



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

October 17, 2016

Via Email at tjones@fccps.org

Dr. Toni Jones,
Superintendent
Falls Church City Public Schools
800 West Broad Street
Suite 203
Falls Church, VA 22046

Re: OCR Complaint No. 11-16-1122
Resolution Letter

Dear Dr. Jones:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received a complaint on January 6, 2016 against Falls Church City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of sex and disability. Specifically, the complaint alleges the following:

1. The Division/School failed to promptly and appropriately respond to the Complainant's report, made on August 17, 2015, alleging a sexually hostile environment created by other students at the School.
2. Beginning in spring 2015, the Division/School failed to timely evaluate the Student for eligibility as a student with a disability under Section 504.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. Also, 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 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. Because the Division

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receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title IX, Section 504, and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division, interviewed the Complainant and Division faculty/staff, and conducted a site visit on May 25, 2016. After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The Division agreed to resolve the concerns through the enclosed resolution agreement. OCR also identified a compliance concern regarding the Divisions Title IX Grievance Procedures, which the Division agreed to resolve through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

ALLEGATION 1

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

A division's failure to respond promptly and effectively to sexual harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Title IX. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the division's programs, activities, or services. When such harassment is based on sex, it violates Title IX.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a division must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a division must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires the division to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault.

Title IX does not require a division to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A division may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a division's grievance procedures are prompt and equitable, OCR reviews all aspects of a division's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. written notice to both parties of the outcome of the complaint and any appeal; and
6. assurance that the division will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment, the potential consequences for such conduct, and how the division processes complaints, the division's Title IX grievance procedures should also include the following in writing:

1. a statement of the division's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;

8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy, and support.

The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

For Title IX purposes, a division must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the division has taken to eliminate the hostile environment, if the division finds one to exist, and prevent recurrence. Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to other classes. Additional steps the division may take to remedy the effects of the hostile environment include counseling and academic support services for the complainant and other affected students.

Pending the outcome of an investigation of a report or complaint, Title IX requires a division to take steps to ensure equal access to its education programs and activities and to protect the complainant and ensure his or her safety as necessary, including taking interim measures before the final outcome of an investigation. The division should take these interim measures promptly once it has notice of the harassment allegation and should provide the complainant with periodic updates on the status of the investigation. The division should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her transportation situation as appropriate. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. In general, when taking interim measures, the division should minimize the burden on the complainant. The division should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify and offer alternatives. The division should also ensure that the complainant or the complainant's parent or guardian is aware of his or her Title IX rights and any available resources, such as legal assistance/advocacy, academic support, counseling, services for students with disabilities, and health and mental health services, and, if applicable, the right to report a crime to the school resource officer/campus or local law enforcement.

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant alleging harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the division (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin

the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that school divisions clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

Throughout the division's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence and to otherwise participate in the grievance process. Also, the division must use a preponderance of the evidence standard for adjudicating allegations of sexual harassment. If a division provides for appeal of the findings, it must do so for both parties. The division must maintain documentation of all proceedings.

To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the division and other actors, including students, from retaliating against any individual "for the purpose of interfering with any right or privilege secured by [Title IX]," or because that individual "has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title IX.

When a division knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. This includes making sure that complainants, their parents or guardians if appropriate, and witnesses know how to report retaliation by school officials, other students, or third parties. As an example, this in part can be executed by making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred and responding promptly and appropriately to address any new problems.

In addition, a division must ensure that responsible employees with the authority to address sexual harassment know how to respond appropriately to reports of sexual harassment; that other responsible employees know that they are obligated to report sexual harassment to appropriate school officials; and that all other employees understand how to respond to reports of sexual harassment. A division should provide training to all employees likely to witness or receive reports of sexual harassment and/or sexual assault/violence, including teachers, division law enforcement unit employees, division and school administrators, counselors, general counsel, athletic coaches, and health personnel. Training for employees should include practical information about how to prevent and identify sexual harassment and sexual assault/violence, including same-sex sexual harassment and/or sexual assault/violence; the behaviors that may lead to and result in sexual harassment and/or sexual assault/violence; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual assault/violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training also should explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact information for the division's Title IX coordinator. A division also should train responsible employees to inform students and their parents/guardians of: the reporting obligations of responsible employees; the option to

request confidentiality, available confidential advocacy, counseling, or other support services; and students' rights to file a Title IX complaint with the school and to report a crime to the school resource officer or local law enforcement.

