filed a disability discrimination complaint with OCR on behalf of the Student and the Student's parents. In this complaint, the Complainant made the same allegations, described above, that were included in the draft OCR complaint that she provided to the District during settlement discussions. In the OCR complaint, the Complainant also alleged that the District failed to respond promptly and adequately to the internal complaint filed by the Student's parents on July XX, 2016,² which alleged that the Student had been harassed by a District employee based on disability and the District failed to implement the Student's Section 504 plan.

The Investigative Findings and Report

On February XX, 2017, the District completed its investigation regarding the disability discrimination complaint pertaining to the Student and provided the Student's parents with notice of their findings and a copy of the investigative summary report with redacted exhibits.

OCR reviewed the investigative report and underlying exhibits. In the investigative report, the Investigator stated that the standard of proof used in making the findings was the preponderance of the evidence standard. The Investigator also stated that she conducted an independent investigation, the District allowed her discretion to conduct the investigation as determined to be necessary, and no party attempted to influence her findings in the report.

The Investigator drafted a detailed investigative report consisting of 51 pages and explained the findings and results of the investigation. The Investigator investigated the allegations that the Complainant and the Student's parents made in the internal complaint that was filed with the District on July X, 2016 and in the draft OCR complaint that was submitted to the District on August X, 2016. The general complaint allegations that were investigated were: 1) the Teacher discriminated against the Student by failing to consistently comply with and implement the accommodations granted under the Student's 504 plan, 2) the Teacher inflicted a harsh, punitive, and dismissive attitude towards the Student based on his identified special needs, as demonstrated by comments she made to him in front of other students; and 3) the Student was improperly benched at XXXX in violation of his 504 plan. The Investigator received and reviewed 670 pages of documentation submitted by the Complainant, the Student's parents, and the District. This documentation included copies of the internal complaint filed with the District, the draft OCR complaint, the District's 504 plan, the Student's 504 plan from the previous school district he attended, the District's Board Policy 5145.3 (Nondiscrimination/Harassment), and emails and other documentation submitted by Student's parents and the other witnesses interviewed. In addition, the Investigator interviewed ten witnesses total during the time frame of August XX, 2016 – October XX, 2016. These ten witnesses included 1) the Student's mother, 2) the Student's father, 3) the Teacher, 4) another District teacher, 5) the Resource Specialist, 6) the Principal of the Elementary School, 7) the School Psychologist, 8) the District's Special Education Director, 9) the Student's Occupational Therapist (private), and 10) the Special Education Advocate (private). The Investigator noted that she asked for an interview with the Student but the Student's parents declined to allow her to speak to the Student because they were

² In the OCR complaint, the Complainant stated that the date of the internal complaint that the Student's parents filed with the District was July XX, 2016. OCR's review of the internal complaint document shows that the correct date of the complaint is actually July X, 2016 and this date is reflected above in the factual findings summary.

concerned that the interview would have an emotional impact on the Student. The Investigator stated that she explained to the Student's parents and the Complainant that her inability to speak to the Student personally could negatively impact her ability to substantiate their allegations, which were based entirely on reports from the Student that were made to the Student's parents and the Complainant.

The Investigator concluded that the evidence did not substantiate most of the allegations by the Student's parents. The Investigator found that the Teacher did not implement the accommodation of providing pressured pats/rubs on the shoulder or back for redirection because the Teacher was not comfortable engaging in that type of physical contact with the Student. The Investigator concluded that the Teacher should have sought a Section 504 team meeting to address her concerns regarding this accommodation. The Investigator further concluded that Section 504 Coordinator did not provide the first Section 504 plan and distribute it until about two weeks after School started and should have attempted to locate a copy of the Student's 504 plan before the start of the school year and distribute copies or directives in order to ensure that his 504 plan was being implemented on the first day of school, but failed to do so. Furthermore, the Investigator found that on one occasion, on March XX, 2016, the Teacher stopped the class and inappropriately asked the other students to raise their hands if they were tired of the Student receiving special attention from her and that she engaged in this conduct in response to her frustration over the Student and his parents, including their demands and complaints about her. The Teacher admitted to engaging in this conduct. The Investigator concluded that this incident "likely" constituted retaliation. The Investigator also found that there were some occasions where the Teacher could have communicated with the Student more clearly and directly to alleviate the Student's anxiety and more effectively implement his accommodations. In this regard, she found that with respect to the accommodation of not providing homework on Mondays when he had social skills group, that the Student was still required with the rest of the class to write the homework assignments in his planner on Mondays and that even though he was not counted down or punished when he did not do the Monday homework, he would not have known that this exception applied to him because the Teacher did not share that information with him.

