



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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August 11, 2020

VIA ELECTRONIC MAIL

Jeff Malan
Superintendent
Barstow Unified School District
551 Avenue H
Barstow, CA 92311

(In reply, please refer to OCR Docket Number 09-19-1116.)

Dear Superintendent Malan:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Barstow Unified School District. The complainant alleged that the District discriminated against the Student on the basis of disability.¹ Specifically, OCR investigated the following issues:

1. Whether the District received notice that the Student and other students in the District's XXX SUCCESS classroom were subjected to alleged verbal and physical harassment on the basis of disability by a 1:1 aide, and the District failed to provide a prompt and equitable response to notice of the harassment.
2. Whether the District denied the Student a Free Appropriate Public Education (FAPE). Specifically, whether the District:
 - a. failed to implement the Student's behavior intervention plan and provide weekly 1:1 counseling services as provided in the Student's Individualized Education Program (IEP); and,
 - b. subjected the Student to a significant change in placement without following adequate evaluation and placement procedures when the Student was removed from the classroom due to his behavior.

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

¹ OCR previously provided the District with the identity of the complainant and student. Their names are not included in this letter for privacy reasons.

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 several third parties. OCR also conducted a two-day site visit in September 2019 in which OCR interviewed approximately 12 school and district staff members. OCR also interviewed other parents of students in the Student's class and a number of employees of other agencies who worked with the District. In total, OCR conducted more than 20 interviews.

Based on this investigation, OCR found sufficient evidence to conclude that the District was out of compliance with Title II, Section 504, and their implementing regulation with respect to the issues investigated in Issue 1 regarding the Student and in Issue 2a. OCR also identified a compliance concern with respect to Issue 1 regarding other students and with respect to Issue 2b as to the significant change in placement. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

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 and Title II 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.

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 the circumstances. However, in all cases the district must conduct a prompt, equitable and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, 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. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

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

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7[b] and 28 C.F.R. §35.107[b]). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7[a] and 28 C.F.R. §35.107[a]).

In determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently severe, persistent or pervasive to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the circumstances, including: the type of harassment (e.g. whether it was verbal or physical); the frequency and severity of the conduct; the nature of the student's disability; the age and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, such as whether the procedures provide for the following: notice of the procedure to students, parents, and employees, including where to file complaints; application of the procedure to complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

Implementation of IEP

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.

Significant Change in Placement

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

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

Factual Findings

The following facts are relevant to OCR's analysis:

Placement at School 1

The Student was a XXXXX-grade student at a District elementary school (School 1) during the 2018-19 school year. According to the Student's IEP, the Student was eligible for special education services under the category of emotional disturbance.

The Student was placed in the District's SUCCESS special day class in XXXXX grade. According to the District's Director of Pupil Services for the 2018-19 school year (the Director), the SUCCESS program was intended to serve students with emotional disturbance who were not making satisfactory progress in a general education classroom. The Principal of School 1 (the

Principal) told OCR that the SUCCESS program was intended to serve students who had emotional and behavioral needs, but that it was not originally intended to serve students with severe behavioral disorders.

The Principal told OCR that during the prior school year (2017-18) School 1's RSP teacher had taken over the SUCCESS class midway through the school year, but prior to that, the class had not had a teacher of record for approximately three years. The teacher for the SUCCESS program (SUCCESS Teacher 1) for 2018-19 did not have a teaching credential and had not taught students this age before. The Principal also told OCR that at the beginning of the school year there were approximately five paraprofessionals in the classroom but that there was a lot of turnover. The Principal reported that there were a lot of intense behavioral issues and so she was being called to the class to help on a daily basis.

The Student's IEP required that he have a 1:1 aide. District Aide 1 began working with the Student in during the 2015-2016 school year and consistently worked with him through the first month of the 2018-2019 school year. District Aide 1 told OCR that while she was the Student's 1:1 aide she used restraints with him approximately twice a week by grabbing his arms if he hit another student or was attacking a teacher, but that she did not report or record any of these restraints. She also explained that she did CPI holds for other students and did not provide a written record of those restraints either.

The Student's IEP team convened a meeting on August XX, 2018, which was continued on August XX, 2018. During that meeting, the IEP team revised the Student's Behavioral Intervention Plan (BIP) and agreed to request an expedited Functional Behavior Assessment (FBA). The meeting notes from the IEP indicate that the District's School Psychologist observed "the need for more neutrality from the adults in the classroom."

The Student's revised BIP, dated August XX, 2018, listed the actions that staff should take if problem behavior escalated. This included a directive to "respect the student's personal space, stand at least a leg length away from the student" and "use supportive, non-verbal neutral communications – do not reprimand or scold [the Student] while he is engaging in the behavior or ask him to stop." Similarly, the Principal told OCR that what worked best with the Student was to give him time to deescalate in an area where he was not doing any harm.

At that meeting, the Complainant raised concerns about whether staff had training in CPI, noting that the Student had come home with skin irritations and scratches that he explained were caused by being restrained by staff. The IEP meeting notes stated that the District was planning to provide CPI training to SUCCESS staff in the near future.

On September XX, 2018, the FBA was completed by a Non-Public Agency (Non-Public Agency A). The Student's IEP team met on October X, 2018 to review the FBA and to adopt the behavior plan (BIP). The IEP team determined that a 1:1 aide from Non-Public Agency A would begin working with the Student.

