



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

August 24, 2017

Dr. Tim Markley
Superintendent
New Hanover County Schools
6410 Carolina Beach Road
Wilmington, North Carolina 28412

Re: OCR Complaint No. 11-15-1240
Letter of Findings

Dear Dr. Markley:

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 XXXX against New Hanover County Schools (the District). The Complainant filed the complaint on behalf of her son, at that time a XXXX student (the Student) at XXXX and, subsequently, XXXX (XXXX).¹ The Complainant alleged that the District had discriminated against the Student on the basis of disability and race, and retaliated against her. Particularly, she alleged:

1. In XXXX, the District treated the Student differently based on disability when it denied him admission to the afterschool tutoring program;
2. In XXXX, the District retaliated against the Complainant when it restricted her communication with District personnel;
3. The District retaliated against the Complainant and discriminated against her based on race when it counted the student's absences in XXXX² as unexcused instead of excused³;
4. During the XXXX school year, School personnel at XXXX and at XXXX failed to implement the Student's individualized education program (IEP) by not providing him

¹ On XXXX, the District confirmed that the Student is no longer enrolled in any school in the District.

² The allegation initially pertained to unexcused absences between XXXX and XXXX. However, during the course of the investigation, the Complainant informed OCR that she disputes the designation of only those absences that were incurred while the Student was enrolled at XXXX. OCR determined that these absences took place only in XXXX.

³ OCR communicated to District counsel on XXXX that it had revised this allegation based on clarification from the Complainant. The original allegation read: XXXX

with: (a) prompting and redirecting; (b) repeating directions; (c) small group testing; and (d) special reading time; and

5. From XXXX, XXXX denied the Student a free appropriate public education (FAPE) when it failed to provide him with his XXXX.

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 programs and activities that receive Federal financial assistance from the Department. OCR further 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. OCR also 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. These laws 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 District 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 documents provided by the Complainant and the District, and interviewed the Complainant and District faculty and staff. After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns regarding Allegations 1, 2, and 4. Before OCR completed its investigation, the District expressed a willingness to resolve these allegations by taking the steps set out in the enclosed Resolution Agreement. OCR found insufficient evidence to support Allegations 3 and 5.

The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement, as well as its findings of insufficient evidence.

Background

In XXXX, the Student was enrolled as a XXXX grade student at XXXX. The Student received special education services through an IEP to accommodate a XXXX. Among the items required by the Student’s IEP were: “Repeat instructions/directions and provide cues for task completion,” and “separate setting small group for tests.” At that time, XXXX offered an after-school tutoring program entitled Supplemental Educational Services (SES or Program). School administrators oversaw the Program, which maintained eligibility criteria based, in part, on student test scores. Administrators also affirmatively offered enrollment to certain students whose test scores rendered them otherwise ineligible. The Student, whose test scores did not qualify him for the Program according to the District, was not offered admission.

The Complainant often communicated with XXXX personnel by email. From XXXX to XXXX, she sent a series of emails regarding issues concerning the Student to XXXX teachers and at least

one administrator. Shortly thereafter, on or about XXXX, the District began blocking the Complainant’s emails. The District maintains that it blocked the Complainant’s emails based on a District policy, Board Policy 1602 - Civil Conduct Policy.

The District granted the Student’s transfer to XXXX, another school within the District, on XXXX, and he enrolled on XXXX. The Student had a number of absences before and after the transfer, from approximately XXXX to XXXX, that the District deemed unexcused under its Attendance Policy, NCHS Policy 8212. While at XXXX, and following an IEP team meeting on XXXX, the Student’s IEP remained in place, including the accommodations listed above. Additionally, the Student—who has XXXX—had an “Emergency Action Plan” at XXXX dated XXXX which permitted him to access XXXX.

Legal Standards and Analysis

Allegation 1: In XXXX, the District treated the student differently based on disability when it denied him admission to the afterschool tutoring program.

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 a school district’s programs or activities on the basis of race, color, or national origin. Additionally, the Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a school district’s programs or activities on the basis of disability.

