



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 15, 2019

Via Email: jferrell@camden.k12.nc.us

Dr. Joe Ferrell
Superintendent
Camden County Schools
174 North Highway 343
Camden, NC 27921

RE: OCR Complaint No. 11-17-1185
Resolution Letter

Dear Dr. Hawkins:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on January 10, 2017 against Camden County Schools (the District).

The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the District discriminated and retaliated against the Student on the basis of disability. Specifically, the complaint alleges the following:

1. On September XXXX, 2016, at a meeting to discuss the Student's 2016-2017 Individualized Education Program (IEP), the School denied the Student a free appropriate public education (FAPE) when the School failed to carefully consider: (a) the Student's 2015-2016 IEP; (b) the Student's 2015-2016 Behavior Intervention Plan (BIP); and (c) information the Complainant provided regarding the Student's need for XXXX.
2. On September XXXX, 2016, October XXXX, 2016, November XXXX, 2016, and February XXXX, 2017, the School discriminated against the Student on the basis of disability when the Student was subjected to peer bullying and the School failed to investigate and respond appropriately.
3. The School retaliated against the Student because of the Complainant's disability-based advocacy when it disciplined the Student by: (a) issuing him discipline referrals and two in-school suspensions from November XXXX, 2016 and (b) on February XXXX, 2016, issuing the Student demerits.

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

4. On January XXXX, 2017, the School denied the Student a FAPE when it failed to reevaluate the Student after the Complainant requested a reevaluation.

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

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District faculty/staff.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1-3. However, before OCR completed its investigation, the District expressed a willingness to resolve Allegation 4 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Background Information

During the 2016-2017 school year, the Student was enrolled as a XXXX grader at the School, and was identified as a student with multiple disabilities. The Student transferred to the School XXXX at the beginning of the 2016-2017 school year. The Student had an IEP that was developed at his previous school during the 2015-2016 school year (previous IEP). Also during the 2015-2016 school year, the Complainant requested that an outside agency develop a Behavior Intervention Plan (BIP) for the Student. This BIP was presented to staff at the Student's previous school, but was not incorporated in the Student's previous IEP or implemented in whole by the Student's previous school. After the Student transferred to the School, according to an email from the Student's parent to the Student's special education teacher dated September XXXX, 2016, the Complainant requested a phone call to discuss a BIP and two other issues. On September XXXX, 2016, the IEP team met and developed a new IEP (2016-2017 IEP). According to this IEP, the Student has behaviors that impede his learning or that of others.

On October XXXX, 2016, the Complainant filed a complaint with the North Carolina Department of Public Instruction, Exceptional Children Division (NCDPI). The Complainant alleged in part that the District did not follow the State's policies regarding reviewing and revising the Student's IEP per the Complainant's request and that the District did not implement

the Student's BIP. NCDPI found that the 2016-2017 IEP addressed the Student's behavioral needs and found that the District included specially-designed instruction specifically for behavior for the Student in that IEP. NCDPI found the District in compliance in regards to reviewing and revising the Student's 2016-2017 IEP.

The Student resides, but no longer attends school, in the District XXXX.

Allegation 1:

Legal Standard

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.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Analysis

The Complainant's contends that, during the Student's IEP meeting in fall 2016, the Student's IEP team did not carefully consider the Student's previous IEP and BIP that was developed the previous year. The Complainant also alleged that the IEP team did not consider information she provided to the team about the Student's need for XXXX.

The District asserted in its narrative response that the IEP team did review the Student's previous IEP, including reviewing the Student's goals. The District noted that the IEP team used the goals in the previous IEP to establish goals for the new IEP. The District alleged that based on the decision in the Complainant's state complaint, the District has been found to be in compliance regarding the development of the IEP and consideration of the BIP created by the outside agency. The District also asserted that the IEP meeting notes show that the information the Complainant provided, regarding the Student's need for XXXX, were considered but ultimately rejected by the IEP team.

