



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

June 1, 2017

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Dr. Larry Nyland  
Superintendent  
Seattle School District No. 1  
P.O. Box 34165  
Seattle, Washington 98124-1165

Re: Seattle School District No. 1  
OCR Reference Number 10161132

Dear Superintendent Nyland:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Seattle School District (district) filed on behalf of a student alleging disability discrimination and retaliation. The complainant (parent) alleged that the district:

1. failed to convene a 504 team to address the parent's request for an evaluation to determine if the student needed counseling or other assistance due to her changing medical needs;
2. failed to modify classes for the student during the 2015-2016 school year by reducing the number of classes the student was required to take;
3. failed to protect the student's privacy when the health class instructor allegedly projected a class roster which identified which students had Section 504 plans; and
4. retaliated against the parent and the student by:
  - (a) failing to return the calls of the parent after she complained about problems with her daughter's 504 plan and the school not providing the student with assistance; and
  - (b) disenrolling the student.

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Title IX of the Education Amendments of 1972. These laws prohibit discrimination on the bases of disability and sex, as well as retaliation, in programs and activities receiving federal financial

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assistance (Section 504 and Title IX) and by public entities (Title II). The district receives federal financial assistance from this Department and is a public entity, and is therefore subject to these laws.

### Voluntary Resolution Agreement for Issue Nos. 1 and 2

OCR and the district have entered into a voluntary resolution agreement for issue Nos. 1 and 2.

#### Issue 1

OCR investigated whether the district discriminated against the student, on the basis of disability, when the district failed to begin the evaluation process in a timely manner after the parent expressed concerns about a new medical diagnosis in fall 2015.

The regulations implementing Section 504 at 34 C.F.R. § 104.35(a) require a recipient to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

OCR's investigation to date indicated that after the student enrolled in the district as of fall 2014, she was not re-evaluated, and the district continued to use the Section 504 plan developed by her previous district, despite the parent's September 2015 handwritten note to the district stating that her daughter had anxiety, which was not covered by the existing Section 504 plan. The records provided by the district do not reflect that the district responded to or acknowledged the parent's notification regarding the student's anxiety, and when the district re-convened and revised the student's Section 504 plan in November 2015, it did not address anxiety. OCR has a concern that the district did not respond to the parent's notice of the student's anxiety.

#### Issue 2

OCR investigated whether the district discriminated against the student, on the basis of disability, by failing to provide the student a free appropriate public education (FAPE) when it did not modify the student's class schedule in fall 2015 after the student and her parent raised concerns that the student was having trouble keeping up with a full class schedule.

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires the district to provide a FAPE to each qualified student within its jurisdiction. The regulation defines an appropriate education as the provision of regular and special education and related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of non-disabled students. Title II at 28 C.F.R. § 35.130 includes similar requirements and is interpreted consistently with Section 504.

OCR's investigation to date showed that the student's 504 plan did not address the modified schedule prior to November 13, 2015. The parent asserts that she requested a reduced schedule for the student due to her disability in a telephone call with the student's counselor; she did not specify the date. The counselor told OCR that she learned in an October 19, 2015, call with the parent that the parent's main concern was that the student had a full schedule of classes. Data provided by the district shows that the student emailed the counselor on October 20, 2015, saying that she wanted the counselor to fix the mistake of having an assigned first period class. The student's school records show that she received a reduced schedule for the 2014-2015 school year. OCR has a concern that the district did not evaluate the student's needs in a timely manner to determine whether the student required a reduced schedule after the student requested a reduced schedule due to her disability, given that the student previously received a reduced schedule, and the district modified the student's schedule in November 2015.

In accordance with Section 302 of the *OCR Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. Before OCR completed its investigation with respect to issue Nos. 1 and 2, the district expressed an interest in voluntarily resolving this case. In light of the district's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate for issue Nos. 1 and 2.

The actions the district will take under the agreement include the following:

- review and revise as necessary its policies and procedures to ensure that as the district receives new information regarding a student's disabling condition, or information about new disabling conditions, it will conduct a timely evaluation as necessary to determine whether the student's placement in regular or special education requires modifications based on the new information;
- provide notice to all district employees regarding the revised policies and procedures;
- provide training to all principals, assistant principals, counselors, school psychologists, and student 504 plan coordinators at XXXXX High School regarding the revised policies and procedures;
- review any outstanding fees or fines left on the student's account and forgive those fees or fines; and
- notify the parent of the district's responsibility for providing a FAPE to disabled students, and include a copy of the student's transcript with the notification.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by **August 1, 2017**.

Finding of No Violation for Issue Nos. 3 and 4

OCR determined that the district did not violate Section 504, Title II, or Title IX with respect to issue Nos. 3 and 4.

Issue 3

OCR investigated whether the district discriminated against the student, on the basis of disability, by treating the student differently by allegedly projecting a health class roster that identified which students in the class had 504 plans.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(b)(iv) states that the district may not provide different services to disabled students unless such action is necessary to provide them with services that are effective as those provided to others. Title II at 28 C.F.R. § 35.130 includes similar requirements and is interpreted consistently with Section 504.

The student took a XXXXXXXXXX class during the 2015-2016 school year. OCR found that the XXXXXX teacher had the ability to project the contents of her computer screen onto a projection screen in the class room. The parent asserted that the XXXXXX teacher projected an electronic class roster on her computer that indicated which students had a 504 plan onto the projection screen. The XXXXXX teacher told OCR that she did not remember whether she had projected a class roster that identified which students had 504 plans, but that it was not her practice to do so.

OCR's investigation determined that there is insufficient evidence to support a violation of Section 504 or Title II regarding this issue. Because the XXXXXXXX teacher did not remember projecting any class lists that identified students by disability, OCR finds that the evidence does not support that the district violated Section 504 or Title II with respect to this allegation.