The revised BIP provided that for aggression and verbal outbursts, staff should block all behaviors that could result in injury, move all items that could result in injury, and calmly ask

others to move away from the Student. The BIP provided that staff should refrain from engaging in verbal negotiations or eye contact and wait until the Student completely deescalates without talking to him. The BIP stated that once the Student showed signs that he was deescalating, staff should use minimal verbiage to redirect him to a low demand activity or prompt the Student to engage in a replacement behavior. The plan provided that if the Student engaged in behaviors with such intensity that they may result in injury to him or others, staff should block unsafe behaviors to the best of their ability, remove the Student from the situation, provide the Student with the time and space to calm, refrain from placing demands on the Student for 15 minutes, and present a neutral activity in which the Student can engage.

Around the same time the BIP was implemented, a separate non-public agency (Non-Public Agency B) began to provide behavior support services to certain classrooms within the District. As part of the contract, Non-Public Agency B provided two aides (NPA Aide B1 and NPA Aide B2) to work in the Student's classroom starting on approximately October XX, 2018. At this time, NPA Aides B1 and B2 were providing services to all students in the classroom, not specifically as a 1:1 aide for the Student.

SUCCESS Teacher 1 told OCR that she did not provide NPA Aides B1 and B2 with copies of the students' BIPs. She said that she provided them with a cheat sheet that had some positive behavior interventions she wanted the aides to work on. NPA Aide B2 told OCR that her understanding was that aides were supposed to review each student's IEP and BIP but they did not get that information.

On October XX, 2018, Non-Public Agency A notified the District that its aides would not be returning to support the Student due to an incident that had occurred that day. The Agency notified the District that it would be withdrawing from the contract to serve as a 1:1 aide for the Student. The representative from Non-Public Agency A stated that when her agency agreed to provide 1:1 aides for the Student, she did not know that another NPA would also be working in the classroom, and that her agency's approach was less focused on reprimanding and providing negative incentives and was more focused on changing the environment around the Student. She also told OCR that she did not have any experienced behavior therapists available who she thought could be successful in the classroom. She stated that the environment in the classroom was very chaotic and that there was no instructional control in the classroom due to the severity of the behavior of all of the students. She stated that the other staff in the classroom were in very high need of training and assistance.

That description of the classroom was also reflected in the Student's September XX, 2018 FBA. That FBA stated that "due to the frequency and intensity of challenging behaviors exhibited by [the Student] and some of his classroom peers, engagement in learning opportunities is severely impeded." The FBA stated that during the assessor's observations, "staff was unable to present learning opportunities in 3 out of 4 visits due to behaviors." That description was also consistent with what District Aide 1 told OCR. She reported that there was no control in the classroom and that it was very loud. She told OCR that there was always violence in the classroom; that the program was not working; and that they kept getting students who were more and more dysfunctional.

Similarly, the supervisor from Non-Public Agency B told OCR that the teacher and aides were struggling to keep their heads above water with having a new teacher and students with difficult challenges.

Another general education teacher at School 1 also told OCR that the campus was like a “war zone” during this time period, and that she was afraid to let her students go to the bathroom for fear of getting hurt by students in the SUCCESS program.

On October XX, 2018, the Student’s IEP team met and decided to assign NPA Aide B1 as the Student’s new 1:1 aide, meaning that NPA Aide B1 was no longer working with all the students in the classroom, but instead would be working only with the Student.

The Principal told OCR that the Student seemed to respond well to NPA Aide B1. However, another adult in the classroom reported that NPA Aide B1 behaved inappropriately towards the Student and other students in the classroom, including yelling at students, cornering students, grabbing students by their upper arm and shoulder, throwing students to the ground and holding them down with his knee. That staff member stated that when NPA Aide B1 would start yelling at the Student or being physically aggressive, the Student was usually already agitated and that NPA Aide B1’s actions would cause the Student’s behavior to become worse.

October XX, 2018 Incident

On October XX, 2018, another staff member stated that she observed the Student run into the classroom with NPA Aide B1 chasing him. NPA Aide B1 told OCR that the incident started when they were putting together some chairs and the Student wanted to help. NPA Aide B1 said that one of the other students wanted to help, and the Student did not like that so the Student hit the other student and started calling the other student vulgar names.

The staff member told OCR that when they entered the classroom NPA Aide B1 grabbed the Student’s right arm and shoulder and pulled him to the back of the room. The staff member stated that when the Student started to get up, NPA Aide B1 put the Student on the floor in the bathroom (which was connected to the classroom) and had his knee on the Student’s chest.

The other students were then removed from the classroom. At some point, the staff member began taking a video of the interaction between NPA Aide B1 and the Student. In the video, which lasts about five minutes, the Student is standing in a corner of the classroom, and NPA Aide B1 is blocking the Student from getting out of the corner by keeping the Student between his legs and at times placing his hands on the wall on either side of the Student.

The video starts with an animated exchange between the Aide and the Student where the Student is taking staples out of the wall and telling the Aide that the Aide does not care about him. Shortly after the video starts, the Aide grabs the Student and wraps both hands around the Student with the Student’s back to him. The Aide appears to pull the Student’s arms very tight across his body and the Student appears to yelp in pain. The Aide begins pounding on the wall or table loudly for emphasis while telling the Student to “get it in your head” that “we care about you.” The Aide and the Student continue to argue and at that point the Principal appears in the

edge of the video standing along the wall in the classroom next to the person taking the video. The Aide then shifts from a very loud voice to actually yelling at the Student, telling the Student to X--- contented redacted ---X while holding the Student's hands in front of him with the Student facing him. The Aide then tells the Student that "you need this talk. X---redacted content---X. The Student is crying at this point and says "ow, you hit me." The conversation continues and the Aide tells the Student again that "you need this talk. Because no one has taken you to the side to try to get through to you."