OCR investigated whether the IEP team considered the Student's previous IEP at the September XXXX, 2019 IEP review meeting. OCR reviewed the Student's previous IEP and the IEP drafted in fall 2016, including the meeting notes. OCR finds sufficient evidence that the fall 2016 IEP team considered the Student's previous IEP, and this is evidenced by the similarity

between and overlapping information in both IEPs. For example, OCR notes that the language in the Student’s 2016-2017 IEP regarding “Functional goals”, “General Education Program Participation”, and “North Carolina Testing Program” was the same or substantially similar to the Student’s previous IEP. The similarity of the language between the two IEPs shows by a preponderance of the evidence that the District clearly considered the Student’s 2015-2016 IEP when developing the Student’s 2016-2017 IEP. Despite this, OCR also found that the 2016-2017 IEP was designed to address the Student’s new school, grade and subject matter, including updated goals and accommodations. Based on all the above, OCR finds insufficient evidence to support Allegation 1(a).

The Complainant alleged to OCR that the Student had a BIP from the previous school year and that School staff failed to consider that BIP when developing the Student’s 2016-2017 IEP. OCR reviewed the Student’s records, including the October XXXX, 2015 BIP that is labeled a “draft” and was developed by an outside agency (“draft BIP”) and the outcome of the Complainant’s State complaint, and found that the Student did not have a BIP in effect at the previous school. OCR found that the draft BIP was never incorporated fully into the Student educational program. Although the previous school considered the draft BIP, at the conclusion of a November 2015 meeting, the Student’s previous 2015-2016 IEP team chose not to use a BIP for the Student and incorporated behavioral goals for the Student into his IEP. OCR did not find any evidence that the previous school adopted the draft BIP during the 2015-2016 school year. Similarly, the September XXXX, 2016 IEP team reviewed the behavioral goals in the Student’s previous IEP and included behavioral goals in his 2016-2017 IEP, as discussed above. In addition, OCR’s review of the September XXXX, 2016 IEP meeting notes and IEP indicate that the IEP team considered strategies for use “during episodes of correcting the [Student’s] behaviors such as XXXX. The IEP team also considered input from the Complainant, the Student’s therapist, teachers and other personnel. Based on OCR’s review of the evidence, the 2016-2017 IEP team considered information presented to the team specifically regarding the Student’s behavior, and established goals for the Student regarding that behavior. Also, as previously discussed, this issue was reviewed in part during the Complainant’s State complaint, and the District was found to be in compliance with the IDEA regulation regarding that allegation. Based on all the above, OCR finds insufficient evidence to support Allegation 1(b).

OCR investigated whether the IEP team considered information provided by the Complainant regarding the Student’s need for transportation in September 2016 and found evidence that the IEP team reviewed the information the Complainant provided, considered it, but declined to add transportation services. OCR reviewed the IEP team’s prior written notice to the Complainant, dated September XXXX, 2016 and the September XXXX, 2016 IEP meeting notes. The prior written notice indicates that the IEP team considered a re-evaluation determination for XXXX but “[t]he IEP team refused to complete a re-evaluation determination because [the Complainant] feels that [the Student] will not be able to XXXX. The IEP team does not have any documentation from the previous years stating that [the Student] had difficulty XXXX.” Based on this, the IEP team declined to include XXXX. OCR reviewed the Student’s previous IEP and previous prior written notices and notes that they do not contain any information regarding the Student’s difficulty with XXXX. Therefore, OCR finds insufficient evidence that the IEP team failed to consider XXXX.

OCR also investigated whether the IEP team considered information provided by the Complainant regarding the Student's need for XXXX in September 2016. The September 28, 2016 prior written notice indicates that "the IEP team refused to add in XXXX with his classwork/assignment." The prior written notice explained the basis for the team's refusal to grant the specific accommodation requested by the Complainant and instead added an accommodation that the Student "XXXX" While the prior written notice did not discuss the Complainant's request regarding XXXX, the IEP's September 2016 meeting notes did discuss the request. The IEP meeting notes indicated that "the [Complainant] asked the team about allowing [the Student] to XXXX, we have included a goal which addresses XXXX." OCR confirmed that this goal was added to the "Functional Goals" in the Student's 2016-2017 IEP. Based on this, OCR finds insufficient evidence that the IEP team failed to consider information regarding XXXX.