Findings of Fact

During the 2014-2015 school year, the Student was enrolled in 6th grade at the School. In June 2015, the Complainant notified School staff about three alleged incidents of sexual harassment and alleged that the Student was subjected to retaliation.

On Saturday, June 6th, the Complainant notified a teacher at the School via email and then by phone of an incident which occurred in his classroom the previous day. According to the Complainant, Student A and Student B were grinding their hips in a sexualized manner toward the Student and sticking their tongues out at her. The teacher notified the Principal. The same day, the Principal sent the Complainant an email stating that he had been made aware of the incident in the classroom. He assured the Complainant he would address the matter. Subsequently, on June 8, 2015, the Principal spoke to Students A and B, who reportedly admitted to the sexualized conduct. The Principal issued a consequence to both students, which OCR confirmed with documentary evidence provided by the Division. The Principal did not notify the Complainant of the outcome of his investigation. OCR requested, but was not provided with, any notes or interview statements regarding his investigation. On June 15, 2015, the Complainant emailed the Principal and noted that the behavior of Students A and B "had been going on all year" and that the Student reported the June 5 incident to the teacher because "they wouldn't stop it and she was just exhausted by it."

On June 16, 2015, the Complainant sent an email to the Principal and forwarded it to the Student's Counselor stating that she had not heard back regarding the June 5th incident. Additionally, she reported a new concern involving Students A and B which reportedly occurred on June 15, 2015, in another classroom. The Complainant reported that Students A and B had stuck out their tongues between their fingers and made "kissing gestures" directed toward the Student. She also reported that Students A and B retaliated against the Student after she reported their conduct. The Division reported that the Principal spoke to Students A and B and the teacher for that class regarding this incident, although there are no notes or interview statements documenting the Principal's investigation. According to the Division, this teacher (who is no longer at the School) did not report that she observed conduct of a sexual nature. There is no documentary evidence to indicate whether or not the Principal investigated the retaliation allegation. The Principal did not take any disciplinary actions or other actions as a result of the investigation.

In a letter dated August 17, 2015, the Complainant, through her attorney, again informed the Division of the incidents that occurred in the classrooms, including allegations of retaliation, and that Student B engaged in sexualized conduct directed at the Student's sister by telling her that she "turned him on." In the letter, she complained that the Division failed to provide her notice as to the outcome of the School's investigation, failed to address the harassment, and failed to address the retaliation.

OCR interviewed the Division's Title IX Coordinator (Coordinator), who told OCR that she began investigating the allegations in September 2015. After reviewing documentary evidence, which included emails to and from the Complainant and the School, the Coordinator reported speaking with the following: the Principal, the Complainant, the Student, and the two teachers. In regards to the June 5th sexualized behavior, she found it to be sexual harassment. However, she found that the matter was adequately addressed because the students apologized to the Student and were issued a consequence.

In regards to the alleged June 15, 2015 incident, the Coordinator reported to OCR that she interviewed the Principal about his inquiry into the incident. She also interviewed the Student, who reported that Students A and B directed conduct at her; specifically, they stuck their tongues in between their fingers. She told the Coordinator that the teacher asked them to apologize to the Student and they did. According to the Coordinator's notes of the interview provided by the Division, the Student reported to the Coordinator that after this incident in class, she no longer wanted to go to school. The Coordinator acknowledged that she did not conduct any re-investigation of the incident and relied upon the Principal's verbal account of his investigation. The Division described the students' behavior in the classroom as "hand gestures like kissing, like a hand puppet." The Coordinator did not find the conduct to be sexual harassment.

In regards to alleged sexual harassment of the Student's sister, the Coordinator reported that on September 21, 2015, she interviewed the Complainant. In addition to reporting the incidents related to the Student's alleged sexual harassment, the Complainant also reported an incident in which Student B sexually harassed the Student's sister, which the Complainant stated she had reported to a teacher in June. OCR interviewed this teacher, who confirmed that on June 6, 2015, the Complainant had reported to him the sexual harassment which occurred the previous day in his class and she reported that Student B had told the Student's sister while in the hallway, "You turn me on." The Title IX Coordinator acknowledged that she did not conduct further investigation of this allegation.