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 school district treated the student less favorably than similarly situated individuals of a different race, color, or national origin, for purposes of analysis under Title VI, or similarly situated individuals without disabilities, for purposes of analysis under Section 504 and Title II. If so, OCR then determines whether the school district had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the school district is a pretext, or excuse, for unlawful discrimination.⁴

To investigate the allegation that the District discriminated against the Student on the basis of his disability with respect to the Program, OCR first considered whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR considered whether the District treated the Student less favorably than similarly situated individuals without disabilities when it denied him admission to the Program. OCR indeed found that similarly situated, non-disabled students were accepted into the Program during the XXXX, and that the Student was not offered admission. Accordingly, OCR found sufficient evidence of a prima facie case of discrimination.

OCR next examined whether the District proffered a legitimate, non-discriminatory reason for denying the Student access to the Program, and whether this rationale appeared to be a pretext

⁴ The aforementioned standard also applies to Allegation 3 below.

for discrimination. Initially, the District informed OCR that students who scored moderately below grade level proficiency (Level 3) in end of grade (EOG) math and/or reading tests were eligible for the Program, and that the Student was not eligible because his EOG math and reading scores, at Level 1, were too low. Subsequently, the District modified its description of the Program’s eligibility standards for the relevant time period, stating that students had to score moderately below or moderately above grade level proficiency (Level 3) on both or either the EOG math and reading tests to be eligible for the program. According to the District, the Student’s Level 1 scores also rendered him ineligible under that standard.

Additionally, the District informed OCR that if eligible students did not fill all available slots, certain non-eligible students were admitted to the Program; principals within the District had discretion to fill open slots at their school “with other students whom the principal felt could most benefit from the tutoring.” The District initially stated that the XXXX principal (the Principal) did not verify that there were open slots until after the Student transferred from XXXX; at that point, she asked her staff for recommendations for additional students to be offered enrollment. In an interview with OCR, however, the Principal informed OCR that the Student was not offered a spot because “his name did not come up as far as a teacher recommendation,” and that subsequently, the Student left XXXX. When OCR sought clarifying information concerning when and how the Principal sought staff recommendations, the District stated that the Principal “no longer remembers” the details of the events, and that while the Principal had previously stated in an interview that she sought recommendations by email or at staff meetings, the District stated that the Principal had since been “unable to locate any such emails so she believes she did it at staff meetings beginning in XXXX.” However, in an interview with OCR, the Student’s teacher stated she was unable to locate an email seeking recommendations and did not recall having been asked to provide recommendations for the Program.

OCR also sought data from the District on the disability status of students admitted to or denied admission to the Program in XXX. The District provided data of admitted and enrolled students in the Program on XXXX. Based on that data, and contrary to the Principal’s recollection, OCR determined that XXXX non-eligible students without disabilities were enrolled in the SES Program by XXXX prior to when the Student left XXXX. Of this group, XXXX students received a beginning of grade or end of grade math or reading level of 1.

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District on August 23, 2017, expressed its willingness to enter into a voluntary resolution agreement for Allegation 1, which, when fully implemented, will resolve this allegation.

Allegation 2: In XXXX, the District retaliated against the complainant when it restricted her communication with District personnel.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

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 school district took a materially adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the school district has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the school district’s reason for its action is a pretext, or excuse, for unlawful retaliation.

An individual engages in a protected activity if he/she 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 OCR investigation, proceeding, or hearing. An adverse action is something that could deter a reasonable person from engaging in further protected activity.⁵

With respect to Allegation 2, OCR finds sufficient evidence to establish that the Complainant engaged in protected activity. The Complainant sent emails to XXXX teachers and an administrator from XXXX to early XXXX expressing a number of concerns in connection with the Student’s in-classroom activities and his IEP, including complaints about “additional instruction” that the Student had been receiving purportedly without the Complainant’s knowledge, and one teacher’s use of an accountability sheet that the Complainant believed was “in direct violation of his IEP.” By taking action in furtherance of the Student’s rights under Section 504 and Title II in connection with his IEP and related services, OCR finds that the Complainant engaged in protected activity. Second, OCR finds sufficient evidence to establish that the District took a materially adverse action against the Complainant when it restricted her email communications with District personnel. The Complainant communicated often with the Student’s teachers by email, so restricting email communication would likely negatively impact the Complainant’s ability to communicate with his teachers, as other parents could. This could reasonably deter the Complainant from engaging in further protected activity. Third, there is sufficient evidence to support a causal connection between the Complainant’s protected activity and the materially adverse action. The proximity in time between the protected activity (which includes emails sent from XXXX to early XXXX) and the District’s email ban (which occurred on or about XXXX) is sufficient alone to establish a causal connection for purposes of a prima facie case of retaliation. Moreover, the District does not dispute that the Complainant’s emails caused it to restrict her communication.