Lastly, OCR investigated whether the IEP team considered information provided by the Complainant regarding the Student's need for XXXX. The Student's September 2016, IEP and prior written notice does not contain any discussion of a request from the Complainant regarding XXXX. OCR also reviewed email correspondence between the Complainant and members of the Student's IEP team. In response to an October XXXX, 2016 email from the Complainant requesting XXXX, the Assistant Principal emailed the Complainant that afternoon indicating that the Student's IEP team meeting ended with an agreement to provide XXXX. The Assistant Principal also indicated that the team also discussed XXXX. The Assistant Principal requested that the Complainant allow two weeks for them to determine if the academic strategies were working and provided a list of websites that could XXXX. The Assistant Principal also stated that they would share feedback through the Class Dojo, Remind 101, and emails. Subsequently, on October XXXX, 2018, the IEP team members followed up with additional academic strategies after they had assessed the IEP strategies put in place in the September 2016 IEP meeting. The team determined to provide to the Complainant XXXX.

Based on emails between the Complainant and the School staff, OCR finds that the IEP team considered the Complainant's request for XXXX so that the Complainant could assist the Student at home. In response, the documentation shows that the School put a number of accommodations in place, including XXXX. Based on all the above, OCR finds insufficient evidence to support Allegation 1(c).¹ Therefore, OCR finds insufficient evidence of a violation of Section 504 or Title II regarding Allegation 1.

Allegation 2:

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires District's that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public District's that employ 50 or more

¹ OCR also notes that OCR generally does not second-guess educational decisions as long as the District follows the "process" requirements of Section 504. Substantive disagreements over a student's evaluation, or services are more appropriately addressed through a due process proceeding.

people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

Analysis

The Complainant alleged that the Student was subjected to bullying at the School by one of his peers (Student A) and that the District failed to take appropriate steps to address it. The District responded that all reports of peer bullying by Student A were investigated by the Interim Principal (the Assistant Principal) and dealt with appropriately. In addition, the District stated that the two students were separated in all academic and non-academic classes and that no appeal of the steps taken by the School was submitted to the District as of March XXXX, 2017. OCR reviewed emails and other information provided by the Complainant and the District, including investigative and other notes taken by the Assistant Principal and guidance counselor, regarding this allegation. OCR also interviewed one of the Student's teachers.

According to documentation provided to OCR, on September XXXX, 2016, the Assistant Principal notified the Complainant about a XXXX incident between the Student and Student A that had occurred and she had investigated that day. The Assistant Principal's documentation stated that both students admitted to engaging in XXXX and indicated that they have been competitive since they were younger. Following the incident, the boys apologized to each other and were told to stay away from and not play with each other. The Assistant Principal also notified the parents of both students of the incident. In response, on September XXXX, 2016, the Complainant reported to the Student's special education teacher that Student A had previously bullied the Student and the Student had retaliated against Student A at an outside organization, not affiliated with the school. The Complainant then requested recommendations to address the conflict between the boys. The Complainant did not make any allegations of disability harassment in her email.

On October XXXX, 2016, the Complainant reported to the Student's special education teacher that the Student had reported that he had been called a "freaking idiot, stupid and cursed at" by Student A that day.² The Complainant requested resolution suggestions and indicated that she was ready to meet with Student A's parents. According to the documentation, the special education teacher reported to the Assistant Principal that the Student had not reported this incident to her, although she saw him twice towards the end of the school day. The Assistant Principal investigated the incident the following morning by interviewing both students. The Assistant Principal received conflicting accounts of the incident from the students and concluded that it was "he said/he said" with both students alleging inappropriate behavior by the other. The Assistant Principal counseled both students and instructed them to stay away from each other (e.g., not stand in line behind each other, sit together at the table, etc.).

