



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

November 13, 2018

Dr. Rita Bishop  
Superintendent  
Roanoke City Public Schools  
40 Douglass Avenue NW  
Roanoke, Virginia 24012

Re: OCR Complaint No. 11-15-1194  
Letter of Findings

Dear Dr. Bishop:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on April 2, 2015 against Roanoke City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student), who was enrolled at XXXXX (the School). The Complainant alleges that the Division discriminated against the Student based on race and disability and retaliated against the Complainant and the Student. Specifically, the complaint alleges that:

**Allegation 1:** The School denied the Student a free, appropriate public education (FAPE) by failing to re-evaluate him prior to XXXXX, to determine his eligibility for special education or related services based on his XXXXX, which resulted in XXXXX;

**Allegation 2:** The School treated black students differently than white students by placing them on different floors within the School;

**Allegation 3:** The School discriminated against black ninth grade students on the basis of race by placing them in XXXXX with XXXXX;

**Allegation 4:** The Division retaliated against the Complainant on XXXXX by limiting her communication with Division staff to four points of contact; and

**Allegation 5:** The Division retaliated against the Student during the 2015-2016 school year by amending his discipline record to include a referral for XXXXX based on an incident that occurred during the previous school year.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in

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

programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. In addition, OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II, and Title VI.

In reaching a determination, OCR reviewed extensive documentation provided by the Complainant and the Division and interviewed the Complainant and Division staff.

After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding Allegation 1, which the Division agreed to resolve through the enclosed resolution agreement. OCR found insufficient evidence to support Allegations 2-5. OCR's findings and conclusions are discussed below.

## **Background**

The Student first enrolled in the Division as a kindergartener in XXXXX. He has XXXXX and was evaluated and found eligible under Section 504 while in the fourth grade. Minutes from the Section 504 eligibility meeting held on XXXXX note that the Student was on the honor roll, has XXXXX, and needs XXXXX and to XXXXX." The Student's 504 Plan remained in effect without change during his fifth grade year.

The Student withdrew from the Division and attended a XXXXX school division (XXXXX) from XXXXX when he re-enrolled in the Division for XXXXX grade and attended XXXXX Middle School (the middle school). He enrolled in the School in the Division for ninth grade in fall XXXXX.

On March 12, 2015, while reviewing the Student's cumulative file, the Complainant did not see a current 504 Plan for the Student and mentioned that to a Division staff member who was present while the Complainant reviewed those records. After looking into the matter, Division staff confirmed, and informed the Complainant, that the Student did not have a 504 Plan currently in effect. Division staff held a Section 504 meeting for the Student on XXXXX. The team determined that the Student was eligible under Section 504 due to his XXXXX. The Student's 504 Plan provided for XXXXX – XXXXX; XXXXX; and XXXXX. At the same meeting, the Complainant requested that the Student be evaluated for eligibility under the Individuals with Disabilities Education Act (IDEA). Following a comprehensive evaluation, the Student was found ineligible under the IDEA on XXXXX. In XXXXX, the Student graduated from the Division with a standard diploma.

## **Legal Standards and Analysis**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements.

### **Allegation 1: *Failure to re-evaluate***

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically re-evaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan or placement are necessary.

In XXXXX, upon re-enrolling the Student in the Division, the Complainant submitted a written request that the Student's cumulative records from the XXXXX be sent to the Division XXXX school, in which the Student was enrolling for XXXXX grade. She also completed the Division's Form E-2, a registration form, on which under "Chronic illnesses or serious medical/physical problem" she wrote "XXXXX."

At the beginning of the Student's ninth grade year, the Complainant again completed a Form E-2 but did not include anything under "Chronic illnesses or serious medical/physical problem." In August 2014, the Complainant completed a XXXX. Under "Other Acute or Chronic Illnesses and Medical History" the Complainant checked "XXXXX" and under "Please explain" she wrote, "XXXXX." On the back of the form, she checked that the Student had a "XXXXX." In response to the question, "Does your child have an IEP or 504 plan?" she checked "Yes" and under "Please explain" wrote "XXXXX." As directed on the form, the Complainant turned the School Nurse Health Information Form in to the School nurse.

