



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
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SAN FRANCISCO, CA 94102

September 7, 2023

Diego R. Ochoa
Superintendent
1170 Chess Drive
Foster City, CA 94404

By email only to: diegoochoa@smfcsd.net

Re: San Mateo-Foster City Unified School District
OCR Case No. 09-22-1083

Dear Superintendent Ochoa:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Mateo-Foster City Unified School District (District). The Complainant, on behalf of the Student's Mother, alleged discrimination against the Student and the Student's Mother on the basis of disability, race, color, and/or national origin.¹ Specifically, OCR investigated the following issues:

1. Whether the District denied the Student a free, appropriate public education (FAPE) by failing to timely evaluate the Student even though the District had a reason to believe the Student needed special education or related aids and services from [redacted content] – [redacted content], 2021; and not educating the Student with students without disabilities to the maximum extent appropriate to the needs of the Student;
2. Whether the District treated the Student differently based on his disability when it restricted access to his educational program by reducing the number of hours the Student was allowed to attend school during the [redacted content] of 2021;
3. The District treated the Student adversely based on disability when an employee, the Student's teacher, physically reprimanded the Student on or around [redacted content] 2021;
4. Whether the District treated the Student and the Student's mother differently on the basis of race, color, and/or national origin when School administration and staff refused to communicate with the Student and Student's mother during [redacted content] 2021; and
5. Whether the District retaliated against the Student and the Student's mother in [redacted content] 2021 after the Complainant filed this disability, race, color, and/or national origin

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

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

discrimination complaint with OCR when the Principal verbally discouraged the Student's mother from "involving lawyers" and informed her that she can no longer drop the Student off at the front office to allow him time to calm down and must take him directly to class.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation at 34 C.F.R. Part 100; and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. These laws and regulations prohibit discrimination on the basis of race, color, national origin, and disability under any program or activity receiving Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a public entity and a recipient of federal financial assistance from the Department, the District is subject to Title VI, Section 504, and Title II.

To investigate this complaint, OCR gathered evidence provided by the Complainant and District, including statements provided in the District's data response, and reviewed publicly available information. OCR also conducted interviews of District employees. After careful review of the information gathered in the investigation, OCR concluded that the District violated Section 504 and Title II and their implementing regulations with regard to Issues #1 and 2. With respect to Issues #3, 4, and 5, OCR found insufficient evidence that the District violated Section 504, Title II, or Title VI.

Issues 1 and 2: Whether the District denied the Student a FAPE and whether it treated the Student differently based on his disability when it restricted access to his educational program by reducing the number of hours the Student was allowed to attend school during the [redacted content] of 2021.

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 school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit, or service.

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Under 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), 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.

Factual Findings

During the 2021-2022 school year, the Student was [redacted content] years old and enrolled in a general education [redacted content] class at [redacted content] school in the District (School).

On [redacted content], 2021, the Student started [redacted content] on a regular schedule from [redacted content] to [redacted content] ([redacted content] instructional minutes).

During the Student's first week in [redacted content], on or around [redacted content], 2021, the Principal discussed with the Student's Mother, in-person and over the telephone, the Student's behavioral issues in class, including elopement, his medical history of [redacted content], and the difficulty his teacher (Teacher) was having managing his behavior. OCR also reviewed emails between the Principal and the Student's Mother, dated [redacted content], 2021, in which the Principal acknowledged that the Student's Mother agreed to schedule an appointment with the Student's pediatrician and request a full evaluation.

On [redacted content], 2021, the Principal spoke with the Student's Mother at the School and proposed a shortened class schedule for the Student from [redacted content] to [redacted content] ([redacted content] instructional minutes). According to the Complainant, the Student's Mother asked the Principal whether the reduced schedule was her only option, and based on his response, she believed she had no other choice and agreed to it.

According to the District, the Principal and Student's Mother agreed that the Student would attend school on a reduced schedule and would gradually return to the regular schedule as a strategy to support his adjustment to [redacted content]. The District informed OCR that the Principal spoke with the Student's Mother at least three times about this temporary plan. The Principal told OCR he "believed in good faith that [the Student's Mother] agreed with the interim plan" as a temporary accommodation to allow the Student to become independent and more familiar with the class, since he was in a school setting [redacted content].

Between [redacted content], 2021 (48 school days), the Student attended [redacted content] on a reduced schedule [redacted content] ([redacted content] instructional minutes each day), resulting in a total of [redacted content] minutes of missed instructional time. According to the District, the Student's Mother was allowed to drop the Student off at the office each morning to help reduce any anxiety the Student was experiencing before he was led to class. The Principal told OCR that the period in the office lasted for a few minutes; the Teacher told OCR the period lasted for 20-30 minutes. According to the Resource Specialist Program (RSP) Teacher, a Spanish-speaking aide was assigned to the Student [redacted content] to ensure his safety and help him access the curriculum.