On November XXXX, 2016, the Complainant reported to the Assistant Principal and the Student's teachers, including his special education teacher, that Student A had kicked the Student

² The Complainant did not use the term disability discrimination in her correspondence with the School but OCR notes that the alleged terms used by Student A (i.e., "idiot" and "stupid") are terms often associated with disability discrimination.

during XXXX on October XXXX, 2016.³ She stated that the Student reported this to a School staff person, who responded to the Student that it was probably an accident. The Complainant requested that all teachers be informed about the “bullying” and support the Student with this ongoing issue. The Assistant Principal investigated the incident that day by interviewing both students, who reported to her “everything was alright” between the students. Despite this, the Assistant Principal put in place a plan for the students during recess where they would not interact with each other. According to OCR’s interview of one of the Student’s primary teachers, the teacher indicated that she became aware of the alleged bullying incidents around this time and the Assistant Principal spoke with her regarding separating the boys on the playground. She also indicated that she would separate the boys during class and she also remembered speaking to the special education teacher about the incident. In addition, the documentation shows that from November XXXX, 2016 – January XXXX, 2016, the School’s guidance counselor conducted on-going weekly counseling with the two students to work on improving their relationship. During weekly meetings with the guidance counselor, XXXX. OCR reviewed notes from these sessions and found that the students participated in seven counseling sessions together. OCR also observed that, at their last counseling session, the students expressed to the counselor that they wanted to work on playing together in a competitive way to improve their skills at competing with each other while not engaging in inappropriate behaviors.

On November XXXX, 2016, the Complaint reported that on November XXXX, 2016, Student A had pushed the Student in the back while he was sitting down. The Complainant reported that she was in the office when both students were brought in and the other student admitted that he had hit the Student. The Complainant again requested a conference with Student A’s parents and indicated that the School had not responded to her complaints or offered any resolution. The Assistant Principal set up a conference between the students, the Student’s parents and Student A’s guardians for November XXXX, 2016. A District staff member also told the Complainant by email that the Assistant Principal and the Student’s teachers would be looking into ways to separate the two students further during the non-core academic classes. The documentation from the November XXX, 2016 meeting shows that the parents and guardians of both students met with the Student and Student A and strategies were formulated on how to move forward. These strategies included: a) classroom seating separation; b) transition separation; c) group counseling sessions, as discussed above, focusing on teamwork, communicating effectively, and how to interact with outside/recess play; and, d) participation in an outside outing.

On February XXXX, 2017, the Complainant reported that Student A had XXXX. The Complainant also requested a report from the staff counseling the students. The Principal investigated the incident on February XXXX and XXXX, 2017 by interviewing both students. Based on Student’s A’s account, the Principal determined that the incident was an accident. The guidance counselor generated a two-page report on her counseling sessions with the students and the Assistant Principal indicated that she was going to have the counselor provide additional information to the Complainant about the counseling sessions. The District did not provide any documentation that this report was provided to the Complainant. However, there is no other information provided by the District or the Complainant that she reported any other incident.

³ Although the Complainant alleged in her complaint that the Student was bullied on November XXXX, 2016, the documentation shows that the alleged incident occurred on October XXXX, 2016