OCR's investigation of Allegation 1 focused on whether the Division had sufficient reason to believe that the Student needed special education or related services due to a disability prior to evaluating the Student for Section 504 eligibility in XXXXX and concluded that it did. According to the Complainant, the Division had sufficient information prior to XXXXX to have known of the Student's XXXXX and need for special education or related aids and services. She pointed specifically to the fact that the Division previously had evaluated him for Section 504 eligibility, found him eligible, and developed a 504 plan for the Student while he was enrolled in a Division elementary school. In addition, the Complainant noted that upon re-enrolling the

Student in the Division, she had completed requisite forms (i.e., the paperwork referenced above) that again put the Division on notice of the Student's disability. Finally, she notes that in XXXXX grade the Student would XXXXX during his XXXXX class which XXXXX due to the fact that XXXXX. She maintained that as a result of XXXXX, the Student was XXXXX on multiple occasions during the fall XXXXX.

Division personnel acknowledge, and Division electronic records reflect, that the Student had a Section 504 plan while previously enrolled in the Division. Upon receiving the Student's records as part of the re-enrollment process at the start of the Student's XXXXX grade year, School counseling staff contacted the sending school division (the XXXXX) specifically to inquire about the Student's 504 plan; however, they were told that the Student did not currently have a 504 plan. In addition, the Division acknowledges that the Complainant referenced the Student's 504 Plan in paperwork she submitted initially upon his re-enrollment, but notes that she did so solely in the context of "School Nurse Health Information" form. According to the Division, the form, which is given to all Division students on the first day of school, is intended to provide the school nurse with updated medical information and is not typically used to establish Section 504 eligibility. Finally, the Student's teachers at the School told OCR that they had no concerns regarding the Student's academic performance and XXXXX during classroom instruction. While acknowledging that at times the Student XXXXX and XXXXX, the teachers noted that it happened relatively infrequently and that XXXXX was not unusual among students.

OCR recognizes that the School Division had before it somewhat conflicting information. For example, the Division did not receive a 504 plan for the Student among the records provided by the XXXXX. When School Division staff took the initiative to call XXXXX school division personnel to inquire about a 504 plan for the Student in XXXXX, the information they received at the time was that the Student did not have a current 504 plan. In addition, the Division received somewhat conflicting information from the Complainant. For example, the E-2 enrollment form completed by the Complainant at the beginning of the Student's XXXXX grade year, unlike the E-2 form she had completed the year before, did not reflect that the Student had any chronic illness or serious medical or physical problem. However, the Student Nurse Health Information form submitted by the Complainant on XXXXX, explicitly referenced that the Student had XXXXX and indicated "Yes" in response to the question "Does your child have an individualized education plan (IEP) or a 504 Plan?"

Given the XXXXX Student's disability, the fact that the Division had previously found the Student eligible for a 504 Plan to address XXXXX, and based on the information provided to the Division by the Complainant through the School nurse, OCR finds that the Division had sufficient information to have reason to believe that the Student might need special education or related services due to a disability prior to XXXXX when it evaluated the Student and found him eligible under Section 504. To resolve Allegation 1, the Division, through execution of the enclosed Resolution Agreement has committed to ensuring that all administrators, and instructional, counseling, and nursing personnel at XXXXX Middle School and XXXXX High School receive training on the requirements of Section 504 and Title II. The training will emphasize the Division's obligation under Section 504 to identify and conduct an evaluation or re-evaluation of any student who, because of a disability, needs or is believed to need special education and/or related aids and services. The Division also agreed to develop and disseminate

to all school-level staff at the XXXXX Middle School and XXXXX High School a memorandum reminding them of the Division's obligation under Section 504 to identify and evaluate students who need or are believed to need special education and/or related aids and services. The memorandum will explain who in the Division or individual schools that staff should contact if they suspect that, or have questions about whether, a student may need special education and/or related aids and services.<sup>1</sup>

