



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200, ROOM 1545  
SAN FRANCISCO, CA 94102

February 11, 2022

**VIA ELECTRONIC MAIL**

Mr. Dan Thomas  
Executive Director  
Urban Corps Charter School

Re: OCR Complaint No. 09-17-1543

Dear Mr. Thomas:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has reached a resolution in the above-referenced complaint against Urban Corps Charter School (School). While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the School for its patience.

The complaint alleged that the School discriminated against students on the bases of national origin and disability, and that the Complainant<sup>1</sup> was subjected to retaliation for her advocacy on behalf of English learner students (“EL” or “EL Students”). Specifically, OCR investigated the following issues:

1. Whether the School denies students a free appropriate public education (FAPE) by failing to evaluate and to follow adequate procedures for evaluation and placement of students in a timely manner even though it has reason to believe that the students may need special education or related services because of a disability;
2. Whether the School does not provide EL students with educational services that are designed to teach them English and provide them equal access to the School’s educational program until they are fully English proficient; and
3. Whether the School retaliated against the Complainant for her advocacy on behalf of EL students by writing increasingly negative performance evaluations, failing to renew her contract and indicating that she could never re-apply to work in the Charter school, and putting false information in her personnel file.

OCR investigated the complaint under the authority of 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

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<sup>1</sup> In previous correspondence with the School, OCR identified the Complainant and, to protect the Complainant’s privacy, will not do so here.

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

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. OCR also investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The School receives funds from the Department and is subject to Section 504, Title II, Title VI and their implementing regulations.

To investigate this complaint, OCR reviewed documentary evidence provided by the Complainant and the School in its initial data response on August 18, 2017, and a supplemental data response on January 21, 2021. OCR also interviewed the Complainant, the School’s Executive Director, the School Psychologist, the Academic Director, and other School administrators. Additionally, OCR conducted an onsite visit in June 2018, during which OCR interviewed teachers and staff and conducted a review of student files. Based on this investigation, OCR has determined there is insufficient evidence to support a finding that the School retaliated against the Complainant for her advocacy on behalf of EL students. Prior to completion of the investigation, the School expressed interest resolving Issue No. 1 and Issue No. 2 pursuant to a voluntary resolution agreement under Section 302 of the *Case Processing Manual*.<sup>2</sup>

### Background

The School is located in San Diego, California and is a locally-funded charter school, authorized by the Mono County Office of Education (MCOE). The School has four campuses providing adult high school education programs in San Diego County. Two days per week, students attend the School’s academic program. Three days per week, students receive vocational training through community-based programs, for which they are paid. The School is designed as a four-year program for high school diploma completion, providing vocational education requirements only.

### Issue No. 1 – *Failure to Follow Evaluation Procedures for Students Suspected of Having Disabilities*

### Facts Gathered to Date

According to the School, if it learns during enrollment that a student has an Individualized Education Plan (IEP), the School Psychologist and Special Education Coordinator meet with the student to discuss the student’s previous supports and ask whether the student wants to continue receiving special education services. The School reported that they tell the student that the School can provide comparable support within the classrooms without a formal plan because the School has small classes and is able to provide “504s for all.”

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<sup>2</sup> *Case Processing Manual* (August 26, 2020) <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

According to the School Psychologist, all students have access to certain “accommodations,” including tutoring, repetition of instructions, peer support, after school support, counseling, and preferential seating. She reported that the School does not “newly diagnose” for IEPs or Section 504. Instead, student files would be referred to MCOE, which serves as the School’s Special Education Local Plan Area and conducts special education assessments for the School. The School had no examples of this occurring.

According to the School, students are generally not assessed prior to ending special education services. The Special Education Coordinator stated that because students are over age 18, the School does not need to reassess before exiting students. Instead, the student is presented an IEP Exit Form (Exit Form) to sign that terminates special education services. Because the students are adults, parental consent is not required to exit special education services.

The Exit Form states in English that the student is “choosing to revoke [their] consent for the provision of special education and related services” and details that they will “no longer be entitled to an Individualized Education Program.” The Exit Form states that students have the right to procedural safeguards and that the student will be given a copy for their review. OCR did not receive a copy of what procedural safeguards, if any, are provided to students. The School provided records showing that between October 25, 2016 and December 19, 2019, twelve (12) students signed Exit Forms.