Having found sufficient evidence to establish a prima facie case of retaliation, OCR then considered whether the District had a legitimate, non-retaliatory reason for the email restriction. The District informed OCR that it blocked the Complainant’s emails after they became XXXX. In an interview with OCR, the XXXX stated that the District blocked the Complainant’s emails because the District felt she had violated Board Policy 1602 (Civil Conduct Policy), that the emails the Complainant sent XXXX and that the purpose was to encourage the Complainant to

⁵ The aforementioned standard also applies to Allegation 3, below.

XXXX. OCR determined that this constitutes legitimate, non-retaliatory reasons for its decision to restrict the Complainant’s email communication.

OCR next considered whether the District’s proffered justification was merely a pretext to retaliate. OCR reviewed the Civil Conduct Policy that was cited by the XXXX and provided to the Complainant on XXXX, immediately prior to the email restriction. While the Policy includes, “[a]busive, threatening, or obscene electronic or voicemail messages” in a list of “unacceptable/disruptive behavior,” it does not authorize the District to restrict email communication. Indeed, the XXXX informed OCR in an interview that the practice of restricting email communications had not been applied to anyone other than the Complainant. Moreover, while the District produced documentation concerning individuals who had been physically banned from school property after engaging in abusive behavior, physical aggression, or threatening physical aggression, OCR finds that those individuals are not similarly situated to the Complainant. By contrast, the District not only failed to physically ban the Complainant from school property, it asserted that its restriction on email communication stemmed, in part, from a desire to encourage the Complainant to physically come to the School’s premises.

Moreover, OCR finds insufficient evidence to conclude that the emails from the Complainant that the District identified as prompting the email ban, while XXXX in tone, were profane, threatening, or abusive. Specifically, OCR reviewed each of the emails at issue and found that, while the Complainant strongly advocated on behalf of the Student about issues such as student bullying, breach of privacy, transportation concerns, undermining of the Student’s self-esteem, and concerns over his grades, she did not use profanity or other inflammatory language, physically threaten District employees or students, or use any other language that could reasonably be regarded as being significantly disruptive or in violation of the rights of other individuals.⁶ Additionally, as previously noted, some of the emails make reference to the Student’s IEP and disability. Accordingly, OCR finds that some of the emails at issue that prompted the communication ban directly related to the Complainant’s protected activities.

In reference to the XXXX statement that the purpose of the email restriction was to encourage the Complainant to meet with District personnel in person, OCR reviewed a XXXX email from the Complainant to the Student’s teacher expressing her unwillingness to meet, suggesting that the District may have been aware that in-person communication was unlikely. Moreover, there is no evidence to indicate that the District encouraged the Complainant to meet in person when it imposed the ban; rather, the XXXX simply directed the District’s Information Technology personnel to block the Complainant’s emails, and did not correspondingly ask the Complainant to come to the School. Finally, in a letter dated XXXX, the XXXX informed the Complainant that the District would not lift the email restrictions because she had not XXXX the letter further stated, XXXX. This indicates that the XXXX rationale for the restriction on email communication was intended to be punitive, rather than as a means to encourage the Complainant to meet with District personnel in person.

⁶ Furthermore, while the XXXX asserted at one point in an interview with OCR that the Complainant sent a voluminous number of emails during this period, OCR found that the Complainant sent the District a total of XXXX emails during the XXXX time period at issue.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District on August 23, 2017, expressed its willingness to enter into a voluntary resolution agreement for Allegation 2 which, when fully implemented, will resolve this allegation.

Allegation 3: The District retaliated against the Complainant and discriminated against her based on race when it counted the student's absences in XXXX as unexcused instead of excused.