At this point the Aide appears to be inadvertently spitting on the Student because he is yelling and his face is so close to Student's. The Student then tells the Aide not to spit on him and begins trying to spit on the Aide. The Aide puts his hand on the Student's jaw and pushes his jaw to the side against the wall to prevent the Student from spitting on him. The Aide continues to tell the Student that "nobody has taken you to the side to talk to you about what really matters." The Student then apparently succeeds in spitting on the Aide's arm, and the Aide wipes the spit back on the Student's shirt, telling him X---redacted content---X. The Aide then continues by saying "but guess what, there is a three-letter word, or three [sic] acronym that I could call right now. Do you know who they are? C-P-S. X---redacted content---X."²

X---redacted content---X.

The video then ends. The staff member who took the video told OCR that the staff member went to the Principal to discuss the incident, and the Principal explained that everyone has a different style. That day the Principal sent home a daily communication log to the Complainant. The log stated that the Student had gotten upset and had used inappropriate language, had broken an Aide's glasses, and had tried to rip staples and paper off the wall. The report did not mention any restraints used on the Student or describe NPA Aide B1's reaction other than to note that NPA Aide B1 gave the Student his privilege ticket to look at for rewards for good behavior.

NPA Aide B1 denied to OCR that he treated the Student inappropriately, noting that there was no evidence that anyone assaulted, choked, or kicked the Student, and he described the recorded incident as a "pep talk." He also denied ever yelling at the Student or having used restraints on that day. He said that during the exchange he had mentioned CPS to remind the Student to be honest about what was happening with his parents because allegations he had made could have resulted in him moving to foster care.

About a month later the Principal completed a Behavior Emergency Report form about the incident. That report focused primarily on the Student's behavior but did note that NPA Aide B1 "stopped the Student from hitting by holding [the Student's] wrists crossed in front of [the Student]." It also noted that after the Student "continued to aggress," NPA Aide B1 "manually restrained [the Student] to the ground face up, while holding his wrists crossed across his body." The Principal told OCR that NPA Aide B1 held the Student to the ground and that the Student did knock his head when he slammed himself back when he went to the ground. She told OCR that she believed that happened after the Student had tried to hit NPA Aide B1.

² "CPS" is a reference to Child Protective Services. The Complainant told OCR that the Student knew what CPS was because he had had previous experience with CPS.

The Complainant told OCR that on approximately October XX, 2018 she saw the video of the October XX, 2018 incident and immediately removed the Student from School 1. The Complainant stated that she immediately took the video to the District office to show the Superintendent. The Complainant said that the Superintendent made her feel like she did something wrong by having the video but said he would investigate it. She said she had the video but the Superintendent did not want to see it.

The Complainant told OCR that after the Student was assigned to NPA Aide B1, the Student's behaviors became much worse. The Complainant said that even though NPA Aide B1 was only his aide for approximately two weeks, she felt that the Student was traumatized from his interactions with NPA Aide B1. She said that the Student had night terrors and continued to do so even after NPA Aide B1 was no longer assigned to him. The Student was "terrified" that NPA Aide B1 would show up at school.

Police Report

A police report dated October XX, 2018 (before the Complainant had seen the video) indicated that the Superintendent had contacted the District's School Resource Officer (SRO) to report that the Student's father had received information stating that the Student was being touched inappropriately by NPA Aide B1. The report indicated that the SRO initially interviewed the Complainant, who stated that there was an incident in school where NPA Aide B1 had grabbed the Student and pulled him from under a table, causing him to hit his head on the table. The Complainant told OCR that the Student came home that day with a knot on his head, and that when she asked the Principal, the Principal told her that the Student was under a table and NPA Aide B1 yanked him out and he hit his head on a table leg.

The Police Report stated that the SRO visited the School and interviewed NPA Aide B1, who stated that he had never touched the Student inappropriately and always complied with CPI techniques. The SRO told OCR that when he visited the School and conducted interviews, he was not aware of any video and so therefore did not interview anyone about the incident that was captured on the video.

The Police Report stated that the SRO spoke with the Complainant again on October XX, 2018, and that at that time she had obtained a video showing the Student being handled inappropriately by NPA Aide B1. The SRO told the Complainant to take the video to the Superintendent. The SRO also spoke to the staff member who took the video. The Report stated that the SRO told that individual that it was illegal to record the incident. The Report stated that he and another officer at the Department then viewed the video. The disposition of the Police Report was that "no criminal action was noted on the part of [NPA Aide B1's] handling of [the Student]."

The SRO told OCR that he did not report back to the District and the District did not receive a copy of his report. He said that he did not share what he saw on the video with the District. He stated that his statement that it was illegal to record the Student was based on the fact that he had previously been told by school principals that if a video was going to be taken then permission from parents and the school would be needed.

Response by the District and NPA B

The Director told OCR that he reported the incident to the District's Personnel Department and also talked to a supervisor from Non-Public Agency B regarding the incident.

The Assistant Superintendent for Personnel (the Assistant Superintendent) said that the Principal had called him to let him know there was a situation between an aide and a student, and that he had gone out to School 1. He said that he talked to the Principal (but not the Aide) and that the Principal said that she was in the classroom at the time and she did not see anything afoul. The Assistant Superintendent stated that he also understood that the police had investigated and had not found anything, and that the issue was not with a District employee. He stated he was not aware that there was a video.

The Director said that he also went to School 1 when he learned about an incident there but said that he did not talk to NPA Aide B1 about the incident except to advise him to wait to discuss the incident until the SRO arrived. The Director stated that he believed that he had talked to the Principal, but he did not remember what was said. The Principal told OCR that she did not remember anyone from the District office asking her any questions about NPA Aide B1 and the Student.

