



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

May 16, 2018

Dr. Ruth Pérez
Superintendent
Paramount Unified School District
15110 California Ave.
Paramount, California 90723

(In reply, please refer to case no. 09-17-1617.)

Dear Dr. Pérez:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Paramount Unified School District (District). The Complainant¹ alleged that the District discriminated against the Student on the basis of disability. Specifically, OCR investigated the following allegations:

- (1) Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate the Student in a timely manner.
- (2) Whether the District failed to provide the Complainant with notice of procedural safeguards regarding the identification, evaluation or placement of the Student.
- (3) Whether the District revoked the Complainant's Interdistrict transfer (IDT) based on the Student's disability.
- (4) Whether the District subjected the Student to harassment by other students on the basis of disability, and whether the District failed to respond appropriately and effectively to notice of the disability harassment.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990, as amended (Title II). Section 504 and its implementing regulation prohibit discrimination on the basis of disability by recipients of Federal financial assistance. Title II and its implementing regulation prohibit discrimination on the basis of disability by public entities. The District receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504, Title II, and their implementing regulations.

¹ OCR previously provided the District with the identity of the Complainant and Student, and we are withholding their names from this letter to protect personal privacy.

OCR began its investigation by gathering and reviewing documents and correspondence provided by the Complainant and the District, and by conducting interviews. After careful review of the information gathered in the investigation, we concluded that the District did not violate Section 504 and Title II with regard to the fourth issue OCR investigated. Prior to OCR completing its full investigation, the District voluntarily agreed to address OCR's areas of concern regarding the first through third allegations while they were under investigation. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, and the terms of the resolution reached with the District.

Background

- The Student was in first grade during the 2016-17 school year, and attended a District Elementary School (School) using an IDT from XXXXXXXX XXXXXXXX School District (Home District).
- The District's Interdistrict Transfer of Students procedure, AR 5118.2(a), provides that an IDT request from a parent is either approved or denied by the Director of Student Services. The policy provides that IDT requests may be denied for attendance problems during the six months prior to the request for a permit.
- The District revoked the IDT, effective at the beginning of the 2017-18 school year. The District informed OCR that the IDT was revoked based on the Student's poor attendance records. The Complainant homeschooled the Student after the IDT was revoked.

Issue 1: Whether the District failed to provide the Student with a FAPE by failing to evaluate the Student in a timely manner.

Legal Standards

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

Section 104.35(a) 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 in a timely manner.² Under section 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. Under subsection (c) of the same, placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement. In determining whether a district or school has conducted an evaluation in a reasonable period of time, OCR takes into consideration the 60-day timeframe provided by the IDEA regulations and the district or school's own procedures.

Issue 2: Whether the District failed to provide the Complainant with notice of procedural safeguards regarding the identification, evaluation or placement of the Student.

Legal Standards

Section 104.36 of the Section 504 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. A procedure consistent with the IDEA is one means of meeting this requirement.

Issue 3: Whether the District revoked the Complainant's IDT based on the Student's disability.

Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public school district may not, directly or through contractual,

² 34 C.F.R. 104.35(a); Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (December, 2016).

licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service, afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others, or limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR first examines whether there is direct evidence of discriminatory treatment on the basis of disability. Absent that, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

Facts Gathered to Date

- The Complainant informed OCR that in around November 2015, when the Student began his kindergarten year at the School, she and her husband told the School Principal and the Student's Counselor that the Student did not talk with adults, and that he frequently cried and fell to the floor. She stated she told them that when the Student was XX XXXX XXXXX, it took him around three months to settle down, during which time he did not speak. She also stated she told them that the Student gets anxious, and his anxiety increases the more anyone tries to have him speak. The Counselor also recalled portions of this meeting.
- The Student's first grade teacher (Teacher) informed OCR that she had spoken with the Student's kindergarten teacher about the Student, and was therefore aware on his first day of first grade that he did not speak with adults and that it had been difficult for him to come into the kindergarten class when the school day began. She stated that, at the beginning of the year, the Counselor gave her a packet of information on selective mutism about the Student, and told her that the Student had not been formally diagnosed, and that neither she nor the Teacher could diagnose the Student because they were not psychologists.
- The Teacher informed OCR that she observed the Student crying daily or often for a few weeks at the start of the school year. After that, it took a while for the Student to come to her class, in some cases as late as lunch time. The Teacher stated that while most first grade students can be sad and cling to their parents at the start of the day, what was unusual and difficult about the Student was how long that behavior lasted compared to her other first grade students.