For students who maybe suspected of having a disability, the School monitors the student’s progress, documents any general education “accommodations” that are provided within their classroom, and waits at least two semesters before assessing a student. A student study team (SST) meeting is scheduled only after the teacher has exhausted and documented all potential instructional strategies in the classroom and determines that the lack of academic progress is not due to a language barrier or lack of instruction. According to School policy, if the SST team recommends an assessment, the School Psychologist determines whether an assessment is needed by examining whether any concerns are the result of a language issue, lack of instruction, related to an “academic issue”, or whether the student’s needs can be met through a Section 504 Plan rather than an IEP. If the School Psychologist determines a special education assessment is needed, the assessment would be conducted by MCOE. Neither the School nor MCOE had record of the School referring a student to MCOE for special education assessment between Fall 2016 and the present.

During onsite interviews, teachers at the School described varied understandings of the policies, procedures, and practices for special education. For example, one teacher stated that the School “do[esn’t] necessarily have special education services because [the] students are all adults.” Another teacher reported that there are up to four students with Section 504 Plans or IEPs in their class who receive a decreased workload and skeleton worksheets. The teacher described that they participated in a Section 504 meeting with the Special Education Coordinator and School Psychologist where no student was present.

In January 2021, the School provided OCR with an updated description of special education policies and procedures. The updated procedures are the same or substantially similar to the previous procedures provided to OCR.

The School provided documentation showing that 937 students were enrolled at the School during the 2018-2019 and 2019-2020 school years. The School's records indicate that the School was aware of thirteen (13) students who had Section 504 Plans and one (1) student had an IEP when they enrolled. Of these fourteen students, twelve (12) were presented with and signed Exit Forms and the School convened a Section 504 meeting for only one student during the 2019-2020 school year. A separate spreadsheet lists "accommodations" for thirteen (13) of these fourteen (14) students, though it is unclear how the School provided "accommodations" since records show these students had exited themselves from special education services.

OCR reviewed student files, including special education records and learned that during the 2016-2017 school year, the School held SST meetings for three (3) students. None of these students were referred for special education assessment, though the students had moderate or major problems reported in areas including attention, speech, and anxiety, that had not been fully resolved through the interventions provided.

The School provided information demonstrating that during the 2016-2017 school year four (4) current EL students had entered the School with a Section 504 Plan or an IEP, and six (6) students had been referred for special education, but none were assessed. Records show that during the 2017-2018 school year, the School suspected one student may have autism spectrum disorder and required that the student provide a medical diagnosis. The School did not conduct a psycho-educational assessment to determine whether the student qualified for a Section 504 Plan or an IEP.

### Legal Standards

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 students without disabilities 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. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. 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 104.36 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.

### Analysis & Determination

OCR's review to date of the School's special education procedures and practices raised a concern that the School may largely not be following procedures compliant with the Section 504 requirement at 34 C.F.R. § 104(a) for evaluation of students who are believed to need special education and related aids and services. The School's policies and practices indicate that the School may be applying a heightened standard for referral for special education assessments that prolongs the process, narrows the criteria for determining whether a student is believed to need special education. Specifically, the School monitors a student for at least two semesters and requires teachers to exhaust and document all potential general education instructional strategies prior to holding an SST to consider whether to evaluate the student for special education and related services. In the event that an SST recommends that a student be assessed, the School Psychologist conducts an additional level of review to determine whether the student's needs can be met with other accommodations, and if so, the School finds that the student does not need to be assessed. Under this stringent standard, the School did not refer any students to MCOE for special education assessments during the 2018-2019 and 2019-2020 school years. Additionally, during the 2016-2017 and 2017-2018 school years, the School did not refer for assessment students with known, unaddressed attention, speech, and anxiety needs, and rather than a refer a student with Autistic-like behaviors to MCOE for assessment, the School asked the student to obtain a medical diagnosis.

OCR's review of the information received to date also raised a concern under 34 C.F.R. § 104.36 regarding a possible failure to provide notice of procedural safeguards to students with disabilities or who were suspected of having a disability. While the School provided Exit Forms in English that included a statement about procedural safeguards, and these forms were signed by students, it is not clear that such procedural safeguards were in fact provided to students during initial discussions regarding possible special education services or prior to students' revocation of consent for receipt of special education services, and in a language that the students understand.