The supervisor from Non-Public Agency B also provided OCR with notes regarding the incident. According to the notes, on October XX, 2018, the supervisor went to School 1 and interviewed the Principal, the Teacher, and three aides. The supervisor told OCR that she went to the School the same day as the police officer. The notes indicate that "all of the District staff reported that [NPA Aide B1] was a huge asset to the classroom and cared for the students." The notes stated that an officer was contacted and that the officer said there did not seem to be any evidence of abuse. The supervisor told OCR that NPA Aide B1 continued working in the classroom for the next couple of days but that the Student did not return.

The notes stated that a video existed but the "specifics of the video are unknown since only the parents and the police have viewed it" and that "the police did not consider the footage to show abuse." The notes also stated that on November X, 2018 the Principal said that she could "recall being in the classroom but never thinking anything was wrong." According to the notes, on November X, 2018, approximately two weeks after the incident, Non-Public Agency B decided to remove NPA Aide B1 from the classroom out of an abundance of caution.

Follow-Up IEP Meetings

Meanwhile, on November X, 2018, the Student's IEP team met. At that meeting, the Complainant reported that she had been sent a video about the incident and was revoking her consent to the program at School 1. According to the meeting notes, the Complainant stated that she was concerned about the supervision provided to the aides in the classroom. The notes stated that "the District has not seen the video and will investigate what has occurred and contact the supervisor of the NPA."

However, based on interviews with District and School staff, OCR found no evidence that anyone from the District had ever watched the video prior to OCR's investigation. School and District staff offered various explanations for this decision. The Principal acknowledged that the Complainant had told her about the video but said that no one showed it to her. The Director, SUCCESS Teacher 1, and the School Psychologist told OCR that the Complainant did offer to show them the video. SUCCESS Teacher 1 told OCR that she did not want to see the video at the time. The Director said that he did not look at the video because it was discussed at an IEP meeting and there was a police investigation ongoing. The School Psychologist also said that she declined because the Complainant was pursuing the matter through the police. The Director also reported that he had heard concerns that the video was recorded illegally and believed that contributed to why no one from the District viewed the video.

The Student's IEP team met again on November X, 2018 and decided to change the Student's placement to School 2. The notes also stated that the District would be contracting with a different NPA to provide a 1:1 aide. The notes further stated that "the team discussed the parents concern that many of the behaviors that were witnessed in the video has led to the concern the NPA was not following [the Student's] behavior intervention plan." The team decided that the Student would continue on independent study until enrolling at School 2 on November XX, 2018.

The IEP team met again on November XX, 2018 and included staff from the new NPA (Non-Public Agency C). At that meeting, the Complainant shared her concern that the Student was restrained and the District had not provided any documentation. The Complainant told OCR that restraints happened so much to the Student that she thought it was normal and did not realize that any paperwork or protocol was required. The Director told OCR that he realized in the fall of 2018 that District staff were not completing Behavioral Emergency Reports (BERs) when students were being restrained. He stated that when he realized this, the District conducted training for all administrators about the requirements for when restraints were used. The Principal also confirmed that in the fall of 2018 she did not know that reporting of restraints was required. The Supervisor from Non-Public Agency B told OCR that reporting of restraints did not happen at the beginning of the year because there was pandemonium for a lot of the day.

Assessment of Other Staff Regarding October XX, 2018 Incident

During the course of OCR's investigation, several other school and District staff watched the video of the incident. The Principal told OCR that the Student's behavior would not necessarily have required the use of restraints, and that instead an adult in that situation should remove themselves and allow the Student space. SUCCESS Teacher 1 noted that she never wanted to hear anyone say that a child would get removed from their parents, and stated that she did not believe that NPA Aide B1's actions were effective because once the Student got upset, he was very difficult to calm down. The School Psychologist told OCR that the Student was not in crisis because he was against the wall, and therefore NPA Aide B1 should not have put his hands on the Student. The School Psychologist stated that the person who was in crisis during that incident was NPA Aide B1, and that his actions helped create the Student's behavior by yelling at him, putting him in the corner, and putting his hands on the Student. She also noted that the

NPA Aide B1's actions were especially problematic because he was "attacking" what the Student held most dear, which was his family.

Allegations Involving Students 2 through 4

Another staff member reported several other incidents involving NPA Aide B1 and other students. Specifically, the staff member reported witnessing NPA Aide B1 was holding Student 2, who was XXXXX years old, on the ground with his knee on his back.

The staff member also reported that NPA Aide B1 would shove Student 3, a XXXXX grader, in corners and squish him against the wall so that he could not get out. She stated that NPA Aide B1 picked Student 3 off the ground by grabbing hold of one arm. The parent of Student 3 provided OCR with a text message that she received that said that Student 3 "was in distress and [NPA Aide B1] just wouldn't stop. He had [Student 3] shoved in a corner and sat his chair in front of him pushing it back against [Student 3] so he couldn't get out. [Student 3] started slamming his head into the wall and screaming to get out." The text message stated that NPA Aide B1 had stated that Student 3 deserved whatever he did to himself. The parent of Student 3 also told OCR that her son reported to her that the teachers in his class were "mean" to him and were yelling at him, and specifically that there was a man in his class who was "mean" to him.

Finally, the staff member also told OCR that NPA Aide B1 would yell at Student 4 all the time and that Student 4 would have a "break down" when NPA Aide B1 was yelling at him. The staff member reported that NPA Aide B1 had said that the students needed someone to put them in their place.