- The Counselor also informed OCR that the Student was often unwilling to go to class in the morning during his first grade year. She stated that while the Student would line up for class on arrival on some school mornings, at other times he would be with her, sometimes for an hour and 20 minutes before he would go to the Teacher's classroom. She stated the Student also spent time some mornings in the main office or with the Teacher on Special Assignment. She stated that the Student's behavior of not going to class had happened in other students before during her career, but that it was not normal for a student.
- On September XX, 2016, the Counselor wrote a referral for outside mental health services for the Student, writing on a form, "does not speak cries daily" and checked off boxes on the form labeled "Anxious/nervous, Depressed/sad, Fearful, Attendance, and Cries often."
- The Teacher informed OCR that she used Response to Interventions (RTI) interventions of small group differentiation and peer support with the Student and that she met with the Language Arts Coach on September XX, 2016 for an RTI meeting about the Student. She stated that she started the RTI process because she could not assess the student academically if the Student was not communicating with her.
- The Student's Achievement Report for his first grade year included scores showing little or no progress toward meeting grade level standards in areas such as "Plans, speaks, and presents information and ideas in complete sentences." The Teacher's Achievement Report comments for the last three quarters stated that she was unable to properly or accurately assess the Student because he did not communicate orally with adults.
- The Teacher informed OCR that she has referred students for speech and for resource specialist program (RSP) services. She told OCR that she talked with a Speech Therapist who thought that it would be difficult to assess the Student for speech services because he was not speaking to adults, and that as a result, the Student was not referred for Speech Therapy and did not, to her knowledge, ever receive speech services. She stated that the School also has a Learning Center and students often go to it before being referred for speech services or RSP. She stated she did not refer the Student to the Learning Center because any time away from the mainstream classroom would not have helped him, because his issue was not "academic"; it was that he was not communicating with adults.
- Neither the Teacher nor the Counselor referred the Student for evaluation or discussed Section 504 or evaluation with the Complainant during most of the school year.
- The Teacher informed OCR that, as the year went on, she assessed the Student by calling the Student and a peer she selected (who she knew did not know the answers to her assessment questions) to a table in the back of the room with her,

and would ask the Student the question, the Student would whisper the answer to the peer, and the peer would tell her the answer. Using this whisper-to-a-peer assessment, and her observations about the books he read and his writing skills, she determined that, by the end of the school year, the Student could decode words and was reading fluently.

- On April X, 2017, the School Principal denied Student's IDT renewal application, for the 2017-2018 school year, listing the reason as excessive tardies and absences (unexcused). The Student's first grade Achievement Report showed 15 absences, ten of which were unexcused, and eight tardies.
- The Complainant informed OCR that she had written some excuse notes for a few of the days the Student was sick but they were sometimes submitted late, and that she did not always provide them for the Student's absences. She stated the School sometimes would not apply them if they were late. She stated that when the Student became anxious and nervous, he often got headaches, which resulted in a fever, and that she would not send the Student to School on those days.
- The Complainant informed OCR that she met with the Principal on May X, 2017, to discuss the Student's tardies and absences, and that during this meeting the Principal informed her that the Student's IDT had been denied. The Complainant stated that during this meeting, she went over the Student's kindergarten history, including his anxiety and nervousness problems since he was a baby, and told the Principal about his anxiety-related headaches and fevers. During the meeting, the Complainant said that the Principal said that she works with parents to do something about student absences, but that she had no documentation or paperwork about the Student, so nothing could be done about the Student's absences.
- On May X, 2017, the Complainant wrote a letter requesting that the Student be seen by a School psychologist and that he receive a 504 plan and an IEP. She wrote the Student was receiving therapy and it was the Complainant's understanding that the Student's diagnosis had to be from a psychologist. She wrote that the Student has trouble speaking with adults, and that he ends up with stomach aches, headaches, and fever. She wrote she did research, and came up with "selective mutism." She wrote the Student has these problems in and out of school.
- The District informed OCR that a Section 504 Evaluation Team met on May XX, 2017, discussed the Complainant's concerns regarding the Student's inability to talk and the outside therapy he was receiving. The May XX team recorded on a District form that the Student had a disability, and that the Student would benefit from a 504 plan in the instructional assessment setting.
- On June X, 2017, the District held a Section 504 team meeting, and created a 504 plan. The Student 504 plan described the Student's present level of performance as doing well in math, and displaying great social skills with peers. The Student's disabling condition was listed as not speaking to any adults, and that the Student's