The information gathered to date raised an additional concern under 34 C.F.R. § 104.33 that students with disabilities may not be receiving a FAPE designed to meet their individual needs. The information the School provided to OCR did not indicate what accommodations and modifications the School provides to students with IEPs and Section 504 Plans.

Additionally, the information OCR reviewed raised a question as to whether the School failed to evaluate students with disabilities prior to a significant change in placement as required by 34 C.F.R. § 104(a). The School's enrollment procedures and the information gathered to date indicate that the School has a practice of exiting students from special education without first conducting an evaluation. The Special Education Coordinator and School Psychologist inform

each student with an IEP or Section 504 Plan who enrolls that the School can provide what is included in their IEP or Section 504 Plan within the classroom because the School provides “504s for all”. The School then provides the Student with the Exit Form to sign revoking their consent for special education and related services. According to information provided to OCR, as of June 6, 2018, none of the students with IEPs or Section 504 Plans continued to receive special education and related aids and services after enrollment, and the School did not conduct special education assessments prior to exiting these students from special education. In total, twelve students signed Exit Forms between October 2016 and December 2019. Therefore, the School’s practice raises a concern that, whereas the Exit Form formally states that students are choosing to opt out of special education, in practice, the School is exiting students from special education without first conducting an evaluation and convening an IEP or Section 504 meeting to determine appropriate placement for the student. This practice also raises a concern that School may be discouraging students from receiving the continued support and protections they are entitled to under the law.

To address the compliance concerns identified above, the School agreed to enter into a resolution agreement, which when fully implemented would resolve the compliance concerns identified by OCR, including the following: draft new special education policies and procedures covering identification, evaluation, and placement of students with or suspected of having disabilities; issue written guidance and training for all staff outlining the School’s obligations with respect to Section 504; and conduct a review of all students suspected of having a disability, including those who have signed Exit Forms, to determine whether an evaluation needs to be conducted and whether compensatory and/or remedial services are appropriate to address any possible loss of FAPE. In addition, the School will provide procedural safeguards to all students identified as potentially being a student with a disability in a language they can read and understand.

## **Issue No. 2 – *The School’s Program for English Learners***

### Facts Gathered to Date

The Complainant reported to OCR multiple concerns regarding the School’s program for English learners, including that teachers were not using EL teaching strategies and that important materials, including enrollment paperwork and initial assessments, were not translated for students. Further, the complaint alleged that EL students were not appropriately placed within the School, that students suspected of having a disability were not evaluated or provided necessary supports, and that there were limited or ineffective supports offered to ELs, particularly those who had been mainstreamed but had not yet been reclassified as English proficient (RFEP).

The School initially reported to OCR that approximately fifty percent (50%) of its student population was made up of young people placed through the United Nations Refugee Program (refugee program). The other approximately fifty percent (50%) of students at the School were local to the County and had been historically unsuccessful in traditional education systems. In December 2020, the School reported that its population of refugee students had significantly decreased to four refugee students enrolled and that a larger portion of enrolled students had been born in the United States but had not been enrolled in California schools for many years,

and many students had experienced interrupted schooling. Because of this, many students had not previously been designated as EL students.

The School provided to OCR an EL policy both in the initial phase of the investigation and again in its supplemental data response in January 2021. The January 2021 policy reflected very few changes from the version first provided to OCR; it does not reflect the demographic change that the School reported to OCR in December 2020.

According to the School's EL procedures for the initial identification and assessment of students who may be ELs, students are identified as ELs based on a home language survey and English proficiency assessment. The School then administers a diagnostic assessment and reviews any available student records to determine the student's placement in either structured English immersion (SEI) or English language mainstream (ELM). Students requiring SEI are placed into one of four- tiered levels for SEI: ELD-1; ELD-2; ELD-3; and ELD-4. In addition to designated ELD, students receive "integrated ELD instruction" in specific courses: Math, Health, Life Skills, and Vocational Ed. According to the School, integrated ELD provides instruction in academic skills and language needed for placement within ELM and materials are adapted and scaffolded support is provided as needed.

The School's EL program document states that SEI is designed for EL students who score at less than reasonable fluency. At the start of this investigation, a majority of EL students enrolled at the School were recent immigrants, refugees, and adult learners with limited formal education and/or extremely limited exposure to the English language.