Rehiring of NPA Aide B1

Several months later, NPA Aide B1 was later rehired by the District at the District's continuation high school in February 2019. The Assistant Superintendent for Personnel told OCR that any concern he had about rehiring NPA Aide B1 was outweighed by the fact that there had not been any police action and that the Principal did not feel that NPA Aide B1 had done anything wrong.

The Complainant told OCR that she called the District's Assistant Superintendent for Personnel when she found out NPA Aide B1 was still being allowed to work with students like her son. She told OCR that she offered to show the Assistant Superintendent the video. The Assistant Superintendent told OCR that he did recall ever having spoken to the Complainant and the District reported that the Assistant Superintendent did not have any documentation regarding such a call.

Placement at School 2

On November XX, 2019, the Student enrolled in the SUCCESS program at School 2, which was a XXXXX through XXXXX grade program, even though the Student was still in XXXXX grade. The Student's 1:1 aide at School 2 was employed by Non-Public Agency C (hereinafter "NPA Aide C1"). Another aide also worked with all of the students in the SUCCESS classroom. That aide had the same first name as NPA Aide B1. NPA Aide C1 told the Complainant that when he

first told the Student that there was an aide at his new school that had the same name as NPA Aide B1, the Student reacted with anxiety and distress and asked if it was the same aide.

The Student generally developed a good relationship with NPA Aide C1. According to NPA Aide C1, the Student said that the aide at his previous school attacked him with a desk and would drag the Student around by his legs and get in his face a lot.

NPA Aide C1 told OCR that he did not receive a copy of the Student's IEP or behavior plan. Another aide that worked with the Student also confirmed that she did not receive a copy of his IEP. Both aides confirmed that before they started there was a meeting where the Student's behaviors were discussed. NPA Aide C1 stated that he believed he was technically allowed to access the behavior plan but he did not know where it was. NPA Aide C1's supervisor told OCR that Non-Public Agency C provided some information to aides about a student's behaviors, but that IEP and BIP documents are generally not available to 1:1 aides unless they were physically present at the NPA's office.

NPA Aide C1 resigned from his position on or around February X, 2019. SUCCESS Teacher 2 told OCR that after NPA Aide C1 left, the Student "checked out" because he was tired of all the changes.

After an incident at school on approximately February XX, 2019, the Complainant decided to remove the Student from School 2 based on her opinion that the school was not able to meet his needs. On March XX, 2019, the Student's IEP team decided to refer the Student for placement in a Non-Public School. On March XX, 2019, the Student was enrolled in a Non-Public School.

Conduct of District Aide 2

NPA Aide C1 reported that other adults at School 2 would regularly provoke the Student. The Aide reported that on one occasion another aide employed by the District (District Aide 2) got upset at the Student because he had thrown a ball that hit another student and District Aide 2 told him "little boy don't get in my f***ing face. You are going to learn who I am today." SUCCESS Teacher 2 confirmed that an incident like the one described by NPA Aide C1 was consistent with District Aide 2's behavior in general. SUCCESS Teacher 2 reported that District Aide 2 was very aggressive with the students and that she therefore instructed District Aide 2 not to interact with the Student.

Two staff members also reported concerning behavior on the part of District Aide 2 toward another special education student (Student 5), who often wore the same clothes to school multiple days in a row. When Student 5 said something that District Aide 2 did not like, the Aide would say something like "at least I can change my clothes every day." One of the staff members also reported that District Aide 2 would call Student 5 "Shorty" because she knew it bothered the Student. One of the staff members reported that she had raised concerns about District Aide 2 on a number of occasions because she was "always" yelling at the students and "making threats" to the students that she was going to get them "kicked out" of the class. The staff member reported that as of the beginning of the 2019-20 school year District Aide 2 was working in a special education classroom at School 1.

Discipline at School 2

School 2's discipline records indicated that the Student was suspended at School 2 on four occasions for a total of five days in January and February 2019. The Complainant told OCR that School 2 also regularly called her and the Student's father to ask them to pick up the Student because of behavioral issues without formally suspending him. The Complainant said that the School was calling her or the Student's father approximately three times a week in February 2019. The Director and SUCCESS Teacher 2 also said that the Student was being sent home multiple times a week. Similarly, NPA Aide C1 told OCR that he remembered that on one occasion the Student's father came to pick up the Student approximately four days in a row.

At a March X, 2019 IEP meeting, the notes stated that "since 2/X/19 parent was called every day." The notes indicated that the teacher told the IEP team she was not aware that School 2 was calling the parent to pick the Student up when he was sent to the office.

SUCCESS Teacher 2 told OCR that if there were different resources in place (including regular access to a school psychologist) the Student may have been able to regroup at school instead of being sent home. She stated that they had talked in IEP meetings about having a calm-down space but she did not have one available to use. This was consistent with the December XX, 2018 meeting notes, which stated that the parent asked about the calming area and the Principal explained that there was a shortage of space, so the team discussed that the Student and an aide would take breaks outside. The adults who worked with the Student at School 2 reported that he spent approximately half of his time at the School outside with NPA Aide C1. The teacher told OCR that they took the Student outside to keep him from escalating or because he was more comfortable there.

The District's attendance records and sign-out sheets indicate that, in addition to the five days of suspensions, the Student left School 2 early on twenty other days, primarily in January and February 2019. Three of those days were recorded as disciplinary incidents, and for two of the days health reasons were noted, but for other days the reason the student left was not provided. In sum, counting the days the Student left early, the days of suspensions, and two other days the Student was absent, records indicate that the Student only attended a full day of school for 10 of the 35 school days in January and February 2019.