ability could not be assessed without oral communication. The 504 plan offered accommodations including testing in small group, or one-to-one setting, and the Student using gestures such as pointing, or head nods, to communicate. The other accommodations were therapy (only with outside therapist weekly as needed), and having the Student check in with the Teacher on Special Assignment each morning.

- The 504 Team meeting notes indicated that 504 accommodations were offered to support the Student related to the Complainant's concern that the Student does not speak to adults, but that further assessment was not appropriate because the Student's not speaking was not significantly impacting his academic progress. The Teacher informed OCR that she agreed with the 504 team's decision because assessments for students at first grade age are oral, and because he does not speak to adults, that would result in it erroneously looking like the Student needed extra academic help.
- On June X, 2017, the Complainant signed a School Assessment Team form, checking boxes that she agreed to the Student's 504 plan, and the 504 team recommendations, and that she wanted to rescind her request for assessment at the time. She also handwrote a note dated June X, 2017 on her May X, 2017 request for an evaluation, stating that she met with a group regarding the Student's request for evaluation, and that with the information given to her, she understood the Student might not need an evaluation currently.
- The Student's June X, 2017 504 Plan was signed by the Complainant, and it included her signed acknowledgement of receipt of the District's Section 504 Rights and Procedural Safeguards. The Complainant confirmed to OCR that she received a copy of the District's Section 504 Rights and Procedural Safeguards on June X, 2017.

Analysis and Resolution

A school district must evaluate a student if it has reason to believe the student has a disability and the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral (and not academic) challenges. In determining whether a district or school has timely conducted an evaluation of a student, OCR takes into consideration information such as the 60-day timeframe provided by the IDEA regulations and the district or school's own procedures. The District's policy's requirement for the completion of the 504 identification, evaluation, and placement process within a reasonable period is not incompatible with completion of an evaluation within a 60-day period.

The District did not begin the 504 process during the Student's Kindergarten year, or after the beginning of the Student's first grade year when, for several weeks, the Student was arriving at the School, often crying, and failing to go directly into class to begin receiving his education. Instead, he spent a varied amount of time at the beginning of the school day, up to an hour and 20 minutes, either in the office, or with

either the Counselor or a Teacher on Special Assignment. Both the Teacher and the Counselor described this behavior as “unusual and difficult” and “not normal for a student.” The Counselor referred the Student to outside counseling because he “d[id] not speak” and “crie[d] daily” and she considered him to be “anxious/nervous, depressed/sad, and fearful.”

The evidence considered to date also shows that the Student most likely did not speak to adults at school during either his kindergarten or first grade years. School staff selected the RTI process to address this behavior after the beginning of the 2016-17 school year, in September, 2016, but did begin the 504 process until approximately seven and a half months later, when the Complainant made a written request for a 504 plan and IEP. The use of RTI strategies cannot be used to delay or deny the evaluation of a student who, because of disability, needs or is believed to need special education or related services.

The evidence indicates that neither the Teacher nor the Counselor referred the Student for evaluation under Section 504, in part because his anxiety appeared to have a cause outside the school and because they could not “diagnose” him because they were not psychologists or psychiatrists. The Teacher informed OCR that she did not refer the Student for evaluation because his difficulties were not “academic” and he did not need extra academic support, since he appeared to be successfully learning to read and write. She acknowledged, however, that she was unable to assess his progress accurately because he could not participate in oral testing except, at times, by asking other students to relay his answers. OCR also determined that she marked him as making little or no progress towards meeting standards in the portions of the curriculum that required speaking, including such goals as “Plans, speaks, and presents information and ideas in complete sentences.” According to the Teacher, the speech therapist told her that the Student could not be assessed for services because speech and language assessments were oral. While this evidence suggests that the Student could not be assessed for traditional speech and language services, it did not remove the District’s responsibility to determine whether his refusal to speak reflected that he had a disability and whether he needed other special education or related services.