OCR notes that at the conclusion of the Student's 504 eligibility meeting on XXXXX, the Division offered to provide supplemental tutoring to the Student in XXXXX and XXXXX, which were identified by the Complainant as subjects in which she was concerned about the Student's progress. In addition, the Student was offered the opportunity to make up for full credit any class assignments that he had failed to complete in either of those two classes. The Student received a final grade of B in XXXXX in XXXXX. OCR also notes that the individual who had served as the Division's XXXXX reviewed current practices when she joined the Division in XXXXX, and sought to streamline the enrollment process for both parents and Division staff and so consolidated several enrollment forms into one. The revised form, which was first implemented in the XXXXX school year, directly asks whether a student has a disability and whether the student has been served through a 504 Plan or an IEP. In addition, under the current practice, relevant Division personnel are automatically notified of students whose enrollment form indicates that they have or have had a 504 Plan or IEP.

***Allegation 2: Different treatment of black students as compared to white students by placing them on different floors within the School***

### **Legal Standard**

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the Division's programs or activities on the basis of race, color, or national origin. The Title VI regulation, at 34 C.F.R. § 100.3(b)(iii), specifically prohibits the Division from on the basis of race subjecting an individual to segregation or separate treatment in any matter related to receipt of a service or benefit under the Division's program.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the Division treated the Student less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the Division had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the Division is a pretext, or excuse, for unlawful discrimination.

---

<sup>1</sup> Having found that the Division failed to timely re-evaluate the Student prior to XXXXX, OCR considered whether individual relief in the form of compensatory educational services for the Student was warranted. OCR concluded that an assessment for compensatory educational services for the Student was not appropriate under the circumstances, including that XXXXX. However, the relief obtained in the Resolution Agreement is designed to improve awareness and understanding among staff of the Division's obligations under Section 504, including the responsibility to identify and evaluate students who need or are believed to need special education and/or related aids and services.

## Analysis

The Complainant claims that students are assigned to different floors of the School based on their race, which she said results in segregation of students by floor. She noted that the vast majority of the second floor of the School is comprised of black students while white students are in what she described as “a niche on the third floor.” She said that the second and third floors respectively are referred to by her XXXXX and XXXXX as “our floor and their floor.”

OCR found insufficient evidence that students in the School are, in fact, placed on different floors based on their race. The Division notes that students’ schedules dictate what classes they will take and thus what floor(s) of the School they will be on throughout the school day. The School is divided into three floors: the first floor of the building contains many of the school’s administrative offices, as well as the school’s cafeteria, library, and gymnasium. Students participating in a fine arts elective class or physical education class attend classrooms located on the first floor. The second floor of the building contains many of the School’s math, science and world language course offerings. Students participating in dance, health, or certain elective classes such as economics and personal finance or sports medicine attend classrooms located on the second floor. The third floor of the building contains most of the English and social studies classes as well as some science and world language classes. Students participating in accounting or marketing attend classes located on the third floor.

The Division maintains that because subject areas are divided among the different floors of the building, most students take classes on all three floors of the school building throughout the school day. For example, during the XXXXX school year, the Student was assigned to the following classes: 1) XXXXX; 2) XXXXX; 3) XXXXX; 4) XXXXX; 5) XXXXX; 6) XXXXX; 7) XXXXX; and 8) XXXXX. These classes span all three floors of the building. During the school day, the Student attended his XXXXX and ate lunch on the first floor. He attended XXXXX on the second floor. Both his XXXXX and XXXXX were located on the third floor of the school building.

OCR informed the Complainant of the Division’s explanation as to where classes are located and that the Student took classes on all three floors of the School. She did not refute that but rather responded, “He’s one of the few.” She acknowledged that any student taking Health/PE would be on the first floor; however said that she was “not talking about health/PE but about math, science, social studies, and English.” The Complainant indicated that she did not personally know where classrooms, for example science classrooms, are located in the School nor had she personally observed the racial composition of the floors within the School.