During OCR's onsite in 2018, OCR learned that in some content area classes, volunteer community members served as "aides" in classrooms to assist with individual instructional support to students; instructional aides also conducted pull-out for small groups of students. OCR also learned that in order for the School to communicate with EL students who spoke under-represented languages, the School used a common online translation service, higher level EL students, peer mentors, or; community volunteers to assist refugee students when they are newly arrived.

OCR also learned that for EL students who get "stuck" in ELD-2, the School generally waits until the second year of a student's demonstrated lack of progress before discussing what classroom interventions might be helpful. Most teachers were not aware of any EL students on their rosters who had disabilities and had never participated in a Section 504 meeting. During its onsite visit, OCR observed classrooms in which EL students were mainstreamed and required to receive integrated supports to access the curriculum. One teacher stated that she did not have EL students because her students were "mainstream;" however, she shared with OCR a number of strategies, such as use of visuals, graphic organizers, and total physical response, that she indicated she implements in her classroom. Another teacher told OCR that EL students were permitted to turn in work late and that he lowered the Lexile level of his lessons if students exhibit learning gaps. The School provided OCR with a document outlining the process for reclassification of ELs to fluent English proficient which discussed the reclassification process, including the criteria for reclassification, such as grade point average and scores on the California state assessments.

OCR reviewed English proficiency classification and levels for 613 students enrolled during the 2018-2019 and 2019-2020 school years. Of the 613, there were 84 RFEP students and 452 EL students. Student scores on the California State English language proficiency exams show that the majority of EL students for whom more than one score was available did not demonstrate improvement over two or three administrations of the exam. A handful of students (fewer than 15) demonstrated some improvement in State scores, and at least five students' scores decreased over multiple administrations of the exam.

OCR reviewed School data for the 84 students who were classified as RFEP and the English language proficiency scores for the twelve (12) students reclassified by the School. The final scores from state assessments for these RFEP students ranged from Early Advanced to Advanced. The School did not provide OCR information related to the tracking of these students' progress and performance following reclassification.

### Legal Standards

The Title VI implementing regulations, at 34 C.F.R. § 100.3(a) and (b), provide that a public school or school district may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, a school district may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

Schools and school districts must take affirmative steps to address language barriers so that limited English proficient students (English learners or EL students) may participate meaningfully in the district's educational programs. Specifically, a school or district's language assistance program must be based on sound educational theory; the program and practices of the district must be reasonably calculated to effectively implement the district's educational theory. Schools and school districts must evaluate implementation and monitor outcomes of their services for EL students to determine whether the services are successful in meeting these responsibilities and the academic achievement standards set by the district.

A school district must select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to effectively implement their educational theory. OCR also reviews the educational program to see whether it succeeds in producing results indicating that the students' language barriers are being overcome in a reasonable period of time. School and districts have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. This dual obligation requires schools and districts to design and implement EL programs that are reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time.



With respect to evaluation, schools and districts must validly, reliably and annually measure EL students' performance on the state English language proficiency assessment and in academic content areas. Monitoring systems should include benchmarks for expected growth and ensure that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the EL program. Schools and districts should take appropriate steps to assist students who are not adequately progressing towards those goals and modify EL programs as necessary, if the dual obligation is not being met.

### Analysis & Determination

Under Title VI, schools and school districts are required to provide all English learner students with instruction that is designed and reasonably calculated to enable them to attain fluent English proficiency within a reasonable amount of time, based on their level of English proficiency. Schools must also ensure that EL students receive instruction in all content areas that is accessible to them so that they do not incur irreparable deficits while they are developing English proficiency. These services must be provided until students have attained fluent English proficiency and are able to participate equally with their English fluent peers in the standard instructional program. Schools must also monitor student progress while they are learning English to ensure that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the EL program and take the steps that are necessary to ensure that any deficits are identified and addressed.

OCR's investigation to date raises concerns about the effectiveness of the School's program for EL students. First, there was a lack of clarity about whether EL students in content area courses are identified appropriately by their teachers. According to the School's written program, EL students may be relatively low in English proficiency but placed in ELM and receiving instruction from teachers in "mainstream" content area classes. Without clarity as to what is expected of content area teachers with respect to integrated English language supports, it is not clear that students are receiving equal access to the School's educational program. This is reflected in a lack of adequate progress for EL students in both academic success and development of English language proficiency.