Retaliation

As stated with respect to Allegation 2, OCR finds sufficient evidence to establish that the Complainant engaged in protected activity in emails to XXXX teachers and an administrator in XXXX to XXXX, some concerning the Complainant's dissatisfaction with the implementation of the Student's IEP. By taking action in furtherance of the Student's rights under Section 504 and Title II in connection with his IEP and related services, the Complainant engaged in protected activity. OCR also finds sufficient evidence that the District took a materially adverse action against the Complainant when it deemed the Student's absences unexcused because the District's Attendance Policy states that such absences can lead to prosecution and referral to county social services. This could reasonably deter the Complainant from engaging in further protected activity. Third, the record contains sufficient evidence of a causal connection between the protected activity and the adverse action to support a prima facie case of retaliation. Specifically, the proximity in time between the protected activity and the unexcused absences is sufficient to establish a causal connection for purposes of a prima facie case.

Having established an initial case of retaliation, OCR next considered whether the District articulated a legitimate, non-retaliatory reason for its conduct. The District informed OCR that it characterized the Student's absences as unexcused in accordance with its Attendance Policy, which excuses certain absences including those for illness, because the Complainant "did not provide adequate documentation to support an excused absence." OCR reviewed the Student's alleged unexcused absences in XXXX, which would be deemed excused under the Policy if sufficient medical documentation was provided. The District informed OCR that it found no evidence that the Complainant submitted medical documentation for those dates. OCR determined that this constitutes a legitimate, non-retaliatory reason for the District to have deemed the Student's XXXX absences unexcused.

OCR next analyzed whether this legitimate reason was pretext to retaliate by considering all available evidence, including information provided by the Complainant, to determine whether the District's proffered reason is credible. First, OCR reviewed the District's Attendance Policy and notes that its treatment of the Complainant is consistent with the policy, which states that an absence for illness constitutes an excused absence "provided satisfactory evidence is given to the appropriate school official." Consistent with the policy, the Student's teacher at XXXX informed OCR that there was "never a case where a student did not submit a note and had an excused absence." Second, there is insufficient evidence to conclude that the Complainant provided the required medical documentation. Specifically, XXXX personnel, including the Principal as well as the staff charged with receiving medical documentation for absences while the Student attended XXXX, stated that they had not received a note concerning the XXXX

absences. The Complainant informed OCR that she discussed the XXXX absences with XXXX Data Manager, and that XXXX Data Manager stated that she could not update the District's online tracking system because the Student was no longer at XXXX. However, OCR did not discover corroborating evidence of this communication. To the contrary, in an interview, XXXX Data Manager stated that the Complainant never discussed the Student's XXXX absences with her, but instead had called only on XXXX in connection with the Student's absence *that day*. OCR reviewed the XXXX attendance log maintained by XXXX Data Manager and, while it reflects the Student's XXXX absence, it does not contain information that would support the Complainant's assertion concerning the XXXX absences. Additionally, the Complainant informed OCR that, following the Student's transfer to XXXX, she presented medical documentation for the XXXX absences to the XXXX Data Manager, but that the XXXX Data Manager informed her that she could not accept it. In an interview with OCR, the XXXX Data Manager informed OCR that she did not recall receiving medical documentation from the Complainant pertaining to the XXXX absences. OCR could not find, nor could the Complainant provide, any evidence to corroborate the fact that the Complainant provided such medical documentation. Lastly, during the XXXX and XXXX school years, OCR found multiple examples of students who received unexcused absences in the District. The District was unaware of any of these students having protected activities filed on their behalf. Accordingly, OCR finds insufficient evidence to conclude that the District's proffered reason for deeming the absences unexcused was a pretext to retaliate.

Discrimination

With respect to the race (XXXX) discrimination portion of the allegation, OCR will assume for arguments sake that a prima facie case of race discrimination has been established.

Next, OCR examines whether the District proffered a legitimate, non-discriminatory reason for its actions. As described in detail above, the District asserts that it did not excuse the Student's absences because no one provided medical documentation on his behalf. OCR determined that this constitutes a legitimate, non-discriminatory reason.

Moreover, as described above, OCR finds insufficient evidence to conclude that this rationale is pretextual. Specifically, OCR found that that the District's reasoning was consistent with its policies, and that there was insufficient evidence to conclude that the Complainant proffered the appropriate medical documentation to the District. Moreover, OCR found 64 instances during the XXXX or XXXX school years in which XXXX students received unexcused absences from the District. Accordingly, OCR finds insufficient evidence to conclude that the District discriminated on the basis of race, and it will take no further action with respect to Allegation 3.