The Director told OCR that during one of the IEP meetings he attended, the IEP team discussed the parent's concern that the Student was being sent home instead of implementing the steps set out in the Student's BIP. The Director stated that the Student's father was home from work because he was healing from injury and so sending the Student home became an act of convenience for school staff.

Counseling Services at School 1 and School 2

As of August XX, 2018, the Student's IEP provided that he would receive counseling services four times a month for 30 minutes per session from a center (the Center) associated with the District's SELPA. The period that the Student was enrolled in the District in 2018-19 constituted

approximately 7 months. As such, according to the IEP, the Student should have received approximately 27 half-hour counseling sessions.

Records from the Center showed that fourteen counseling sessions were conducted with the Student. For eight other sessions, the documentation reflected notations that the Student had refused or was otherwise unavailable. For seven other sessions, the Student was marked as unavailable during time periods when the Student was pulled out of School. Records reviewed by OCR showed that there were three periods in which there were gaps in counseling services.

No services were provided from the date that the Student was removed from School 1 (on October XX, 2018) to the date that the Student started at School 2 (on November XX, 2018). The Student's Counselor from School 1 told OCR that during that period, the District did not tell the Counselor that the Complainant had removed the Student from school. The Counselor stated that she would show up for counseling at School 1 and would be told only that the Student was not in school that day. The Counselor's Supervisor told OCR that in certain situations the Center would provide services in the home setting, such as when a student was having anxiety about something at school and the counselor would work with the student at home to get them back in school. OCR determined that this did not occur here because the Counselor was not aware that the Complainant was keeping the Student at home.

In addition, at the December XX, 2018 IEP meeting, the counselor referenced that there had been a transition in service providers due to the school change and that missed sessions would be made up. The records show that no counseling was conducted between November XX, 2018 and December XX, 2018, but did reflect that sessions were conducted on December XX, XX, and XX.

Finally, no services were provided after the Complainant removed the Student from School 2 between February XX, 2019 and March XX, 2019 (when the Student was moved to an NPS placement). OCR did not find a record of any efforts made to provide services to the Student during this time period.

Changes to the SUCCESS Program

As of August 2019, the District transferred responsibility for the SUCCESS program to the County of San Bernardino and closed down the SUCCESS programs at School 1 and School 2. As of the beginning of the 2019-20 school year, the County leased a school facility from the District and the County has been running the SUCCESS program in that leased facility with a dedicated special education principal on site.

Analysis

Issue 1: Whether the District received notice that the Student and other students in the District's XXX SUCCESS classroom were subjected to alleged verbal and physical harassment on the basis of disability by a 1:1 aide, and whether the District failed to provide a prompt and equitable response to notice of the harassment.

As described above, in determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently severe, persistent or pervasive to deny or limit the student's ability to participate in or benefit from the district's program.

Here, OCR found that NPA Aide B1's actions in response to the Student's disability-related behaviors were sufficiently severe to deny or limit the Student's ability to participate in or benefit from the District's program. With respect to the incident captured on video, NPA Aide B1 cornered the Student facing against the wall and yelled at him for several minutes. During that time, he pounded on the wall or table and yelled at the Student to "XXX XXX XXXXXXXX." He told the Student he was an "XXXXXX XXXXXXX XXX XXX XX XXXXXXX" and emphasized that it was "your fault." He also suggested to the Student that he would contact CPS, which would result in removal from his family. He explained that the role of CPS was to X---content redacted---X. OCR did not find NPA Aide B1 credible in his explanation about why he referenced CPS. Instead, OCR found that the video clearly showed that NPA Aide B1 was trying to use the threat of CPS to get the Student to change his behavior, even though the purpose of CPS is to protect children from the behavior of adults, not to punish children for their own behavior.

After the video ended, according to a report completed by the Principal, NPA Aide B1 then manually restrained the Student to the ground face up, while holding his wrists crossed across his body. OCR was not able to determine how often NPA Aide B1 had previously restrained the Student, but did note that this incident was consistent with the pattern of the Student's previous 1:1 aide, who reported that she physically restrained the Student approximately twice a week.

School staff do have discretion in how to respond to emergency incidents involving student or staff safety. However, OCR noted the School Psychologist's observation of the video that the Student was not in crisis here, but instead that the person who was in crisis was the aide. The School Psychologist also observed that NPA Aide B1's actions were helping to create and escalate the Student's behavior, not defuse it.

OCR also noted that NPA Aide B1's actions were not supported by the Student's Behavior Intervention Plan. The August XX, 2018 BIP provided that if problem behavior escalated, staff should "respect the student's personal space, stand at least a leg length away from the student" and "use supportive, non-verbal neutral communications – do not reprimand or scold [the Student] while he is engaging in the behavior or ask him to stop." This was consistent with the Principal's observation that what worked best with the Student was giving him time to deescalate in an area where he was not doing any harm. SUCCESS Teacher 1 also confirmed that NPA Aide B1's actions were not effective because once the Student got upset, he was very difficult to calm down.

The severity of NPA Aide B1's actions towards the Student became apparent when the Student began to show the effects of the harassment. According to the Complainant, during this time period the Student was also having night terrors even after NPA Aide B1 was no longer assigned to him, and the Student was "terrified" that NPA Aide B1 would show up at School 2. An aide also reported to the Complainant that when the Student was later informed that another aide with

the same name as NPA Aide B1 would be working in the classroom, the Student expressed anxiety and needed reassurance that NPA Aide B1 would not be returning. After seeing the incident and the Principal's failure to intervene, the Complainant reasonably refused to return the Student to School 1 and the Student missed a full month of school, meaning that NPA Aide B1's actions and the District's response to those actions prevented the Student from accessing the District's educational program during that time.