In regards to the alleged retaliation of the Student, the Coordinator told OCR that during the interview, the Complainant alleged that the harassment got worse after she reported the conduct with Students A and B calling the Student a "snitch" and blaming her for the consequence which was issued against them. The Coordinator also interviewed the Student, who reported that one of the students gave her the middle finger after she told a teacher about them. The Complainant reported to the Coordinator that the Student did not want to go to school anymore because she did not want to be a target. The Coordinator acknowledged that she did not conduct further investigation of this allegation.

The Superintendent provided the Complainant with written notice of the outcome of the investigation on March 18, 2016. The Superintendent's letter reiterated the Title IX Coordinator's findings, specifically; that the June 5th incident was sexual harassment and the School had taken "appropriate actions" to hold the students accountable. No other sexual harassment or retaliation findings were noted. However, the Superintendent did acknowledge there had been a lack of "communication." The letter stated that the Division endeavored to improve in the area communication and made a commitment to improve reporting protocols in

regards to complaints of harassment, undertake training with School staff on harassment procedures, and implement a tracking system to monitor instances of reported harassment.

On June 15, 2016, the Complainant emailed the School and the Division, reporting that Student B has for “past few weeks” harassed Student and her sister. According to the Complainant, Student B told the Student’s sister that the Student is a “snitch and a horrible person.” She also reported that Student B recently attended a field trip with the Student and her sister, and according to the Complainant, managed to get next to the two siblings. He was also recently in the same class with the Student and when she asked the teacher to see her counselor, she was told to move to the other side of the room because no counselors were available. The Complainant’s email reports that the Student subsequently experienced a “panic attack.”

Legal Analysis

Once the School was placed on notice of potential sexual harassment and retaliation, OCR identified compliance concerns with the lack of promptness and the adequacy of the Division’s investigation, along with the effectiveness of its response. Additionally, OCR identified compliance concerns with certain aspects of the Division’s Title IX Policies and Procedures, including, for example, the lack of designated timeframes for the investigative process.

If a Division knows or reasonably should have known about sexual harassment that creates a hostile environment, a Division must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a Division must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a Division’s responsibility regardless of whether a student has complained, asked the Division to take action, or identified the harassment as a form of discrimination. A Division has notice of peer sexual or third party harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a Division delays responding to allegations of sexual harassment or responds inappropriately, the Division’s own action may subject students to a hostile environment. If it does, the Division will be required to remedy the effects of both the initial sexual harassment and the effects of the Division’s failure to respond promptly and appropriately. A Division’s obligation to respond appropriately to sexual harassment complaints is the same regardless of the sex or sexes of the parties involved.

The Complainant first placed the School on notice in June 2015 of two specific incidents of alleged peer sexual harassment and of retaliatory harassment. Subsequently, the Complainant filed a formal grievance through her attorney on August 17, 2015, challenging, among other issues, the adequacy of the School’s response to her reports of sexual harassment.

The Coordinator conducted an investigation upon receiving notice of the allegations in the letter; however, she acknowledged that she did not investigate the retaliation allegation or any sexual harassment allegation related to the Student’s sister. With respect to the June 15 alleged incident, the Coordinator acknowledged that she did not conduct any re-investigation of the incident and instead relied upon the Principal’s verbal account of his investigation. The Division

described the students' behavior in the classroom as "hand gestures like kissing, like a hand puppet." The Coordinator did not find the conduct to be sexual harassment; however, without the Principal's notes or interview statements regarding his investigation into the matter, it is not clear on what basis the Coordinator made her determination. In the Superintendent's letter dated March 18, 2016, the Superintendent noted that the Coordinator acknowledged that the conduct could be seen by the Student as sexual in nature.

Upon notice of potential harassment, OCR is concerned with the lack of interim or remedial measures, such as separating the students, offering counseling or additional monitoring of the school environment to the Student, and implementing measures to prevent retaliation. Finally, OCR is concerned with the period of time the Division took to investigate the matter. The Complainant placed the Division on notice of allegations of sexual harassment and retaliation in June 2015 and then again in August 2015. The Complainant did not receive written notice of the investigative outcome until March 18, 2016, after OCR notified the Division of this complaint and after the Complainant made a Freedom of Information Act (FOIA) request to obtain documents pertaining to the complaint.

Finally, the Coordinator acknowledged to OCR that currently the Division does not have a measure in place to ensure that the Title IX Coordinator is able to track and monitor potential Title IX complaints. OCR is concerned that Division does not currently have a mechanism in place so that the Title IX Coordinator can centrally collect and track allegations of sex-based discrimination and, therefore, is not able to effectively coordinate the Division's Title IX obligations with regards to monitoring the environment. Additionally, based on interviews with School staff and the Coordinator, OCR is also concerned that the Division is not adequately providing training to its staff to ensure each individual understand his/her role in implementing the Division's Title IX Policy and Procedures.