First, OCR finds insufficient evidence that the Student was subjected to disability-based peer harassment. OCR reviewed all the incidents involving Student A and finds insufficient evidence that the Student was harassed based on his disability. The information OCR reviewed showed that the incidents stemmed from personal conflict between the students, which was confirmed by the Student during an interview with the Assistant Principal. Other than two instances of name-calling alleged in the Complainant's October 20, 2016 email, OCR did not find any evidence that the alleged actions committed by Student A were related to the Student's disability. Despite this, OCR considered the School's response to the Complainant's reports of peer bullying. OCR finds that the documentation shows that when the Complainant reported a concern regarding the Student and Student A, School staff responded in a prompt and thorough manner. In response to the Complainant's complaints, the Assistant Principal: immediately investigated the incidents; spoke with at least one of the Student's teachers; developed and implemented strategies to address the incidents (including having the guidance counselor conduct a series of counseling sessions with the students to improve their relationship); conducted a conference with the Complainant and Student A's guardians; and, implemented additional strategies, including separating the students. OCR found that the Assistant Principal's responses became increasingly more involved as she continued to receive reports of conflicts between the students, from counseling the students to involving the parents/guardians and requesting assistance from the School's guidance counselor. According to the documentation, there were no incidents reported after February 2016. Based on this, OCR found insufficient evidence that the School failed to appropriately respond to the Complainant's reports of peer bullying.⁴ Based on all the above, OCR finds insufficient evidence of a violation of Section 504 or Title II regarding this allegation.

Allegation 3:

Legal Standard

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, 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.

Analysis

OCR considered whether the District had a legitimate non-retaliatory reason for issuing the Student disciplinary referrals and demerits. The District contends that School staff did not retaliate against the Student but instead issued the Student disciplinary consequences in response

⁴ Although not alleged by the Complainant, OCR also considered whether the School had an obligation to address any FAPE-related concerns in regards to the effects of the alleged bullying. Under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE – an obligation that exists regardless of why the student is being bullied. As discussed, there is insufficient evidence that the Student was harassed based on his disability. Here, OCR found no information that the Student was not receiving a FAPE or that the alleged bullying affected the Student's receipt of a FAPE. OCR also reviewed the January XXXX, 2017 Facilitated IEP notes and the Complainant's handout presenting her concerns at that meeting and notes that the Complainant did not raise a concern that the Student was not receiving a FAPE due to the alleged bullying.

to his behavior. The District confirmed that the Student received disciplinary referrals and two days of in-school suspension (ISS) between November XXXX and demerits on February XXXX, 2016, but asserted that he violated the School’s disciplinary code during the school day. The District asserted that the relevant incidents were investigated prior to the Student receiving a consequence, and the Student was given the opportunity to address his behaviors before he began receiving consequences. OCR finds that the District has provided a legitimate, non-retaliatory reason (i.e. consequence for the Student’s behavior) for issuing the Student disciplinary referrals in fall 2016 and spring 2017.

Next, OCR determined whether the District’s legitimate non-retaliatory reason was pretextual. OCR reviewed records provided by the District in support of its position that the disciplinary consequences here were warranted. OCR reviewed the Student’s disciplinary file, including the Student’s disciplinary referrals and other supporting documentation. OCR also reviewed the corresponding provisions of the School’s disciplinary code. According to the documentation, the Student received two separate office referrals on November XXXX 2016. One referral was issued for XXXX⁵, and the other was for XXXX⁶. According to the documentation, no disciplinary consequences were given (e.g., suspension) but a conference was held on that date with the Student and the Complainant to discuss the Student’s behavioral incidents since November XXXX, 2016. Subsequently, on November XXXX, 2016, the Student received a referral for an inappropriate gesture XXXX⁷. Again, no consequences were given. According to the disciplinary referral, on November XXXX, 2016, the Student XXXX. As a result, the Student received ISS for two days that was to be served on November XXXX, 2016, XXXX. According to OCR’s interview with the District’s Director of Special Programs, the Student never served the two-day suspension. In addition, in an email dated November XXXX, 2016 from the Assistant Principal to the Complainant, the Assistant Principal acknowledged that the Complainant had kept the Student home rather than serving ISS; therefore, the Assistant Principal modified his disciplinary consequences for “XXXX” to removal from recess time only for two consecutive days.⁸ The Student received multiple discipline referrals on February XXXX, 2017. The first referral indicates that the Student was issued a disciplinary referral for Bullying (052) and Disrespect towards a teacher (069) for behaviors XXXX. The Student also received another disciplinary referral on the same date (033 - Insubordination) regarding his behavior towards another teacher who questioned him regarding the disrespect to the teacher who was subject to the behavior above. On February XXXX, 2016 the Student received 8 demerits for bullying and 8 demerits for disrespect (both were coded as the Student’s first offense of this nature). Both of these consequences were consistent with the disciplinary consequences for first offenses for this type of behavior.⁹ Based on all the above, OCR finds that the documentation provided by the District corroborates the District’s reasons for issuing the disciplinary referrals.