Second, the investigation to date raises a concern that the School may not adequately be monitoring the EL program's success through reviewing EL students' academic achievement and progress toward fluent English proficiency. Additionally, it is not evident based on the investigation to date, that the School is monitoring reclassified students beyond their reclassification, despite information showing that some students have been reclassified in spite of low scores on state standardized assessments. OCR is concerned by the lack of a clear system for tracking and monitoring student progress such that adjustments can be made when programs or practices are demonstrably inadequate.

Third, the School states that it has supports and interventions for EL students, such as classified support personnel; however, teachers lacked clarity as to the ELs that might be within their "mainstream" classrooms and how to use what classified aide support exists. While volunteer support has many benefits, use of volunteers in classrooms does not constitute qualified support staff for EL students. The School has not identified what classified personnel exist and does not

appear to have a clearly articulated plan for how students in need of such interventions and supports are identified and when such interventions are offered.

Finally, the School was not able to articulate to OCR its process for monitoring of EL students and RFEP students in such a way that a student's individual English language proficiency needs and/or resultant content area deficiencies are addressed in a purposeful manner.

To address the compliance concerns OCR identified with respect to the School's program for ELs, the School agreed to enter into a resolution agreement, which when fully implemented would resolve the compliance concerns identified by OCR. The resolution agreement includes the following provisions: the School will retain a consultant with expertise in development and implementation of EL programs; develop a Master Plan for EL students that includes a description of all components of the EL program, including identification, initial assessment and placement, interventions for students who are struggling to make progress toward proficiency in English within a reasonable amount of time and/or access curriculum in all content areas so as to avoid incurring deficits in learning, as well as a plan for monitoring EL and RFEP progress toward English proficiency and relative success in all content areas. In addition, the School will develop an EL Catch-Up plan for all EL students (including adult ELs) who, based on a review of assessment data, have not made adequate progress toward English proficiency over the previous two years. The School will also provide ongoing professional development for all teaching staff that includes teaching strategies, EL-specific interventions available to students, the School's EL Master Plan, and the expectations related to monitoring of progress for EL and RFEP students.

**Issue No. 3 – Retaliation Against Complainant for Advocacy on Behalf of EL Students**

Factual Findings

During the 2015-2016 and 2016-2017 school years, the Complainant was employed as an XXXXXXXX XXXXXXXX XXXXXXXXXXXX teacher by the School pursuant to two separate at-will contracts that terminated on June XX, 2017.

On June XX, 2016, the School completed the Complainant's first teaching evaluation. On a scale of 1-5, with 5 being the highest, the Complainant received Xs and Xs for her ability to engage and support students, to create an effective learning environment, and for her development as a professional educator. The Complainant received Xs in the area of planning instruction and was noted to require improvement in the areas of punctuality and compliance with the School's policies and procedures. In particular, the School instructed the Complainant that she was required to arrive and begin taking attendance on time each morning.

In an email dated July XX, 2016, the Director of Academics reminded the Complainant of her new start time (X:XX AM) and asked that she call or text if she were going to be late.

On August XX, 2016, the Executive Director emailed teaching staff reminding them that their report time was X:XX AM. The same day, the Complainant emailed the Director of Academics, apologizing for being late that morning and sharing that she hoped her XXXXXX carpool schedule

would not interfere with her ability to be on campus by X:XX AM. On September X, 2016, the Executive Director emailed teaching staff, stating that many of them had been late that week and underscoring that tardiness would not be tolerated. The Complainant responded asking if they were to report to the School at X:XX AM or be present at the attendance line at X:XX AM. The Director of Academics responded that she should be in line, ready to work, not arriving at X:XX AM and that the morning routine is very time sensitive. On September X, 2016, the Complainant expressed a misunderstanding that she needed to be in line at X:XX AM and not just on campus. The Director of Academics responded on September XX, 2016, with copy to the Executive Director and the School Psychologist, reminding the Complainant that she had asked teachers to be present and collecting attendance in the designated area at X:XX AM and that because the Complainant had been late twice during the first week, the Academic Director had suggested she arrive earlier to avoid any disciplinary action that might result from tardiness.