Title IX Grievance Procedures

In reviewing the Division's Title IX Grievance Procedures, OCR noted compliance concerns. Specifically, the Division's procedures do not enumerate a designated timeframe for the investigative portion of a complaint resolution. Policy 1B.4R states that the Division is to investigate "promptly." Additionally, it states that upon receiving an investigative report the Superintendent must inform the parties within thirty days if the determination will be accepted or rejected, if additional investigation is necessary, and, the "appropriate" responsive actions that will be taken. However, it also allows for an extension of the thirty day notification timeframe "at the Superintendent's discretion." OCR is concerned that no other limiting or descriptive information is included, such as, for example, explaining instances when such discretion might be appropriate and for how long, and whether or not the parties will be notified of the delay. Given that in this instance there was a delay in providing the Complainant notice of the investigative outcome, it is not clear if the delay was based on the Superintendent's "discretion" or for some other reason, such as a delay in the Title IX Coordinator submitting her findings to the Superintendent. The Procedures also do not require written notice of the outcome. Additionally, the Division's Procedures allow for an informal resolution procedure, which generally is consistent with Title IX, however, it does not mention that it is not appropriate to use informal procedures in addressing allegations of sexual violence. There is also no mention of an

individual’s right to file a complaint with police at any time in cases of sexual violence. With regard to the informal procedure, there is not a stated timeframe as to when the process will start after a report of a Title IX concern, instead it merely states, “[S]hall start promptly.” The procedure does not designate a time frame other than “immediately” as to when the formal investigation process will begin upon the termination of the informal process. OCR is also concerned with a potentially chilling provision of the Title IX Grievance Procedure regarding “False Charges.” Specifically, it states that if an individual is found to “knowingly make a false charge . . . [the individual] shall be subject to disciplinary action as well as any civil or criminal legal proceeding.”

ALLEGATION 2

The Section 504 regulation, at 34 C.F.R. § 104.33, requires divisions 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. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require divisions to provide a FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires divisions to evaluate any student who needs or is believed to need special education or related services due to a disability. A division 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 does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student’s possible eligibility is recognized and the district conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Virginia state regulations generally require that all evaluations and decisions about eligibility be completed within 65 business days of the receipt of the referral by the special education administrator or designee (8VAC20-81-60(b)(1)(g)).

Findings of Fact

According to the Complainant, she notified a School counselor that the Student experienced mild anxiety problems before the beginning of the 2014-2015 school year. On April 5, 2015, the Complainant notified the counselor that the Student was under a great deal of stress and that the stress was affecting the Student physically. On May 3, 2015, the Complainant notified the School that the Student was in the hospital and informed the School’s counselor that she needed

to speak with the School regarding the Student's stress, which was worsened by bullying occurring at the School. In the same email, the Complainant noted that the Student's doctors had emphasized that she could not continue to experience as much stress as she had been. On May 10, 2015, the Complainant requested to meet with the school counselor and Assistant Principal regarding the impact of the bullying issues on the Student's mental health. The Complainant also requested strategies for ensuring that the Student had access to her educational program. On May 22, 2015, the Complainant emailed the school counselor and Assistant Principal noting that the Student was depressed and did not want to attend school. On May 29, 2015, the Complainant requested that the Student not attend classes with another student who allegedly bullied the Student.

The Complainant indicated that she met with the School's Assistant Principal and counselor on June 4, 2015, and informed them of the Student's conversion disorder diagnosis and requested accommodations. However, OCR does not have any documentary evidence of this meeting or information regarding the accommodations that were requested. OCR would need to confirm this meeting and what was discussed with the Division prior to making any findings. Shortly thereafter, the Complainant reported to the School that the Student was subjected to sexual harassment by her peers. On June 15, 2015, the Complainant notified the school Assistant Principal that she was frustrated regarding the bullying issues the Student was dealing with, given their meeting two weeks prior. On June 16, 2015, the Complainant notified the School that the Student was not returning to school for the final week based on advice from a psychologist due to the emotional effects of the bullying and harassment. On August 14, 2015, the Student's psychologist sent a letter to the Division's school board requesting accommodations for the Student based on disabilities, specifically anxiety, severe depression, and illnesses that were exacerbated by stress over the preceding four months. On August 17, 2015, the Complainant's attorney sent the School a demand letter requesting, in part, a meeting to implement a Section 504 plan to address the Student's anxiety and severe depression, appropriate supports, and that she be separated from several students that were exacerbating her disability.