⁵ District Code of Conduct: 114-UB: Inappropriate Behavior

⁶ District Code of Conduct: 027-UB- Aggressive Behavior

⁷ District Code of Conduct: 114-UB: Inappropriate Behavior

⁸ It is also documented on the disciplinary referral, other discipline documentation and email documentation that the Student did not serve this in-school suspension but instead did not receive recess for two days due to the Complainant’s request.

⁹ OCR notes that the Student’s demerits for his Insubordination towards the other teacher on that date were waived.

OCR also reviewed the investigatory notes regarding the disciplinary incidents, including the notes provided of a conference with the Complainant regarding the incidents. OCR found that the School had an administrative conference with the Complainant on November XXXX, 2016 regarding the Student's behavior incidents that had occurred on November XXXX. The incidents reported at the meeting on these dates included: a) communicating a threat and aggressive behavior, b) causing XXXX injury to another student based on his behavior XXXX, c) pushing and shoving another student and making a threatening motion to punch another student in the face, and d) hitting, pushing and shoving XXXX with four other students. The administrative conference notes indicate that the Assistant Principal informed the Complainant that the Student was beyond the stage of receiving a warning or reprimand because he had "put his hands on" other students and the School handbook clearly states that the Student should receive either ISS or OSS given his current offenses. The conference notes indicate that the Complainant requested that she be allowed to work with the Student rather than having him receive a consequence. The Assistant Principal informed the Complainant and the Student that the Complainant would be given the next two days to work with the Student so that he could correct his behavior and this would be the last opportunity to work on strategies that would help him improve. The Complainant was informed that any non-compliant behaviors in the future would result in an office referral, with disciplinary consequences. As noted above, the next day, the Student received a disciplinary referral for an inappropriate gesture on the playground (114-UB: Inappropriate Behavior) and no consequences were given. Thus, OCR found that the School gave the Student multiple chances to correct his behavior.

OCR also examined data provided by the School showing how other students were disciplined for similar behaviors. The data shows that other students received similar or harsher consequences for the same type of behavior as the Student. In this regard, OCR notes that other students received disciplinary consequences ranging from an Administrative conference, ISS (up to 3 days) and OSS (up to 4 days) for Aggressive Behavior or Inappropriate Behavior and Administrative Conference or ISS (up to 3 days) for Insubordination.

Based on the above, OCR finds insufficient evidence of retaliation regarding this allegation. OCR finds that the District provided a legitimate non-discriminatory reason for issuing the Student a two-day ISS on November XXXX, 2016 and demerits on February XXXX, 2016 because of his behavior. OCR further finds that by a preponderance of the evidence, there is insufficient evidence that the stated reason was a pretext for retaliation. The documentation shows that the Student received behavioral consequences that were consistent with the disciplinary code, after multiple chances to correct his behavior, and that he received less than what he could have received as a consequence per the School's disciplinary code for his behavior. Therefore, OCR finds insufficient evidence of a violation of Section 504 or Title II regarding Allegation 3.

Allegation 4:

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate 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 IEP, BIP or placement are necessary.

Analysis

OCR investigated whether the School denied the Student a FAPE when it failed to reevaluate the Student after the Complainant requested a reevaluation. The Complainant alleges that the School did not implement a BIP for the Student despite her repeated requests which resulted in multiple disciplinary referrals, demerits and a two-day suspension for the Student. As discussed above, it does not appear that the Student served the two-day suspension because it was modified after the Complainant kept the Student home for two days. Despite this, as discussed in further detail below, OCR is concerned that the School denied the Student a FAPE when it failed to reevaluate the Student regarding his behavior prior to January XXXX, 2016.