In conversation with OCR, the Complainant said that when she asked the Student where XXXXX’s class is, he replied that XXXXX classroom was in the same area as another XXXXX teacher. Based on this she acknowledged that “[m]aybe they group [classes] by subject taught.” Nonetheless, she indicated that the Student told her that floors have a reputation for being divided by race and that students, including her XXXXX, commonly referred to the floors as the “White floor,” the “Black floor,” “your floor,” “my floor,” the “smart floor,” and the “dumb floor.”

OCR was unable to verify the Complainant's assertion, based almost exclusively on the perception of her XXXXX, that black students are treated differently than white students in terms of their placement on floors in the School. In light of the evidence presented by the Division and the lack of any concrete evidence to the contrary, OCR concludes that there is insufficient evidence to support the claim of different treatment as alleged.

***Allegation 3: The School discriminated against black ninth grade students on the basis of race by placing them in XXXXX with XXXXX***

### **Legal Standard**

As noted above, Title VI and its implementing regulation, at 34 C.F.R. §100.3(a), prohibit the Division from excluding from participation in, or denying the benefits of, or otherwise subjecting a student to discrimination in, any program or activity on the basis of race.

### **Analysis**

According to the Complainant, the Student was assigned to XXXXX's XXXXX class due to his race. She specifically claims that as a black XXXXX grader from a particular middle school, the Student was assigned to XXXXX's class. She explained that XXXXX grade students from the Student's middle school as well as XXXXX grade students from another middle school, both of which are predominantly minority schools in less affluent areas, are typically assigned to XXXXX's XXXXX class.

The Division explained that XXXXX is a class taken primarily by XXXXX graders although some XXXXX students with XXXXX are permitted to enroll. Specifically, a student will be permitted to enroll in XXXXX if the student has already taken and passed XXXXX and has already taken and passed or is concurrently enrolled in XXXXX. To enroll in XXXXX, a XXXXX grade student would have had to have taken XXXXX (XXXXX class) in middle school. As a result, fewer XXXXX grade students are enrolled in XXXXX. Once a XXXXX grade student is determined eligible to enroll in XXXXX, the student is assigned to a specific XXXXX classroom. Student classroom assignments are made on a randomized basis through the school's computerized scheduling system. Although some revisions may be made to alleviate unaddressed conflicts or to ensure that a student is enrolled in all requisite courses for graduation, students' schedules are primarily the result of randomized assignments generated by the school's computerized scheduling system. According to the Division, students' class assignments are neither made nor adjusted based on the student's race and rising XXXXX graders' class assignments are not impacted based on which middle school they attended.

Records provided by both the Complainant and the Division reflect that XXXXX teachers (XXXXX) taught XXXXX at the School during the 2014-2015 school year.<sup>2</sup> The School offered

---

<sup>2</sup> Although the Complainant initially disputed and sought to challenge the Division's assertion that XXXXX taught XXXXX at the School during the XXXXX school year, the information that she provided, including the master schedule for XXXXX teachers at the School during that time period, corroborated the Division's assertion. OCR notes that although a XXXXX taught XXXXX, that is a different course than XXXXX in which the Student was enrolled.

a total of XXXXX sections of XXXXX that year. XXXXX, who taught XXXXX that year, taught XXXXX sections of that course. XXXXX taught the remaining XXXXX sections of XXXXX in addition to several sections of XXXXX. OCR reviewed the XXXXX class enrollment data provided by the Division and found insufficient evidence that black XXXXX grade students were, in fact placed in XXXXX with XXXXX for the XXXXX school year based on their race. A total of XXXXX grade students were assigned to XXXXX with XXXXX: XXXXX were white; XXXXX were black; and XXXXX reported more than one race. XXXXX had XXXXX students in total: XXXXX white; and XXXXX black. OCR considered whether there was any evidence to suggest that the Student's placement in XXXXX's XXXXX class was based on race and found none.