In an email dated September X, 2016, the Complainant asked the Director of Academics if the School received Title III funds, and explained that if so, the School was required to provide students with an annual notification of their English proficiency levels. The Director of Academics replied that the School did not receive Title III funds. The Complainant told OCR that she believed this information was not well-received and that her email was seen as disrespectful by School administration. The Complainant stated that a non-credentialed replacement was recruited, hired, and placed in the Complainant's classroom immediately after this email exchange.

On September XX, 2016, the Director of Academics reminded the Complainant that she was required to upload a classroom video so the School could conduct a classroom observation. The Complainant agreed to do so, but never, in-fact uploaded the video, and as a result no classroom observation was completed for the first semester of the 2016-2017 school year.

In an email dated October X, 2016, the Director of Academics notified the Complainant that she had not received the Complainant's attendance from the previous week. The Director of Academics also told the Complainant that attendance should be entered by the end of each day and suggested she speak with others if she was having trouble completing that task.

On October XX, 2016, the Director of Academics emailed the Complainant expressing concern that her gradebook had very few grades. The Director of Academics reminded the Complainant that School policy required that grades be entered in a School-approved system each week by Friday afternoon because the Complainant was behind on recording grades within the School-approved system and was using an unauthorized grading system.

On October XX, 2016, the Director of Academics sent an email follow-up to a meeting of the previous day. The email outlined instructional priorities and directed the Complainant to focus on them in her classroom management and instruction. The Director of Academics notified the Complainant that she would observe the Complainant's classroom instruction and provide constructive feedback and that the comments should not be considered as "judgmental or disciplinary."

The Complainant told OCR that in fall 2016, she raised concerns with School administration and the Chief Executive Officer (CEO) regarding a lack of interpretation or translation services for adult students who were limited English proficient. Specifically, the Complainant stated that the School hired a teacher to serve as a language translator who was not a certified interpreter.

The Complainant told OCR that after meeting with the CEO, the Director of Academics and the Executive Director of the School met with Complainant to tell her that the CEO had been very upset by the Complainant's comments and informed the Complainant that she should have come to the Director of Academics and the Executive Director of the School prior to raising concerns with the CEO.

The Complainant told OCR that after this meeting, her contributions to the EL program were "dismantled," and a new teacher was brought in who eventually took the Complainant's position as XXX XXXXXXXXX. She went on to explain that she felt her job performance was questioned and her accomplishments were ignored after this point.

In an email conversation dated October XX, 2016, the Director of Academics informed the Complainant that her lesson plan was "too rigorous and not matched well with the learning objectives" for the level of English proficiency of her newcomer students.

On December X, 2016, the Complainant received a performance evaluation. The Complainant received marks of "proficient" and "advanced" in many areas and "needs improvement" in other areas, including lesson delivery and execution, and student assessment procedures. The evaluation provided suggestions for improvement, such as increasing direct instruction and clearly defining learning objectives and expectations for each activity.

On January XX, 2017, the School issued, and the Complainant signed an Employee Write-Up Notice, noting it was a first notice for substandard work and violation of policies because the Complainant submitted semester grades three weeks late. The Write-Up notice stated that the Complainant was granted an extension of ten (10) days due to bereavement leave, but that the grades were submitted twelve (12) days beyond the extension.

On or about April X, 2017, the Complainant delivered a lesson as part of a video observation conducted by the Director of Academics. The evaluation identified the Complainant as needing improvement in 29 areas and demonstrating proficiency in 28 areas. The performance evaluation reiterated previous areas of concern related to lesson delivery, lack of specificity in sharing lesson objectives with students, poor use of direct instruction, and an "inappropriately organic discussion format."

In an email on April X, 2017, the Director of Academics informed the Complainant that she was "not pleased with the structure, organization, and delivery of the lesson" the Complainant had delivered. The Director of Academics instructed Complainant to complete several professional development activities and informed Complainant that her classroom would be observed again prior to the end of the school year.

On or about June X, 2017, the School informed the Complainant via letter that the School was not re-electing the Complainant's employment agreement for the 2017-2018 school year and all subsequent school years. The School told OCR that the Complainant was immediately placed on administrative leave through June XX, 2017, when her employment terminated.

According to the School, on June XX, 2017, while gathering the Complainant's belongings for her to pick up at a designated time, the School became aware that student files were missing from the Complainant's classroom and asked that the Complainant return the student files if she had taken them home.