Issue 4

OCR investigated whether the district retaliated against the parent and the student after the parent raised sexual harassment allegations during the 2014-2015 school year and raised concerns about the implementation of the student's 504 plan during the 2015-2016 school year, by failing to return the parent's calls during the 2015-2016 school year; and by disenrolling the student in January 2016.

The complaint alleged that the school failed to return calls to the parent in 2015 and disenrolled the student from the district in January 2016 because the parent filed a sexual harassment complaint regarding the student in 2014, and because the parent complained about problems with the student's 504 plan in 2015. Data provided by the district shows that the parent filed a complaint on October 17, 2014, regarding alleged inappropriate behavior by a teacher, and that on March 23, 2015, the district informed the parent that there was not sufficient evidence to substantiate the allegation. In fall 2015, the parent raised several concerns with school staff regarding the student's disabilities, including the need for a schedule change.

The parent told OCR that she was attempting to contact the school to resolve issues regarding her daughter's education during fall 2015, and that her calls were not returned. Specifically, she stated that the school's principal failed to return one call in October 2015, and the assistant principal failed to return two calls she made in November 2015 and January 2016.

The parent told OCR that in early November 2015, she was told that the principal had not returned her call because he had been out of the building for weeks or because she had not first contacted the student's assigned administrator for the year, who was the assistant principal.

By mid-November 2015, the student was no longer attending school. On November 24, 2015, the student's biology teacher e-mailed the parent to say that he missed having the student in class and wondered where she was. The school nurse e-mailed the parent and the student's language arts and biology teachers called the parent inquiring about the student's absences. On December 7, 2015, the 10<sup>th</sup> grade counselor emailed the assistant principal to say that the student had been out of school for about three weeks and that the counselor was not getting any response from the parent.

In an internal district e-mail provided by the district, the assistant principal indicated that as of December 18, 2015, when he initiated contact with the parent, the parent had not yet contacted him by e-mail or telephone. He noted in a contemporaneous report that on December 18, 2015, he called three different numbers for the parent and was able to leave messages on two of the lines. The parent then left him a message on January 4, 2016. He called her on January 11, 2016, and attempted to set up a meeting at the school but the parent did not return his call.

The internal school staff e-mails provided by the district showed that school staff expressed concern among themselves that they did not have the correct contact information for the parent. On January 8, 2016, a district administrative staff person e-mailed school staff and specified a certain number for staff to use when trying to contact the parent.

On January 20, 2016, the school registrar e-mailed the assistant principal and other school staff with a list of four students who had been absent for 19 or more days, including the student, who at that point had been absent for 36 days. District admissions staff confirmed with the school staff that all students who had been absent for 20 days should be disenrolled. The student was disenrolled on January 21, 2016, for lack of attendance per district policy 3121 that states students who are absent for more than 20 consecutive school days will be disenrolled.

The Title II, Section 504, and Title IX regulations contain prohibitions against retaliation. The Title II regulation at 28 C.F.R. § 35.134 states that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by Title II. The Section 504 regulation at 34 C.F.R. § 104.61 and the Title IX regulation at 34 C.F.R. § 106.71 incorporate by reference the Title VI regulation prohibiting retaliation at 34 C.F.R. § 100.7(e). The regulation states 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 Section 504 or Title IX, or because the person made or participated in a Section 504 or Title IX complaint.

To prove that an act of retaliation occurred, the following elements must be present: (1) a complainant or injured party engaged in a protected activity; (2) the complainant or an injured party experienced an adverse action by the recipient; (3) there is a causal connection between the protected activity and the adverse action; and (4) there is no legitimate, non-discriminatory reason for taking the adverse action, or the identified legitimate, non-discriminatory reason is pretext for retaliation.

The evidence established that the parent engaged in a protected activity when she filed a complaint regarding a teacher's inappropriate behavior toward the student, and when she advocated for the student's disability-related needs.

Regarding the parent's allegation that her calls were not returned, OCR found that the evidence did not support a finding that this was an adverse action. OCR's investigation found that the school made numerous attempts to contact the parent with questions and return the parent's calls. In the one instance where the evidence established that the parent's call was not returned, the evidence also established that the parent was given a legitimate reason why the principal was unable to return her call. OCR did not find this to be an adverse action. Moreover, the evidence showed that, at times, the school did not have up-to-date contact information for the parent.

Regarding the allegation that the district disenrolled the student as retaliation, while disenrolling a student would constitute an adverse action, OCR found evidence that the district had a legitimate, non-discriminatory reason to disenroll the student. The evidence established that the district made attempts to contact the parent and student regarding its concern that the student had stopped attending school in November 2015. When the student had 36 unexcused absences, the district disenrolled the student per district policy that states that students may be disenrolled after 20 unexcused absences. The district recommended that specific other students who had 20 or more unexcused absences be disenrolled at the same time that it recommended that the student be disenrolled. The evidence did not indicate that the district's reason for the disenrollment was a pretext for retaliation.

Because the evidence did not establish that the district failed to return the parent's contacts, except in one instance where there was a legitimate explanation, or that the district disenrolled the student because of the parent's past complaint and advocacy, OCR is unable to establish that the student or the parent experienced an adverse action by the district. Therefore, OCR has determined that the evidence does not support a conclusion that the district retaliated against the student or parent in violation of Title II, Section 504, or Title IX with respect to issue No. 4.

Regarding issue Nos. 3 and 4, this letter sets forth OCR's determination in an individual OCR case.

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

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

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

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Amy Klosterman, Attorney, by telephone at (206) 607-1622 or by e-mail at amy.klosterman@ed.gov.

Sincerely,

Paul Goodwin  
Team Leader

Enclosure: Settlement Agreement

cc: XXXXXX, Senior Assistant General Counsel