OCR also considered the Complainant's assertion that a XXXXX grade student's race as well as the specific middle school<sup>3</sup> from which they came determined the student's placement in an XXXXX classroom with XXXXX. However, data reflected that XXXXX had black XXXXX grade students enrolled in their respective XXXXX classes and that each had XXXXX grade students from the two middle schools identified by the Complainant as being located in lower income, predominantly minority areas. Although XXXXX had more black XXXXX grade students enrolled in XXXXX than XXXXX, XXXXX also taught XXXXX more class sections of XXXXX than XXXXX so had more students overall enrolled in XXXXX.

OCR interviewed Division staff familiar with the scheduling process and also reviewed the manual associated with the electronic scheduling program used by the Division. Division staff confirmed that a student's middle school is not information that is captured by the scheduling program, and OCR's review of the scheduling manual did not yield any information to the contrary. Based on a review of the scheduling manual and interviews of Division staff, OCR understands that the scheduling system has the capacity to generate reports based on a number of factors, including a student's race and ethnicity. However, Division staff familiar with implementation of the scheduling system reported that there had been no attempt to use the scheduling system to elicit racial information of students and further confirmed that the race of a student had not been considered in initial development of, or subsequent adjustments made to, a student's class schedule. Accordingly, OCR finds insufficient evidence to support Allegation 3.

#### **Allegations 4 and 5: Retaliation**

##### **Legal Standard**

In allegations four and five, the Complainant claims that the Division retaliated against the Complainant and the Student in response to the Complainant's advocacy on behalf of the Student as a student with a disability. The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

---

<sup>3</sup> Specifically the Complainant maintains that black XXXXX students from middle schools in predominantly minority, less affluent neighborhoods (e.g., XXXXX Middle School and XXXXX Middle School) were typically placed in XXXXX's class.



When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the Division took an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the Division has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the Division's reason for its action is a pretext, or excuse, for unlawful retaliation. Using this analysis, OCR found insufficient evidence to support the Complainant's claims that the Division retaliated against either her or the Student as alleged.

### **Analysis:**

***Allegation 4: The Division retaliated against the Complainant on the basis of her advocacy on behalf of the Student when, on XXXXX, the Division sent a letter limiting her communication with Division staff to four points of contact***

An individual engages in a protected activity if he/she asserts a right or privilege or opposes an act or policy that he/she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing under one of the laws OCR enforces. OCR determined that the Complainant engaged in protected activity when she advocated for the Student's right to a free appropriate public education. However, OCR finds insufficient evidence to conclude that the Complainant was subjected to an adverse action as the result of issuance of the XXXXX letter. Moreover, even if OCR were to assume for the sake of analysis that the Complainant stated a prima facie case of retaliation, the Division provided a legitimate, non-retaliatory reason for its issuance of the letter and there is no indication that the reason is not genuine or a pretext for retaliation.

An adverse action is something that could deter a reasonable person from engaging in further protected activity. The evidence indicates that in this instance, the Complainant received a letter asking her to "contact the following individuals regarding any questions [she] might have regarding [her] XXXXX," in "an effort to better communicate with [her] and address [her] concerns." Subsequent to issuance of letter, the Complainant continued to send emails to, and receive emails from, Division staff not specified as points of contact. OCR determined that the issuance of letter which was followed by continued unrestricted ability to communicate with Division staff, would deter a reasonable person from engaging in a protected activity. Moreover, OCR finds that in practice, the letter did not, in fact, deter the Complainant from continuing to correspond with Division staff in her continued advocacy on behalf of the Student; rather, the Complainant sent numerous emails advocating on behalf of the Student throughout the remainder of the XXXXX school year and continuing into the summer of XXXXX. Accordingly, OCR finds insufficient evidence to conclude that the Complainant was subjected to an adverse action through the issuance of the XXXXX letter.