The evidence discussed above raises concerns that School staff may have had reason to believe that, because of a disability, the Student needed special education or related services based on his inability to participate equally in classroom assessments and instructional activities that required speaking, despite the Teacher’s efforts to modify classroom assessments and instructional activities, and on his high level of anxiety, especially at the beginning of each school year, which resulted in his missing significant amounts of classroom instruction. The evidence also suggests that School staff may not have referred the Student for evaluation, in part, because of possible misunderstandings about the need for a diagnosis prior to evaluation, about the Section 504 definition of disability, and about the obligation of the school to provide a FAPE to students who, because of disability, need related services other than the academic support provided in a traditional special education setting.

The evidence also raises concerns for OCR that, even after a Section 504 team met and determined that the Student was a student with a disability, it may not have conducted sufficient evaluation of the Student to determine the extent of services that were necessary to provide him a FAPE. The Section 504 team considered evidence that the Student was able to read and write at grade level, and concluded that his lack of speaking ability was not “significantly impacting his education” and that further evaluation was therefore not necessary. It apparently did not consider whether the Student required aids and services, such as psychological counseling or speech and language services, as part of FAPE designed to enable him to participate equally in the portions of his educational program that required him to speak. It also did not consider whether he required aids and services to address his anxiety.

It is to be noted that a Teacher on Special Assignment met and checked in regularly with the Student in the morning near the beginning of the Student’s first grade year, before that accommodation was specifically written into the Student’s June X, 2017 504 plan. The Teacher also modified her testing in the classroom for the Student at the beginning of the year, which was also eventually a required accommodation in the Student’s June X, 2017 504 plan.

With regard to the issue of the Complainant receiving notice of procedural safeguards, OCR noted that parents’ rights are described in the District’s Section 504 Notice of Parent and Student Rights. Without further investigation, OCR was unable to determine with certainty exactly when the Complainant received the Section 504 Notice of Parent and Student Rights, and whether it was provided as required by Section 504 regulation when District staff took actions regarding the identification, evaluation, or educational placement of the Student.

Regarding the Student’s IDT, even though the Student had not been identified by the School as a student with a disability, as discussed above, OCR was concerned that District staff may have had reason to believe that the Student’s anxiety was keeping him from his classroom. It was also unclear how many of his absences or tardies were from his anxiety and how many occurred for other reasons. Because the District did not make a determination about whether the Student was a student with a disability, or evaluate the Student at any time prior to the revocation of his IDT, it did not address his inability to attend school or consider modification of school attendance rules in response to an anxiety disability. OCR was concerned that, in revoking the Student’s IDT because of his absences, the District may have failed to conduct the necessary determination to determine whether the absences were disability related, and then if they were, to determine whether special education or related aids and services were necessary to provide the Student a FAPE.

To determine whether the District failed to timely evaluate the Student, failed to provide the Complainant with notice of procedural safeguards, and treated the Student differently on the basis of disability when it revoked his IDT in violation of Section 504 and Title II and their implementing regulations, OCR would need further information from the District, including interviews with several employees for details, for example, of

when they were informed of the Student's anxiety disorder symptoms, when and if they thought the Student had a disability, and whether they thought the Student needed any special education and related aids and services because of a disability. OCR would then have to reach its own determination about whether the Student was denied a FAPE by not being timely evaluated, about whether notice was appropriately provided to the Complainant, and about whether his IDT permit was unlawfully revoked.

However, prior to the conclusion of OCR's investigation of these three issues, the District indicated its interest in voluntary resolution regarding these three issues and OCR agreed that such a resolution would be appropriate to resolve the issues and concerns raised. For this reason, OCR did not complete its investigation or reach conclusions as to whether the District violated Section 504, Title II, and their implementing regulations in connection with these allegations.

On May 15, 2018, the District entered into the attached resolution agreement, which when implemented, is intended to resolve the concerns identified by OCR regarding issues one through three that were under investigation. Pursuant to the resolution agreement, the District agrees to restore the IDT, and after the Student enrolls at the School, to seek consent from the Complainant for an evaluation plan prior to holding a meeting of either an IEP team or a Section 504 team to determine the appropriate placement for the Student. The District will also draft and distribute an OCR approved guidance memorandum, which will address topics such as referral and evaluation of students, and the provision of notice of procedural safeguards as described in District policy. The District also agreed to conduct training for all School staff and administrators.