As noted above, when OCR evaluates an allegation of harassment, OCR looks at the totality of the circumstances, including the nature of the student's disability, the age and relationship of the parties, and whether other incidents have occurred. Here, a number of factors supported the conclusion that the actions here were sufficiently severe to constitute harassment under Section 504 and Title II.

Most importantly, the Student was XXXXX years old and a student with emotional disturbance and extremely high levels of need. Furthermore, the individual targeting the XXXXX-year old student was the adult who had been selected to be the Student's individual support in the classroom. Finally, the conduct of NPA Aide B1 came in the context of a classroom that was described to OCR at various times as chaotic, lacking in instructional control, and pandemonium. Given this context, when viewed in the totality of the circumstances, the actions of NPA Aide B1 towards the Student were sufficiently severe to constitute harassment under the law.

As described above, if a student is harassed based on disability, 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 the circumstances. However, in all cases the district must conduct a prompt, equitable and impartial inquiry designed to reliably determine what occurred.

Here, the District did not conduct an inquiry that met those standards. The Principal witnessed NPA Aide B1's actions first-hand and took no action, including failing to immediately notify the parent(s) regarding the incident or the restraints used on the Student. Then, after the Student's parents contacted the police and notified the District that there was a video of the incident at issue, the District failed to investigate the incident on the video. Prior to OCR's investigation, OCR was not able to find any District employee who had watched the video to determine whether NPA Aide B1's conduct raised any concerns.

The most common explanation from District staff about why no action was taken was that they thought that the matter was being investigated by law enforcement. However, the incident shown in the video was not actually fully investigated by law enforcement because the SRO had not seen the video at the time of his visit to School 1 to interview staff. More importantly, though, a law enforcement investigation generally does not obviate the need for a response from the school district. Law enforcement is responsible for determining whether criminal laws were broken and whether a criminal prosecution is appropriate. This determination is significantly different than the standard for an investigation under Section 504, which must determine (among other things) whether harassment occurred, even if that harassment did not constitute a crime that law enforcement decides to prosecute. A school district's investigation into alleged harassment

of a student with a disability also would need to include a determination of what services the student might need as a response to any harassment, an analysis that law enforcement is not tasked with conducting.

Other District staff appeared to have been potentially hesitant to watch the video because they were concerned that it was illegally made. This also does not excuse the District's failure to conduct an investigation into potential harassment of a student. OCR is not aware of any California law that prevents a school district from reviewing a video such as the one at issue here. OCR also did not find any evidence the District attempted to conduct any additional investigation of the incident without viewing the video.

OCR found that the Director did work with the Complainant to transfer the Student to a new school. However, no action was taken to remedy the harassment by taking any steps to address the impact of the harassment on the Student, such as additional counseling or other services. In fact, the incident occurred on October XX, 2018 and the information shows that the Student did not even receive the regular counseling provided for in his IEP for almost two months between October XX, 2018 and December XX, 2018.

Neither did the District take appropriate steps to prevent the harassment from recurring. Instead, after the NPA removed NPA Aide B1 from School 1, the District rehired NPA Aide B1 for a different school a few months later without any communication to NPA Aide B1 that his actions were inappropriate or training from the District. In OCR's interview with NPA Aide B1, OCR found no evidence that NPA Aide B1 was aware that his behavior may have constituted disability-based harassment or any indication that he would act differently in a future situation. In these circumstances, OCR found that the District therefore did not take appropriate steps to prevent the harassment from recurring.

Further, with regard to other students in the SUCCESS classroom in School 1, OCR identified a compliance concern that other students were also potentially subjected to harassment based on disability due to the conduct of NPA Aide B1 (and possibly other staff members) and the District's failure to respond to the conduct. The climate in the classroom for all students was chaotic, and staff explained that they were unable to control the chaos. One staff member reported to OCR that in response to student behaviors, NPA Aide B1 was physically aggressive with Students 2, 3 and 4 in a manner that the staff member found inappropriate. For example, according to the staff member, NPA Aide B1 placed Student 2 on the ground with a knee in his back and Student 3 was pushed against a wall and would be shoved in corners (like the Student in the video). The staff member reported to Student 3's parent that Student 3 was in distress during an encounter with NPA Aide B1, and Student 3 reported that "a man" in the classroom was "mean" to him. The staff member also reported that NPA Aide B1 yelled at Student 4, causing Student 4 to have a "breakdown." OCR is also concerned that other students may have been the subjects of the inappropriate use of physical restraints and yelling by NPA Aide B1 and District Aide 1 in response to these students' behaviors that were related to their disabilities. District Aide 1, for example, told OCR that she used CPI holds on students other than the student and did not keep a written record of those restraints. OCR confirmed that the School was not keeping any records of restraints used during this period.

For this reason, OCR has a compliance concern that other students in the class, due to witnessing the conduct or being the targets of the conduct, were subjected to harassment based on their disability due to the use of restraints and yelling. However, prior to OCR completing its investigation and making a compliance determination as to the treatment of other students, the District expressed an interest in voluntary resolution of this issue pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so.

In summary, with regard to Issue 1, OCR found that the District violated Section 504 and Title II and their implementing regulations when the Student was subjected to harassment based on his disability by NPA Aide B1 and when the District failed to respond appropriately to notice of the harassment. OCR also identified a compliance concern that other students in the classroom may also have been subjected to harassment based on disability and the District may have also failed to respond to notice of that harassment, which the District agreed to address pursuant to the enclosed Resolution Agreement.