OCR reviewed the Student’s special education file, emails and interviewed District and School staff including the District’s Director of Special Education. The information shows that the Complainant initially requested that the School implement a BIP for the Student on September XXXX, 2016. Subsequently, the Student had an Annual Review of his IEP on September XXXX, 2016. The September XXXX, 2016 meeting notes indicate that in response to Complainant’s question when the IEP team would review the Student’s BIP, “the team agreed to have a BIP review meeting to be determined later in the month.”¹⁰ Based on records provided to OCR, this meeting did not occur. The School began documenting several behavioral incidents with the Student beginning on October XXXX, 2016, although from the District’s documentation, the Student’s teacher was also noting behavioral incidents with the Student starting as early as September 2016. On November XXXX, 2016, an administrative conference was held (discussed above) and the Complainant was told that the Student would receive ISS and OSS for future behavioral incidents. Documentation provided by the District shows that the Complainant requested a meeting to discuss a BIP for the Student during this conference. On November XXXX, 2016, the Assistant Principal notified the District’s Director of Special Programs and the Special Education Teacher that she felt that the IEP team should move forward with the meeting to discuss the BIP given the collection of data and the Complainant’s request. On November XXXX, 2016, the Assistant Principal requested the Special Education Teacher to set up a BIP meeting for the Student. However, documentation provided by the District shows that the School did not schedule or hold this meeting.

On November XXXX, 2016, the Dispute Resolution Consultant for NCDPI emailed the District’s Director of Special Programs in response to emails that she had been receiving from the Complainant. She informed the Director that “if the parent is requesting a BIP, the principal

¹⁰ As noted above OCR found that the Student did not have a BIP in September 2016. However, OCR reviewed the Student’s record and finds that the School was put on notice that the Complainant was requesting an evaluation of the Student to determine if the Student needed related aids and services regarding his behavior. When the Student engaged in non-compliant behaviors in fall 2016, the Complainant repeatedly asked when School staff would either review the BIP or meet to discuss a BIP for the Student. OCR finds that this was sufficient notice that the Complainant was requesting an evaluation of the Student.

needs to move forward on scheduling the IEP meeting or asking the special education case manager to do so. This meeting should take place as soon as possible if the student is having continued behavioral issues.” In response to notification of the Student receiving a two day in-school suspension on November XXXX, 2016, the Complainant again requested a BIP for the Student. However, no further action was taken on the Complainant’s request for a BIP for the Student until NCDPI facilitated a meeting on January XXXX, 2017.

At the January XXXX, 2017 meeting, the District began the process of evaluating the Student to determine his need for a BIP by requesting consent from the Complainant to conduct a Functional Behavioral Assessment (FBA). Although the District did not conduct the Student’s FBA until March XXXX, 2017, due to scheduling issues, the District also did not schedule a subsequent meeting to develop a BIP until May XXXX, 2019 and there is no information that a BIP was ever completed. As noted above, the Student stopped attending school in the District at the conclusion of this school year. XXXX.

Prior to OCR completing its investigation of this allegation, the District requested to voluntarily resolve this allegation.

On September 23, 2019, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. Under Section 304 of OCR’s *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into and fulfills the terms of a resolution agreement. OCR will monitor closely the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request information as necessary to determine whether the District has fulfilled the terms of the Agreement. If the District fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will give the District 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 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.

The Complainant has a right to appeal OCR’s determination regarding Allegation 1-3 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or

incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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, assists, or participates in a proceeding under a law enforced by OCR. 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, particularly XXXX. If you have any questions, please contact Jan Gray at Jan.Gray@ed.gov or 202-453-6028 or Zorayda Moreira-Smith at Zorayda.Moreira-Smith@ed.gov or 202-453-6946, the OCR attorneys assigned to this complaint.

Sincerely,

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

Enclosure

cc: XXXX, District Counsel, Hornthal, Riley, Ellis & Maland, LLP