Other than the substantiated allegations described above, the Investigator found that the evidence established that the Teacher implemented the accommodations of the Student's 504 plan and that she was not resistant to those accommodations or dismissive of the Student's need for the accommodations. For example, the Investigator found that the Teacher provided tools to the Student both proactively and reactively. The Investigator found that with respect to the option of the standing desk, it was undisputed that the Student had access to the standing desk throughout the school year. There was a dispute over whether the Student already had access to the TheraBand, but the Investigator concluded based on the plain language of the Section 504 plan, that the District was only required to provide one option, not both, and it complied with the requirement. With respect to whether he was allowed to chew gum as needed, a witness who took the Student for testing confirmed that he was provided with gum and the Teacher testified credibly to ensuring that he could do so during breaks. The Investigator identified documentary evidence and evidence from other school personnel who witnessed the Student being provided movement breaks throughout the School year, including regularly bringing an emergency backpack with band aids to and from the office.

Finally, the investigation also did not substantiate the allegation by the Student's parents that the Student was disciplined during XXXX in a manner that violated the Student's 504 plan. The Investigator determined that while the evidence established that the Student received more than the average number of timeouts during XXXX, it did not substantiate the allegation that these consequences for the Student's misconduct violated his 504 plan, resulted in a significant change of placement, and/or constituted discrimination on the basis of disability.

On February XX, 2017, the District sent the Student's parents a notice of decision letter notifying them about the investigation findings and the measures the District took in response to the findings. In this notice letter, the District summarized the investigation findings as detailed above. In this letter, the District stated that it will take appropriate and effective actions to address the Teacher's retaliatory act, the ineffectiveness of her communication with the Student about his Monday homework from her, the need to use the Section 504 meeting process to address accommodations about which she has concerns, and the Teacher will be informed of the District's expectations. The District stated that it will also take effective actions to ensure that the District 504 coordinators are aware of the need to and do disseminate to pertinent personnel copies of existing 504 plans, or directives based thereon, prior to the start of each school year, as well as the need to call a Section 504 meeting if there is a concern about a particular Section 504 accommodation.

The District submitted documentation to OCR demonstrating that they implemented the proposed measures outlined in the notice of decision letter that was sent to the Student's parents. The District submitted a copy of the letter of warning that they issued to the Teacher on March X, 2017. The District also submitted documentation to OCR showing that they sent an email communication to all of the District's Section 504 Coordinators reminding them to: 1) disseminate pertinent personnel copies of existing 504 plans, or directives based thereon, prior to the start of each school year and 2) if a teacher believes there is a need to address accommodations about which they have concerns, they need to use the Section 504 meeting process rather than unilaterally changing the accommodations.

The Complainant's Concerns with the District's Investigation

The Complainant and the Student's parents received a copy of the investigative report and told OCR that they are not satisfied with the District's investigation for several reasons. The Complainant stated that they believe the District's investigation is inadequate because: 1) there was a substantial delay in the investigation - the District took well over 60 days to complete the investigation and did not notify the Student's parents about the results of the investigation until after they filed an OCR complaint, 2) the Investigator, who works for a litigation firm that represents the District in matters, was not impartial and was biased towards the District, 3) the Investigator misconstrued what the Student's mother said and then made conclusions based on misconstrued information, including that the Student's parents were being inconsistent, and 4) the Investigator penalized the Student's parents for not allowing her to interview the Student even though the Student was really traumatized by the Teacher and they did not want to harm him any further.

The District's Explanation for the Delay in the Investigation

The District has board policies, BP 1312.3 and AR 1312.3, which outline the District's Uniform Complaint Procedures. According to AR 1312.3, the uniform complaint procedures shall be used to investigate and resolve complaints alleging unlawful discrimination, harassment, intimidation, or bullying in district programs and activities based on several protected categories, including race, color, national origin, physical or mental disability, sex, and gender. AR 1312.3 states that all complaints shall be investigated and resolved within 60 calendar days of the District's receipt of the complaint.