On [redacted content], 2021, the Student's Mother provided the Principal a copy of a letter from the Student's pediatrician, which summarized the Student's Mother's concerns about the Student's anxiety and his inability to concentrate and sit still. The letter stated that the Student's Mother agreed to a referral for further evaluation and therapy services to provide the Student with behavioral treatments. The pediatrician also recommended a "complete learning evaluation" if the Student continued to struggle and stated that it was "premature to evaluate learning at [that] time because this [was the Student's] [redacted content]."

On [redacted content], 2021, the Principal emailed the Student's Mother and summarized their meeting the previous day. In that meeting, the Principal described the Student as "extremely active" and shared his concerns that the Student has "trouble concentrating and frequently runs out of the classroom." The Principal also acknowledged that the Student's Mother did not believe the Student needed a modified schedule and had expressed a desire that the Student return to full-time instruction and remain at school until [redacted content].

Within the [redacted content] weeks of school, the Principal had spoken with the School Psychologist (Psychologist) and RSP Teacher about possible assessment of the Student for special education, and he had requested that they conduct in-class observations of the Student.

According to the District, on [redacted content], 2021, the Principal met with the Student's Mother and assisted her in writing a letter to the District's special education department to request a full psycho-educational evaluation for the Student.

On [redacted content], 2021, the District sent the Student's Mother an assessment plan for an initial evaluation for special education, which she signed and returned. On [redacted content], 2021, the Student's Mother received a "Notice of Meeting" for [redacted content], 2021 to discuss the results of the pending assessments. Between [redacted content] and [redacted content], 2021, the Psychologist and/or RSP Teacher observed the Student in class. On [redacted content], 2021, the Student returned to a regular schedule. The District told the Complainant that the decision was made "[i]n order to accommodate [the Student's Mother's] schedule, and in consideration of her concerns as raised in the OCR complaint." The Principal told OCR that the decision to return the Student to the regular schedule was made in part because the Student had become more familiar with a school schedule and because the Student's Mother wanted him to stay in class for longer periods. In a letter dated [redacted content], 2021, the District told the Complainant that "it was necessary to shorten [the Student's] school day schedule" "[i]n order to keep [the Student] safe, pending the outcome of the District's special education assessments."

The Student allegedly hit other students on five separate incidents between [redacted content] and [redacted content], 2021 (the period during which the Student was on a reduced schedule) and continued to elope from class.

On [redacted content], 2021, the RSP Teacher conducted an initial psycho-educational evaluation on the Student.

No other [redacted content] student in the District was placed on a shortened schedule during the 2020-2021 or 2021-2022 school years.

Legal Analysis and Conclusion

OCR found that during the Student's first week in school, the District had ample evidence to suggest that the Student may have a disability and require special education or related aids and services. As early as [redacted content], 2021 (the Student's [redacted content] day in [redacted content]), the Principal spoke to the Student's Mother about the Student's difficulty with concentration and elopement from the classroom and the Student's Mother told the Principal that the Student had a history of [redacted content] and that she would ask the Student's pediatrician for a complete evaluation of the Student. In addition, within the [redacted content] of school, a Spanish-speaking aide had been assigned to the Student to ensure he could access the curriculum and to prevent his elopement from class. The Principal and the Student's Mother regularly discussed the Student's behavior, including almost daily during the [redacted content] of school. Specifically, between [redacted content], 2021, the Student's Mother and pediatrician shared concerns about the Student's anxiety and inability to concentrate and sit still in class and the Principal documented the Student's elopement and concentration struggles. Additionally, within the [redacted content] of school, the Principal asked the Psychologist and RSP Teacher to observe the Student in class. The School began the process to seek an assessment of the Student on [redacted content], 2021 when the Principal assisted the Mother write to the Special Education Department, and the District completed the initial psycho-educational evaluation on [redacted content], 2021.

However, despite having reason to believe the Student needed special education or related aids and services due to a disability, the District placed the Student on a reduced schedule. The District told the Complainant that the decision to shorten the Student's school day was to keep him safe pending the outcome of the special education assessments. The District maintained the Student's placement on a reduced schedule for nearly three months, from [redacted content], 2021 (48 school days), during which the District continued to have reason to believe the Student needed special education or related aids and services due to a disability. The reduced schedule resulted in [redacted content] minutes of missed instructional time—a reduction that constitutes a significant change in placement and one that effectively removed the Student from the regular educational environment for over [redacted content] each day. Further, the Student was the only [redacted content] student in the District who was placed on a reduced schedule for the 2021-2022 school year. For comparison, while other [redacted content] students who attended school on a regular schedule from [redacted content] received [redacted content] instructional minutes for those 48 school days, the Student only received [redacted content] instructional minutes.