Allegation 4: During the XXXX school year, school personnel at XXXX and XXXX failed to implement the Student's IEP by not providing him with (a) prompting and redirecting; (b) repeating directions; (c) small group testing; and (d) special reading time.

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. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.⁷

OCR reviewed the Student’s IEPs for the XXXX school year, including IEPs dated XXXX and XXXX. The IEPs include the following “accommodations and modifications in the regular classroom”: “Repeat instructions/directions and provide cues for task completion” and “separate setting small group for tests.” The IEPs also require “Testing in a Separate Room – Small Group” for end-of-grade tests and district-wide assessments. OCR did not find evidence in the IEP or in any external communication between the Complainant and the District that the Student’s IEP requires “special reading time.”⁸

OCR interviewed the Student’s teachers to determine if they were implementing the remaining provisions listed in Allegation 4, including (a) prompting and redirecting; (b) repeating directions; and (c) small group testing. In interviews with OCR, the Student’s teacher at XXXX (in XXXX) and his teacher at XXXX provided OCR with information confirming that they implemented the accommodations of prompting/redirecting and repeating directions. XXXX SENTENCE REDACTED XXXX. The Complainant did not refute these assertions, instead informing OCR that she believed the XXXX teacher failed to implement these accommodations because she used a point-system worksheet designed to decrease teacher prompting and an “ICANN” worksheet in which the Student wrote down instructions. The use of these worksheets alone, however, is not sufficient for OCR to conclude by a preponderance of the evidence that the teacher’s described methods failed to satisfy the IEP requirements concerning prompting/redirecting and repeating directions. However, regarding Allegation 4(c), in interviews with OCR, the Student’s XXXX teacher stated that she did not offer “small group testing” to the Student in the classroom because she interpreted the IEP to require small group testing for standardized tests only.

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District on August 23, 2017, expressed its willingness to enter into a voluntary resolution agreement for Allegation 4, which, when fully implemented, will resolve Allegation 4(c).

Allegation 5: From XXXX, XXXX denied the student a Free Appropriate Public Education (FAPE) when it failed to provide him with his XXXX.

⁷ The aforementioned standard also applies to Allegation 5, below.

⁸ The Complainant stated that certain District staff agreed during a “Special Education Meeting” to implement “special reading time,” but OCR did not discover reference to any such proposal or discussion in the Student’s IEP or related documents. To the contrary, OCR reviewed contemporaneous correspondence from the Complainant to a XXXX administrator showing that the Complainant’s impression at that time was that the teachers planned to “utilize[e] the parameters of his IEP in conjunction with a special reading time *if he completes his tasks*,” indicating that the special reading time, while it may have been discussed as an additional method of classroom support for the Student, was not part of the Student’s IEP.

As stated above, the Student transferred to XXXX in XXXX, and began attending classes at XXXX on XXXX. On XXXX, XXXX adopted an “Emergency Action Plan” for the Student, which required a nurse to administer XXXX. The Complainant alleges that the XXXX nurse required the Student to submit a new prescription before he could access XXXX, despite the fact that the Student’s prior prescription was “good for a year.” However, OCR reviewed documentation in the record that suggests that any delay occasioned by the prescription requirement was minimal. Records produced by the District reflect that the Student submitted a prescription dated XXXX, only XXXX days after the Student enrolled in the school, and an Emergency Action Plan was finalized the following day. Moreover, the XXXX medication check-in log reflects a check-in of XXXX for the Student on XXXX. OCR did not find evidence that the Student XXXX between XXXX and XXXX, nor is there evidence that had the Student done so, the District would have denied him access to XXXX that the nurse had in her possession. Additionally, the record does not show any attempt by the Student to access XXXX between XXXX and XXXX. Accordingly, OCR finds insufficient evidence that the District denied FAPE to the Student when it failed to provide him with XXXX.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on August 23, 2017 which, when fully implemented, will resolve Allegations 1, 2, and 4(c) raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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

Please be advised that the District 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 District’s cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact the OCR attorneys assigned to this complaint: Jennifer Barmon, at 202-453-6751 or Jennifer.Barmon@ed.gov, or Kathryn Love, at 202-453-6948 or Kathryne.Love@ed.gov.

Sincerely,

/s/

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Wayne Bullard, General Counsel (via email)