On June XX, 2017, the Director of Academics emailed the Complainant recounting the timeline of events surrounding the Complainant's leave and the discussion of final grades and missing student files. The Director of Academics stated in the email that it was in the Complainant's and the School's best interests that the files be returned. The Director of Academics called the Complainant again and told her that if the student files were not returned by 9:00 AM the following day, the School would report "misconduct" to the California Commission on Teacher Credentialing and potentially take legal action against the Complainant.

On June XX, 2017, the Complainant filed a complaint with OCR alleging violations of Title VI, Section 504, and Title II, and that the School's actions against her (non-re-election and threatening legal action) were retaliation for her advocacy on behalf of EL students.

### Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. 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.

The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

### Analysis & Determination

OCR has determined there is insufficient evidence to find that the School violated Title VI with respect to this issue. Under Title VI, it is unlawful to retaliate against an individual in response

to activities protected under the law, such as advocating for the rights of a protected class of students. Here, OCR found that the Complainant engaged in protected activity when she voiced concerns about the School's hiring of an uncertified translator in October 2016 and when she filed her OCR complaint in June 2017. OCR also found that the Complainant was subjected to adverse actions when she received critical evaluations, had her employment contract terminated, and when she was warned that the School might pursue litigation against her. OCR determined that some of these adverse actions occurred after the Complainant's initial protected activity in October 2016, establishing a causal connection based on proximity in time.

Next, OCR examined whether the School provided a facially-legitimate, non-retaliatory reason for the adverse actions taken. Beginning as early as June 2016, prior to the time when the Complainant told OCR she engaged in advocacy for EL students, the School issued and documented several warnings to the Complainant about her late arrival to school, failure to complete attendance and grades in accordance with School policies, and concerns about Complainant's competency as an educator. Specifically, in June 2016, the School noted that the Complainant required improvement in the areas of punctuality and compliance with the School's policies and procedures. Similarly, in the first few weeks of the Fall 2016 semester, the School again warned the Complainant about her punctuality. In October 2016, the Director of Academics notified the Complainant that she had not received the Complainant's attendance from the previous week and that School policy required that grades be entered in a School-approved system each week by Friday afternoon because the Complainant was behind on recording grades within the School-approved system and was using an unauthorized grading system. OCR found that the School documented and notified the Complainant of performance concerns on twelve occasions and the onset of the School's performance concerns occurred prior to the Complainant's protected activities. Therefore, while the Complainant views the critical evaluations of her performance as retaliation, the record shows that even for those adverse actions taken after September 2016, the School had a facially-legitimate, non-retaliatory reason for the adverse actions taken against the Complainant.

As for the threat of legal action against the Complainant, OCR also found that there is insufficient evidence that the School retaliated against the Complainant. While the Complainant considered the threat of litigation as retaliatory, the School made the statement after the Complainant was placed on administrative leave and School administration discovered that student files were missing from the Complainant's classroom. Therefore, the comment was made in response to the student files missing from the Complainant's classroom and not in response to the Complainant's advocacy for EL students. Accordingly, OCR found that the School's asserted basis for taking disciplinary action, ultimately not renewing the Complainant's at-will employment contract, and threatening legal action against the Complainant was not pretextual and there is insufficient evidence for a finding that the School is out of compliance with respect to Issue No. 3.

### Overall Conclusion

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

To address the issues alleged in Issue No. 1 and Issue No. 2, the School, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the complaint allegations and the information obtained by OCR during its investigation. Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of Issue No. 1 and Issue No. 2. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the School is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

With respect to Issue No. 3, OCR has determined that there is insufficient evidence for a finding that the School retaliated against the Complainant.

The Complainant has a right to appeal OCR's determination of Issue No. 3 only within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the School. The School has the option to submit to OCR a response to the appeal. The School must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the School.

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 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 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.

Please be advised that the School 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, the individual 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, personally identifiable 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 Maria Asturias ([Maria.Asturias@ed.gov](mailto:Maria.Asturias@ed.gov)) or Anne Busacca-Ryan ([Anne.Busacca-Ryan2@ed.gov](mailto:Anne.Busacca-Ryan2@ed.gov)), the attorneys assigned to this matter.

Sincerely,

/s/

Kana Yang  
Team Leader