According to the District, it reduced the Student's schedule for his safety and with the Student's Mother's agreement. The evidence, however, showed that the Student had an aide assigned to

ensure his safety and the Principal had requested that the Psychologist and RSP Teacher monitor the Student. Furthermore, the District also explained the decision to return the Student to the regular schedule was made to accommodate the Student's Mother's schedule rather than based on any change in the Student's behavior or any determinations about his safety or needs. Additionally, OCR's investigation found conflicting evidence that suggests the Student's Mother was not in agreement. For example, the Principal sent the Student's Mother an email on [redacted content], 2021, in which he stated that she previously agreed to a shortened scheduled, but he also acknowledged that she did not believe the Student needed a modified schedule and expressed a desire that the Student return to a regular schedule.

Based on the evidence gathered in the investigation, OCR found by a preponderance of the evidence that the District violated Section 504 and Title II by denying the Student a FAPE and treating him differently based on his disability or suspected disability when it reduced his class schedule for a total of 48 school days during the [redacted content] of 2021.

Issue 3: Whether the District treated the Student adversely based on disability, when an employee, the Student's teacher, physically reprimanded the Student on or around [redacted content] 2021.

Legal Standards

As described above, 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.

Factual Findings

According to the District, on [redacted content], 2021, the Student allegedly hit another student on the playground. An aide witnessed the incident and informed the Teacher, who escorted both students to the office. According to the Complainant, the Student's Mother learned about this incident from [redacted content] a few weeks later and was not notified by the School immediately. The [redacted content] told the Student's Mother that she observed the Teacher yell at the Student after the incident and "shove" him into a chair to sit down.

The Teacher told OCR that upon learning from the aide that the Student hit another student, she took both students to the office so that the Principal could speak with the Student about the incident. The Principal was not in the office so the Teacher crouched down to the Student's eye level and said, "do you see she's crying, she's hurt, you can't punch like that." She described her tone as "stern", and she said she looked him in his eyes but did not raise her voice.

The Principal told OCR that when he returned to the office, he also spoke with the Student, who acknowledged that he had punched another student. The Principal then counseled the Student about appropriate conduct at school, and encouraged the Student to resolve conflicts with words, not using his hands. The District said the Principal did not inform the Student's Mother about this incident because it was the first time the Student hit another student and the incident was immediately addressed without a need for further intervention or any disciplinary action.

During the first week of [redacted content] 2021, after the Student's Mother learned of the [redacted content] incident, she called the Superintendent and met with the Principal to complain about the Teacher's alleged mistreatment of the Student. The Principal told OCR that the Student's Mother did not raise an issue of discrimination and he informally investigated the incident. In response to the Student's Mother raising concern about the incident, the Principal told OCR that he assured her that he would meet with the Teacher, the witness, and school staff members who were in the yard when the incident occurred. The Principal said the witness told him that she saw the Teacher walk the Student by the hand, gently ask the child to sit down, lower herself in order to make eye contact, and say with a stern voice "no hitting." The Principal told OCR that the Teacher corroborated the witness' recollection of the incident. At the end of his investigation, he found no inappropriate actions were taken by the Teacher. The District described the Teacher's conduct as "an appropriate response and intervention." The Principal informed OCR that he explained the results of the investigation to the Student's Mother.

Legal Analysis and Conclusion

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR assesses whether there is evidence that the individual was treated differently than individuals without disabilities 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.

In this case, OCR's investigation found conflicting information about the incident. While the Complainant alleged that the Teacher yelled at and shoved the Student into a chair, the Teacher told OCR that she lowered herself to the Student's eye level, explained to the Student the consequences of his actions, and told him in a stern voice that hitting is not allowed. During the Principal's investigation of the incident, a witness corroborated the Teacher's description of what happened during the incident. The Principal did not notify the Student's Mother about the incident because it was immediately addressed without a need for further intervention or any disciplinary consequences for the Student. OCR's investigation confirmed that the incident was not recorded in the Student's discipline record.