Issue 2a: Whether the District denied the Student a Free Appropriate Public Education (FAPE) by failing to implement the Student's behavior intervention plan and failing to provide weekly 1:1 counseling services as provided in the Student's Individualized Education Program (IEP).

Failure to Implement Behavior Intervention Plan

OCR found that the District failed to consistently implement the Student's Behavior Intervention Plan (BIP) at School 1. Instead, as noted above, multiple observers described the classroom as chaotic, lacking in instructional control, and pandemonium. Another observer noted that staff were struggling trying to keep their heads above water. The class, which contained students with extremely high needs, was led by a new teacher who had not worked with students of this age before and who did not have a teaching credential. In addition, multiple aides who worked with the Student at School 1 reported that they did not even have a copy of the Student's BIP.

The failure to follow the BIP was also illustrated, as described above, by the incident captured on video. The actions shown in the video do not reflect the techniques described in the BIP and in fact reflected the opposite of what was proscribed by the BIP. Instead of applying the strategies in the BIP, NPA Aide B1 instead adopted a forceful and aggressive approach. The fact that the Principal observed that approach and did not raise any concerns also indicates that adherence to the BIP was not a priority at that time.

Similarly, while enrolled at School 2, the Student's behavior plan provided that when the Student engaged in disruptive behaviors such as aggression, shock talk, tantrums or property destruction, staff would take steps to prevent the harm, ignore the behavior, and then redirect him to productive activities. However, instead of following this plan, School 2 instead repeatedly called the Student's parents to come pick him up.

IEP team meeting notes and the descriptions of the meeting by various participants also indicated that multiple members of the team were concerned that the Principal was sending the Student home instead of implementing the behavior plan. The Director stated that calling the parent to

pick up the Student was being used as a convenience, while the teacher told the IEP team she was not aware that School 2 was calling the parents to pick up the Student.

In sum, OCR found that the District failed to implement the Student's IEP and BIP in violation of Section 504, Title II, and their implementing regulations. Specifically, at School 1 the evidence indicates that the techniques proscribed to be used in the Student's BIP were not consistently used. At School 2, OCR found that instead of implementing the BIP to address the Student's behavior, staff instead repeatedly sent the Student home. OCR therefore found that the District violated Section 504 and Title II by failing to implement the Student's IEP and BIP.

Failure to Provide Counseling Services

OCR also found that the Student did not receive the counseling services required under his IEP. Specifically, the Student did not receive any counseling services during the two periods in which the Complainant had been forced to remove the Student from school. This occurred first in October 2018 when the Student was removed from School 1, and then in February 2019 when the Student was removed from School 2.

As to the period starting in October 2018, the counselor told OCR that she continued to show up at the School to provide services to the Student because the District did not inform her that the Student was at home. At that moment, directly after the incident with NPA Aide B1, it would have been particularly important for the Student to receive counseling services. If the District had informed the Counselor that the parent had removed the Student from the School because of the incident, the Counselor could have attempted to provide the services at the Student's home.

In sum, given the Student's need for additional services and the volatile environment in the District classrooms, and given the fact that the reason the Student was removed from school was based in part on the District's failure to provide an appropriate environment for the Student, OCR found that under these circumstances the Student's placement at home did not relieve the District of its responsibility to provide the services as required by his IEP.

Issue 2b: Whether the District denied the Student a Free Appropriate Public Education (FAPE) by subjecting the Student to a significant change in placement without following adequate evaluation and placement procedures when the Student was removed from the classroom due to his behavior.

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

In this case, OCR reviewed whether the Student's behavioral exclusions from his classroom environment constituted a significant change in placement, thus requiring the District to hold a manifestation determination.

OCR notes that the District did not keep adequate records to fully evaluate the amount of time that the Student was out of the classroom due to his behavior. However, as noted in Section 2a, it is clear that when the Student engaged in disruptive behaviors, staff at School 2 repeatedly called the Student's parents to pick him up early. Multiple witnesses reported that the Student was sent home early multiple times a week. While the School's records do not always identify the exact reasons for each instance the Student was sent home, not counting two days where health reasons were listed, OCR found 18 days in January and February 2019 where the Student had to be picked up from the office, compared to only ten days where he apparently finished the school day. This averaged out to the Student being sent home two to three times a week, consistent with the Complainant's descriptions. Despite concerns raised in the Student's IEP team meetings of the School's practice of sending the Student home when he engaged in disruptive behavior, the attendance records indicate that the Student continued to be sent home multiple times a week up until the date the Complainant removed the Student from the school.

OCR therefore identified a compliance concern that, due to the District's poor record-keeping, the District did not have a mechanism to ensure that it was aware of whether the Student was missing 10 or more days of school in a manner that demonstrated a pattern of exclusion; that the evidence indicates that the Student may have been subjected to a significant change in placement due to the loss of time at School 2 due to being sent home; and that the District did not hold a manifestation determination hearing at any point to determine if the Student's misconduct and removals were caused by, or were a manifestation of the Student's disability, or whether they were due to a failure to implement his IEP. However, prior to OCR completing its investigation and making a compliance determination, the District expressed an interest in voluntary resolution of this issue pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was appropriate to do so.

Overall Conclusion

This concludes the investigation of this complaint.

To address the issues alleged in the complaint, the District, 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. The Resolution Agreement includes remedies to provide compensatory services to the Student, to determine whether compensatory services were appropriate to other students, and to provide for staff training regarding the issues identified in the complaint.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until

the District is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination in this matter 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. 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 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, 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, 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 Blake Thompson at (415) 486-XXXX or blake.thompson@ed.gov or Jessica Plitt at (415) 486-XXXX or at jessica.plitt@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: David Robinett, Counsel for District