Issue 4: Whether the District subjected the Student to harassment by other students on the basis of disability, and whether the District failed to respond appropriately and effectively to notice of the disability harassment.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination if it fails to respond adequately. A school district may violate Section 504, Title II and the regulations if: (1)

the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

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

Factual Findings

The following facts are relevant to OCR's analysis.

- The Complainant informed OCR that during the month of April or May, 2017, the Student told her in the car one day when she picked him up from school that another student, Student 1, spit on the him while they were coming in from recess, and that Student 2 saw Student 1 spit on the Student, and Student 2 told the Student's teacher (the Teacher) about it. She stated she could not remember if she told anyone at the School, but that she might have either told a School nurse, or the School Principal, and that whomever she told replied that they had not observed any bullying of the Student by other students. The Complainant informed OCR that sometime after the incident, she talked with the Teacher about it, telling the Teacher she learned Student 1 spit on the Student, but she did not tell the Teacher anything about why Student 1 spit on the Student, and did not use any descriptions or say the word bullying to the Teacher.
- The Complainant informed OCR that she could not remember any other examples of any of the Student's peers doing things to the Student or saying things to the Student between February XX, 2017 and August XX, 2017 when she filed her OCR complaint.
- The District denied any notice of peer harassment, or any reports of harassment by the Complainant, the Student, or any School staff and informed OCR the Student was social with peers, and was well liked. It noted his Kindergarten teacher reported the Student was social in class and on the playground with peers, and that the Teacher believed the Student had a lot of friends on the playground, was reminded not to talk to classmates in class, and got along with others and was helpful.

- The Teacher informed OCR that she never saw, or heard about, another student ever saying or doing something to the Student because he did not speak to adults. She did recall the incident involving Student 1, whom she described as the Student's best friend, because Student 2 told her that she saw it. She stated she talked with the three students, and that Student 1 told her that he was talking with the Student and some spit just flew out while he was talking and hit the Student, which was just something "silly" that happened. She stated that this did not seem to bother the Student. She stated that Student 2 was always looking out for the Student because the Student did not talk to adults and would not tell the Teacher about it himself. The Teacher stated she did not see the incident as a red flag or one that any of the students took very seriously. The Counselor informed OCR that she never saw, or heard about, another student ever saying or doing anything to the Student because he did not speak to adults. She stated that she did not recall any incident involving Student 1, Student 2, and the Student.

Analysis

Once a school district has notice of possible disability-based harassment between students, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of a harassing student, but rather for its own discrimination if it fails to respond adequately.

OCR found that the evidence showed that the Complainant identified only one timely incident in which she thought that the Student was spit on by a peer, which she thought might have been because the Student did not talk to adults. OCR assumed without determining that the Teacher had notice of this incident when Student 2 informed her of what she saw, and this enabled OCR to proceed with the disability harassment analysis regarding the reasonableness of the Teacher's response. OCR found no evidence that Student 2 told the Teacher the spitting was related to the Student's disability, or provided information that should have caused the Teacher to suspect that Student 1 spit on the Student because the Student did not speak to adults. The Teacher responded to Student 2's concerns by talking to the three students involved, and learned that none of them were upset by it, they considered it to be a silly incident, and therefore she took no further action. OCR determined in light of the circumstances, including that there was only one reported timely alleged incident of peer disability harassment, combined with the steps taken by the Teacher to gather information from the students involved, that the Teacher's response was reasonable and adequate, and that there was sufficient reason for the Teacher to have taken no additional actions after learning what she did from the students. OCR found that there was insufficient evidence to conclude that the District was out of compliance with Section 504, Title II, or their implementing regulations with regard to this issue.

Based on the above referenced agreement, OCR is closing the investigation phase of this case. This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. Based on the

commitments made in the Agreement, OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact the case resolution team.

Sincerely,

/s/

Ava DeAlmeida Law
Acting Team Leader

cc: XXXXX XXXXX
Director, Special Education (*via electronic copy only*)
XXXXXX XXX XXXXXX
Director, Student Services (*via electronic copy only*)

Enclosure