Even if OCR were to assume for purposes of analysis that issuance of the XXXXX letter was an adverse action, the Division identified a facially legitimate, non-retaliatory reason for asking that

the Complainant's communication on certain issues be directed to four identified points of contact. The Division suggested these points of contact because "the complainant's communications began to cause significant disruption to the school environment" especially during XXXXX when School staff were preparing for Standards of Learning (SOL) testing. In addition, according to the Division, the Complainant began sending emails "addressed to dozens of school and division-level officials, many of whom were unfamiliar with the complainant or her XXXXX." The "wide-spread emails caused confusion among school and division-level staff regarding who was responsible for addressing the statements made within the complainant's frequent communications."

The XXXXX who authored the XXXXX letter explained that his letter was intended to minimize further disruption to the classrooms, especially during SOL testing, while still providing the Complainant with the information she sought. He said that as a general matter lines of communication may be changed to either better answer an individual's questions (for example by directing a parent raising special education issues to the Director of Special Education rather than to a teacher) or due to a disruption issue. He recalled other situations where parents had been directed to school administrators rather than teachers or to Division-level staff rather than school-based personnel. In the situations he recalled the parents had raised questions or complaints but had not raised discrimination-related claims. He also recalled that in those instances the parents involved appreciated being given access to higher level administrators to answer their questions or address their concerns.

Likewise the XXXXX at the time confirmed that at times individuals are directed to particular Division personnel with whom they are asked to raise their concerns and that she has in the past been identified as the appropriate point of contact. She specifically recalled a situation in XXXXX where she was identified as a parent's point of contact. The parent who had been disruptive at the school and had disrupted the classroom environment was asked to contact her with any questions or concerns. Although the parent raised concerns about school division personnel, his concerns were related to his child's safety and did not involve discrimination claims.

Based on the foregoing, OCR finds insufficient evidence to support the Complainant's claim that Division staff retaliated against her as alleged in Allegation 4.

***Allegation 5: The Division retaliated against the Student by amending his discipline record to include a referral for a "XXXXX" based on an incident that occurred in the previous school year while the Student was enrolled in XXXXX school***

OCR determined that the Complainant engaged in protected activity when in XXXXX, she lodged an internal complaint with the Division alleging that the Student had been denied due process prior to being XXXXX after an altercation with another student in XXXXX and that the School failed to provide proper notice to the Complainant of the XXXXX. As a result of an internal investigation, the Division found that the XXXXX had not followed appropriate procedure for reporting the altercation and informed the Complainant of its intention to amend

the Student's record to include a XXXXX<sup>4</sup> Amendment of the Student's discipline record to reflect XXXXX could constitute an adverse action. However during its investigation, OCR found that the Division had reconsidered the matter and decided against amending the discipline record of either student. Counsel for the Division explained that while Division staff had determined that there was a basis for changing the records, given the passage of time, the logistics of doing so, and some concern that there could be implications for changing discipline data after the fact, the Division decided not to amend either student's record. In addition, Division staff felt that there had already been consequences for the students involved as both had been counseled by the middle school principal. OCR's review of the Student's discipline record confirmed that it does not contain any reference to XXXXX.

Given the Division's determination not to amend the Student's discipline record, OCR is unable to conclude that the alleged adverse action was taken against the Student. As such, OCR finds insufficient evidence to support the claim that the Student was retaliated against as alleged in Allegation 5.

## **Conclusion**

On November 12, 2018, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified area of noncompliance. The Agreement entered into by the Division is designed to resolve the issues of noncompliance regarding Allegation 1. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the Division's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the Division has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the Division on November 12, 2018, if the Division fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

---

<sup>4</sup> Division staff reported that they had determined it appropriate to amend the discipline record of not only the Student but also the XXXXX student involved in the incident.

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

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

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Betsy Trice, the OCR attorney assigned to this complaint, at 202-453-5931 or [betsy.trice@ed.gov](mailto:betsy.trice@ed.gov).

Sincerely,

Michael Hing  
Team Leader, Team I  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXXX, (*via email*)