The District completed its investigation approximately seven months after receiving the complaint. The District did not follow the procedural requirement of board policy AR 1312.3 that requires investigations to be completed within 60 days of receipt of the complaint. The District's Assistant Superintendent of Human Resources told OCR that the investigation took longer than anticipated because: 1) the Investigator conducted a complex and thorough investigation, which involved reviewing extensive documentation and conducting numerous, detailed, and lengthy witness interviews, 2) the initial complaint arrived in the middle of summer when many witnesses were unavailable and, 3) the Investigator analyzed the evidence from the witness interviews during the Thanksgiving and winter holidays, which resulted in natural delays. The Assistant Superintendent of Human Resources further stated that the District received the completed investigation report from the Investigator in mid-January 2017 and it took a few weeks for the District administrators to analyze the investigative report, determine what remedial actions were necessary, and to prepare a notice of decision/findings to send to the Student's parents. According to the District, because the Student no longer attended the District at the time the complaint was filed and was attending another school district with an IEP from that district, the Student and his parents did not suffer any negative effects from the delay.

Currently, for the 2017-2018 school year, the Student is continuing to attend school in another school district.

ANALYSIS AND CONCLUSION

Where the allegations filed with OCR have been investigated through a Recipient's internal grievance procedures, OCR's investigation is generally limited in scope to determining whether the internal grievance provided a comparable resolution process under comparable legal standards to that of OCR. OCR first thoroughly reviews all documentation of the Recipient's investigation and resolution of the complaint to determine whether the Recipient provided a resolution and remedy using legal standards and a process that meet Section 504 requirements. If OCR finds that the Recipient has met these requirements, OCR generally will not conduct its own independent investigation.

To determine whether a Recipient's investigation of an internal grievance provided a comparable resolution process, OCR generally looks at whether a Recipient: (1) made factual findings, (2) reached conclusions using comparable legal standards, (3) reached a disposition of the

complaint, and (4) provided the rationale for the disposition of the complaint. In addition, OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt, thorough, and effective.

In this instance, the District hired an outside Investigator to conduct a detailed investigation of the disability discrimination complaint that the Student's parents filed with the District on July X, 2016. OCR confirmed that the Investigator investigated all of the numerous incidents that the Complainant and the Student's parents alleged in the internal complaint that was filed with the District on July X, 2016 and in the draft OCR complaint that was submitted to the District on August X, 2016. The Investigator reviewed 670 pages of documentation submitted by the Complainant, the Student's parents, and the District and interviewed ten witnesses, including the Student's parents, the Teacher, and other relevant staff and administrators in the School who worked with the Student and supervised the Teacher but was unable to interview the Student. The District completed its investigation and notified the Student's parents about the results of the investigation approximately seven months after receiving the complaint. The Investigator drafted a 51-page investigative report explaining the investigation findings and results. In the investigative report, the Investigator made factual findings pertaining to each of the incidents and allegations raised in the complaint and reached evidence-based conclusions and made credibility findings.

After reviewing the Investigator's report, the District reached a final disposition of the complaint and concluded that they were adopting the findings in the investigative report. The District provided the Student's parents with notice of the final disposition by sending them a decision letter on February XX, 2017 explaining the rationale for the disposition of the complaint. In this letter, the District also stated that it will take appropriate and effective actions to address substantiated allegations and described actions it would take as a result.

Upon review and consideration of the evidence, OCR found that the Investigator conducted an adequate and reliable investigation in response to the disability discrimination complaint that the Student's parents filed with the District. OCR found that the Investigator conducted an adequate investigation because the Investigator reviewed all of the relevant documentation, interviewed a number of witnesses who could provide relevant information, attempted to interview the Student, and drafted a detailed report summarizing and analyzing all of the evidence obtained during the investigation. OCR also determined that the Investigator used a preponderance of the evidence standard of proof when weighing the evidence and OCR confirmed that the legal conclusions appropriately reflected the weight of the evidence gathered from the witnesses and documentary evidence. OCR further notes that the Investigator applied appropriate legal standards. Though the evidence in this case did not support a finding of a hostile environment for the student, as a matter of technical assistance, OCR notes that the District's definition of harassment is whether it is severe and pervasive and it is more appropriately articulated as follows: under Section 504 and Title II, harassment rises to the level of a hostile environment if it is severe, pervasive, or persistent such that it denies or limits the student's ability to participate in or benefit from the District's program.

After carefully reviewing the investigative report and underlying exhibits, OCR found that the Investigator's factual findings and legal conclusions were reasonable, adequately analyzed, and

supported by the evidence. For these reasons, OCR concluded that the Investigator followed a process that was sufficiently adequate and reliable.