Based on the information gathered during the investigation, OCR found insufficient evidence that the Student experienced any denial or limitation of services, benefits, or opportunities to suggest different treatment. Here, the Student hit another student on the playground and the Teacher subsequently walked the Student to the Principal's office and told him "no hitting." The Student acknowledged hitting the other student. The Principal investigated the incident and no disciplinary action was taken against the Student as a result of the incident. As such, with respect to Issue #3, OCR found insufficient evidence to demonstrate that the District treated the Student differently based on disability in violation of Section 504 and Title II.

Issue 4: Whether the District treated the Student and the Student's mother differently on the basis of race, color and/or national origin when School administration and staff refused to communicate with the Student and Student's mother during [redacted content] 2021.

Legal Standards

Under the Title VI regulations, at 34 C.F.R. § 100.3(a) and (b), a district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a district may not, directly or through contractual or other arrangements, on the basis of race, color, or national origin, provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others.

Factual Findings

On the Student's [redacted content] day of [redacted content], the Student's Mother contacted the Principal to discuss her concerns about the Teacher's behavior towards her and the Student. According to the Complainant, that morning during drop-off, the Teacher refused to get up from her chair to speak with the Student's Mother and "rolled her eyes and made gestures suggesting that she did not like" the Student or the Student's Mother.

The Teacher denied making any negative gestures, refusing to speak with the Student's Mother, or discriminating against the Student. The Teacher explained to OCR that when the Student's Mother was dropping the Student off in class, he was screaming, having a tantrum, pulling his mother's hair, and refusing to let her go. The Teacher explained that she was seated in her chair on the opposite side of the door when the Student was brought in, and class had already begun so she was instructing the other students. She told OCR that the Student's Mother wanted her to physically assist with getting the Student into the classroom and to hold him down to stop him from eloping. The Teacher told OCR she felt uncomfortable with the Student's Mother's request and had tried to explain that she could not physically restrain a student. She did not want anyone to get hurt. After the Teacher refused to assist with the Student, the Student's Mother took him to the office to calm down before coming back to the classroom.

On [redacted content], 2021, the Student's Mother emailed the Principal and stated her belief that the Teacher's refusal to speak with her, and the Teacher's treatment of the Student, were discriminatory.

On [redacted content], 2021, the Student's Mother and Principal spoke over the phone about her complaint of discrimination. According to the Complainant, the Student's Mother interpreted the Principal's comments to normalize or excuse the Teacher's behavior. The District denied the Principal made any such attempts and according to the District, the Principal informed the Student's Mother that he would schedule a meeting with the Teacher to conduct an informal investigation of the incident.

The Principal met with the Teacher to discuss the incident. He recalled that the Teacher felt uncomfortable with the Student's Mother's request to restrain the Student and prevent him from eloping. The Principal also said that the Teacher expressed remorse and regretted that the Student's Mother took her refusal to physically intervene personally. Moreover, he noted that the Teacher was concerned that she would be held liable if the Student was restrained and if she or the Student got hurt. After that meeting with the Teacher, the Principal explained to the Student's Mother that there was a misunderstanding and he apologized.

Between [redacted content], 2021, the Student's Mother and the Principal communicated regarding the Student's behavior, the incident described in Issue #3 above and other disciplinary incidents, the supports the Student was receiving, the Student's schedule, a request for a full psycho-educational evaluation of the Student, and a "Notice of Meeting" for an initial IEP meeting.

Between [redacted content], 2021, the Complainant and the District communicated via email regarding the Complainant's concerns about the Student's reduced schedule, the Student's upcoming IEP meeting, and the Complainant's request for an emergency meeting and the Student's records and assessment reports.

The Student's Mother and the Principal attended the [redacted content], 2021 IEP meeting, which was continued to [redacted content], 2022 to complete the agenda items, and the Student's Mother signed the Assessment Plan.

Legal Analysis and Conclusion

To determine whether a district has discriminated against an individual on the basis of race, color, or national origin under Title VI, OCR investigates whether that individual was treated differently than individuals of other races, colors, or national origins 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 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 district's actions were based on race, color, or national origin.

OCR's investigation found insufficient evidence to suggest different treatment of the Student or the Student's Mother. The Student's Mother alleged that the Teacher discriminated against the Student and his mother during the morning drop-off period on the Student's [redacted content] day of [redacted content]. The Complainant alleged that staff refused to communicate with the Student's Mother. However, the Teacher told OCR that with respect to the incident at drop-off, she attempted to gesture and convey to the Student's Mother that she could not physically intervene or restrain the Student to prevent him from eloping. OCR also reviewed documentation which shows that the Principal and the Student's Mother communicated by email, by phone, and in-person numerous times between [redacted content], 2021. These communications included discussions about the Student's difficulty accessing the curriculum due to challenges with concentration and elopement from class, the Student's schedule, evaluation of the Student, as well as numerous incidents when he allegedly hit other students. Further, OCR's investigation determined that a Spanish-speaking aide was assigned to the Student within the [redacted content] of school to assist with communication and understanding.