On September 2, 2015, the Complainant was invited to a September 4, 2015 School-Based Team (SBT) meeting. At this meeting, the SBT recommended a comprehensive evaluation to determine the Student's eligibility under the IDEA and Section 504. OCR would need to conduct more interviews in order to determine the Division's reasoning for the delay between September 2 and October 20, 2015 and to confirm what was done during that time regarding the Student's evaluation. On October 20, 2015, the SBT held an eligibility meeting and identified the Student as having anxiety, depression, and conversion disorder, which impacts the Student's perception of her performance and her social life. The SBT recommended that a knowledgeable team meet to develop a Section 504 plan. On December 3, 2015, the Section 504 team met and determined her accommodations. Ultimately, the School listed the following accommodations on the Student's 504 Plan: extended time to complete assignments when she is absent due to a medical reason (the length of the extension will be determined based on the length of her absence), she will be given a "flash pass" to see the counselor anytime she is feeling overwhelmed or anxious, and the school counselor will check in with the Student on a bi-weekly basis. There are no minutes of the meeting and OCR would need to conduct additional interviews to determine the Division's reasoning for the gap in time between the October 20 and December 3, 2015 meetings.

The Division's procedures state that if a parent, teacher, or administrator believes there is reason to suspect a child has a disability and is in need of special education, a referral should be made to a SBT who will determine whether an evaluation for special education is warranted. Each school is responsible for having a designated person to receive referrals and the parent is to be directed to the designated staff person. The SBT team must meet within ten days of receipt of the referral. The evaluation process for determining initial eligibility must be completed within 65 business days from the date the referral is received by the school's designated person, with a ten day extension available in circumstances that do not exist in this case. The School's procedures indicate that within 30 days of the eligibility determination an IEP must be developed and implemented for students who are determined eligible under IDEA, but the procedures do not indicate the timeline for development of a Section 504 plan for students who are determined eligible only under Section 504.

Legal Analysis

Based on the facts outlined in Section IX above, OCR has preliminary concerns regarding the Division's delay in evaluating the Student and promptly determining appropriate accommodations. The School was likely on notice of the Student's potential eligibility by June 2015, but did not evaluate her until the following September and they did not conduct a meeting to determine accommodations until December 2015, which likely does not comply with the legal standard for timeliness. Though no specific timelines are outlined in Section 504, Virginia state law requires all evaluations and decisions about eligibility to be completed within 65 business days and IDEA, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation. These laws, which serve as helpful guidelines in understanding timeliness under Section 504, indicate that the Division's evaluation of the Student was likely unreasonably delayed. OCR planned to interview additional members of the Section 504 team, including the Section 504 administrator and the School counselor as well as the Assistant Principal (now the Principal) to gather additional information regarding these concerns. OCR would need to confirm that a meeting took place on June 4, 2015 between the Complainant and School staff and would need information regarding what was discussed during that meeting in order to confirm that the Division was placed on notice of the Student's disability. OCR would also need to speak with School staff to determine the Division's reasons for their delay in the evaluation process and whether the Student was harmed by the delay in the evaluation process and provision of services. Prior to collecting this information and speaking with additional staff members, the Division stated that they would like to resolve this matter through a voluntary resolution agreement.

CONCLUSION

On October 14, 2016, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the Division is designed to resolve the issues of noncompliance. 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 Title IX, Section 504, and Title II with regard to the issues raised. As stated in the Agreement entered into by the Division on October 14, 2016, 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.

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.

If you have any questions, please contact Josie Evola, Jan Gray, or Katie Teigen, the OCR attorneys assigned to investigate this complaint. You may reach Ms. Evola at 202-453-5908 or by email at Josie.Evola@ed.gov; Ms. Gray at 202-453-6028 or by email at Jan.Gray@ed.gov; or Ms. Teigen at 202-453-5564 or by email at Katie.Teigen@ed.gov.

Sincerely,

/S/

Kristi R. Harris,
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure: Signed Resolution Agreement

CC: Anne Witt, Division Counsel (*via electronic mail*)