However, OCR also found that the District's investigation was not sufficiently prompt despite the mitigating circumstances. The District's board policy, AR 1312.3, requires the District to investigate and resolve disability discrimination complaints within 60 calendar days of the District's receipt of the complaint. The District completed its investigation about seven months after receipt of the disability discrimination complaint filed by the Student. The District told OCR that the delay was, in part, due to the fact that the complaint arrived in the middle of the summer when witnesses were unavailable and the Investigator analyzed the evidence during the Thanksgiving and winter holidays, which caused natural delays. The investigative report states that the Investigator completed the last witness interview on October XX, 2016. The District completed its investigation and provided notice to the Student's parents regarding the disposition of the complaint on February XX, 2017, about three months and three weeks later. OCR found that since the witness interviews were completed on October XX, 2016 and it took the Investigator almost four additional months to complete the investigation, there was an unreasonable delay in completing the investigation. It is reasonable to conclude that the Investigator could have completed the investigation sooner than four months after the witness interviews were completed. The unavailability of the witnesses during the summer did not significantly contribute to the delay in the investigation given the fact that the Investigator took almost four additional months to complete the interview after the witness interviews were completed. The witness interviews were also completed about one month before the Thanksgiving and winter holidays and the Investigator had time to complete the investigation before these holidays. The District also told OCR that the delay in the investigation was due to the fact that the Investigator conducted a complex and thorough investigation but the mitigating circumstances summarized above are not sufficient reason to justify a seven month delay in the investigation that does not meet the 60 day requirement for completing investigations in the District's grievance policy.

The Complainant told OCR that the Student's parents had several concerns with the adequacy of the District's investigation. Their first concern was that there was a substantial delay in the investigation because the District took well over 60 days to complete the investigation. As described above, OCR agrees with this concern and found that the District's investigation was not sufficiently prompt, in violation of the requirements of Section 504 and Title II.

The Complainant's remaining issues with the investigation involve concerns about the Investigator being biased and impartial, the Investigator misconstruing statements made by the Student's mother and making conclusions based on misconstrued information, and the Investigator penalizing the Student's parents for not allowing her to interview the Student. OCR found that the Investigator has the discretion to weigh the evidence and make credibility determinations and the fact that the Investigator made credibility determinations that were not in favor of the Student's parents alone does not show that the Investigator was biased or misconstruing information. OCR also found that the Investigator noted that the Student's parents did not allow her to interview the Student and explained that this impacted her ability to substantiate many of the allegations in the complaint since the most of the allegations were based on issues that the Student reported to his parents. OCR did not find any evidence that shows that

the Investigator penalized the Student's parents for not allowing her to interview the Student or showed bias against the Student's parents for this reason; rather, for allegations whether the testimony and evidence was limited to the allegations of the Student about the Teacher's behavior, the Investigator identified that this would create a greater difficulty in corroborating the information. For the reasons described in detail above, OCR determined that the Investigator followed a process that resulted in an adequate and reliable investigation.

In summary, OCR found that the District violated the requirements of Section 504 and Title II by failing to conduct a sufficiently prompt investigation of the disability discrimination complaint that the Student's parents filed with the District on July X, 2016.

To address the issue of non-compliance in this complaint, the District agreed to enter into a Resolution Agreement (Agreement) which is aligned with the complaint allegations and the findings and information obtained by OCR during its investigation. The Agreement provides the following: 1) when contracting with outside investigators, the District commits to monitoring completion to ensure that the investigation is completed consistent with AR 1312.3, 2) by a reasonable date to be specified by the District, the District will review and provide OCR with a copy of all complaints of allegations of unlawful discrimination on the basis of disability that were received from August XX, 2017 to June X, 2018 and were not resolved within the timeframe set forth in AR 1312.3, along with copies of the District's response to the complaints, and 3) the District will provide any proposals for addressing concerns identified as a result of this review to OCR for review and approval.

OVERALL CONCLUSION

OCR is closing the investigation of this complaint as of the date of this letter, and is notifying the Complainant concurrently. OCR's determination in this matter should not be interpreted to address the recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant 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 determination in this 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. Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, any individual may file a complaint with OCR 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 for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Sewali Patel, Civil Rights Attorney, at (415) 486-XXXX or sewali.patel@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Acting Team Leader