Based on the information gathered during the investigation, OCR found insufficient evidence that School administrators and staff refused to communicate with the Student and the Student's Mother during [redacted content] of 2021 or treated them differently based on race, color, and/or national origin. As such, OCR found insufficient evidence that the District violated Title VI with respect to Issue #4.

Issue 5: Whether the District retaliated against the Student and the Student's mother in [redacted content] 2021 after the Complainant filed this disability, race, color, and/or

national origin discrimination complaint with OCR when the Principal verbally discouraged the Student's mother from "involving lawyers" and informed her that she can no longer drop the Student off at the front office to allow him time to calm down and must take him directly to class.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 106.71, provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, 42 U.S.C. § 2000d et seq., which makes it unlawful to retaliate against an individual because the individual has opposed any practice made unlawful by these statutes, and the Title II regulations, at 28 C.F.R. § 35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II. The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Factual Findings

During the week of [redacted content], 2021, according to the District, the Student's Mother informed the Principal that she had hired an attorney because she was unhappy with how her concerns were being addressed. The Principal told OCR they discussed that the Student appeared to adjust well with the reduced schedule and going to the office before class. In addition, he told OCR that he asked if the Student's Mother would be willing to begin dropping the Student off in the classroom and that she agreed.

On [redacted content], 2021, the Complainant emailed the District to raise concerns that the Student was only in class for [redacted content] hours per day and to set up an "emergency" meeting to discuss the issue. On [redacted content], 2021, the Complainant emailed the District about the [redacted content] email and requested copies of the Student's records. The District responded with a copy of the Assessment Plan and Notice of Meeting but did not respond to the prior email requesting a meeting.

On [redacted content], 2021, the Complainant filed this OCR complaint, and copied the District's Director of Special Education. The District responded to the Complainant's [redacted content], 2021 email, stating that the Student did not have an IEP and that an initial IEP meeting was scheduled for [redacted content], 2021.

According to the Complainant, the Principal approached the Student's Mother between [redacted content], 2021 and discouraged her from "involving lawyers" and informed her she could no longer drop the Student off at the office to calm down before going to class. According to the District,

the Principal did not discourage the Student's Mother from involving lawyers. The Principal also told OCR that he suggested that the Student no longer needed to be dropped off at the office because the Student had shown signs that he was adjusting to the school setting and no longer needed the interim measure.

Legal Analysis and Conclusion

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the district, under circumstances that suggest a connection between the protected activity and the adverse action. The Student's Mother engaged in a protected activity the week of [redacted content], 2021 when she informed the Principal that she had hired an attorney because she was unhappy with how her concerns were being addressed and on [redacted content], 2021 when the Complainant filed this OCR complaint on her behalf and copied the District's Director of Special Education.

Next, OCR analyzed whether the District took an adverse action against the Student and the Student's mother. The Complainant told OCR that the Principal discouraged the Student's Mother from involving lawyers regarding her concerns; however, the Principal denied making that statement. In addition, although the Complainant alleged that the Principal withdrew a supportive measure previously given to the Student (*i.e.*, no longer allowing the Student to calm down in the office before going to class), the Principal denied this, and the Teacher told OCR that the Student's Mother continued to drop the Student off at the office in the mornings. As such, OCR found insufficient evidence to establish that the Student's Mother and the Student were subjected to an adverse action. Therefore, OCR concluded that there is insufficient evidence that the District violated Title VI with respect to Issue #5.

Overall Conclusion

This concludes OCR's investigation of the 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.

To address the complaint allegations and OCR's findings identified in the investigation, the District, without admitting to any violation of law, entered into the enclosed resolution agreement (Agreement). Under the Agreement, the District will convene an Individualized Education Program (IEP) meeting to determine whether compensatory services are appropriate as a result of the District's failure to provide the Student with appropriate regular and/or special education related services, and issue written guidance and facilitate training to District and School site administrators and staff regarding the District's responsibilities under Section 504 and Title II.

Based on the commitments made in the enclosed 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 Agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

The Complainant and Student's Mother have a right to appeal OCR's determination of Issues #3, 4, and 5 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant

or the Student's Mother must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorneys Nezhia Burkes at Nezhia.Burkes@ed.gov or Ellen Moy at Ellen.Moy@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

Enclosure

Copy to: [redacted content], Counsel (via email only)