



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

November 27, 2019

Dr. Eric Jones
Superintendent
Powhatan County Public Schools
4290 Anderson Highway
Powhatan, VA 23139

Re: OCR Complaint No. 11-18-1126
Resolution Letter / Letter of Findings

Dear Dr. Jones:

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 XXXXX against Powhatan County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability and retaliated against the Complainant and the Student. Specifically, the complaint alleges the following:

1. The Division discriminated against the Student on the basis of disability, when School staff asked the Complainant to leave campus when she had the Student's service animal with her in advance of her picking up the Student from the School, on XXXXX and XXXXX, and told the Complainant to give notice of when she would be on the School's campus with the service animal.
2. The Division discriminated against the Student on the basis of disability, by not allowing the Student's service animal into his classroom.¹
3. In retaliation for the Complainant's disability-related advocacy, the Division:
 - a. Accused the Complainant of breaking the visitor check-in policy, in XXXXX;
 - b. Delayed in rescheduling the Student's Individualized Education Program (IEP) meeting from XXXXX until XXXXX; and
 - c. Called the Complainant regarding the Student's unexcused absences, in XXXXX, even though such absences previously were excused.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of

¹ The Complainant alleged the Division denied the service animal and its trainer access to the classroom during the regular school day, in XXXXX. She also alleged that a "Plan of Access" sent to her after a XXXXX meeting with Division staff does not accurately reflect her request to have the service animal attend class at 30-minute intervals.

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

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), 42 U.S.C. §§ 12131 et seq., 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. Additionally, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division, and interviewed the Complainant and Division staff. After carefully considering all of the information obtained during the investigation, OCR determined that there was insufficient evidence to substantiate portions of Allegation 1, as well as Allegations 2, 3, pursuant to Section 303(a) of OCR's *Case Processing Manual*. OCR identified a compliance concern related to a portion of Allegation 1, specifically that the Division asked the Complainant for notice of when she would be on the School's campus with the service animal. Before OCR issued a final determination, the Division expressed a willingness to resolve this concern pursuant to a Resolution Agreement obtained under Section 302 of OCR's *Case Processing Manual*, which states that an allegation may be resolved prior to OCR issuing a final determination, if a recipient expresses an interest in resolving the allegation, and OCR determines that it is appropriate to do so because OCR's investigation has identified issues that can be addressed through a Resolution Agreement. OCR determined that it was appropriate to resolve this concern under Section 302 of the *Case Processing Manual*.

OCR's findings and conclusions are discussed below.

Allegations 1 and 2: Disability Discrimination

With respect to Allegation 1, the Complainant alleged that the Division discriminated against the Student on the basis of his disability, when School staff asked the Complainant to leave campus when she had the Student's service animal with her in advance of her picking up the Student from the School, on XXXXX and XXXXX, and told the Complainant to give notice of when she would be on the School's campus with the service animal. Regarding Allegation 2, the Complainant alleged that the Division discriminated against the Student on the basis of disability, by not allowing the Student's service animal into his classroom.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation also requires school districts to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

The Title II regulation, at 28 C.F.R. § 35.136, provides that a public school district generally must modify its policies, practices, or procedures to permit individuals with disabilities to use service animals. The regulation, at 28 C.F.R. § 35.104, defines a service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” The regulation provides a non-exhaustive list of examples of work or tasks that may be performed by a service animal.

Under the Title II regulation, at 28 C.F.R. § 35.136, persons with disabilities have the right to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed. A public school district is not permitted to ask about the nature or extent of a person’s disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, the public school district is permitted to make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability; and 2) what work or task the animal has been trained to perform.

The Title II regulation provides that a public entity may ask an individual with a disability to remove a service animal from the premises if: (1) the animal is out of control and the animal’s handler does not take effective action to control it; or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b). In addition, if admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. 28 C.F.R. § 35.130(b)(7).

Allegation 1

Facts

During the XXXXX school year, the Student was enrolled in XXXXX at the School. The Student had been diagnosed as having XXXXX ; the Student had an IEP. The Student has a service animal, a dog (the SA); the SA was not specified in the Student’s IEP. The Complainant informed OCR that the SA is trained to “XXXXX.” According to the Student’s doctor, the SA helps XXXXX²

The Division’s Service Animal Policy

The Division has a Service Animals in Public Schools Policy (the Policy).³ The Policy lists four “Requirements That Must be Satisfied Before a Service Animal Will be Allowed on School Property”: (1) an individual must make a prior written request of the principal, and requests must be renewed annually; (2) the service animal must be vaccinated; (3) the service animal must be in good health, and the owner must annually submit a current veterinary health certificate and proof of

² The Division does not dispute that the SA is a service animal.

³ XXXXX See <https://go.boarddocs.com/vsba/powhatan/Board.nsf/Public#>.

current vaccinations and immunizations; and, (4) a service animal must be under the control of its handler at all times, and must have a harness, backpack or vest identifying the animal. The Policy also states that “[p]ersons who are part of a three-unit service dog team [i.e., a service dog, a disabled person, and an adult handler] may be accompanied by a service dog while on school property provided that person is conducting continuing training of a service dog.”

None of the Division staff OCR interviewed had any direct experience or training with service animals in the Division prior to the SA. They reported that with respect to the Student, they tried to follow and apply the Policy. The Director XXXXX (the Director) explained that she and a few colleagues conducted research on the Policy, service animals, and “how to go about handling the request since we never had one before.”

Initial Correspondence Regarding the Service Animal

On XXXXX, the Complainant emailed the Student’s teacher (the Teacher) that she was thinking of bringing the SA in for 30 minutes to an hour at some point in the near future, and inquired when would be a good time to do that and who she needed to contact. The Teacher referred the Complainant to the School Principal. On XXXXX, the Principal emailed the Complainant a copy of the Policy and offered to meet to review it, noting that he was new to this process. The Complainant replied that she would like to meet and explained that she wanted to bring the SA to class for 30-minute intervals during slow times so that students in the class could get acclimated to the SA.

On XXXXX, the Complainant emailed the Principal that a service animal trainer would be in town XXXXX, and she wanted the trainer to spend time in the classroom with the Student and be available for questions.⁴ During a telephone call later that week, the Principal told the Complainant that she needed to bring a request for the SA in writing. The Principal told OCR that once he received the request in writing, they could meet to discuss logistics of the SA. On XXXXX, the Principal emailed the Complainant that he had not yet received her request and that the Division wanted to review her “official request” in person.

On XXXXX, the Complainant sent the Principal a letter from the Student’s pediatrician explaining the need for the SA⁵, and she explained that the trainer would not arrive until XXXXX. On XXXXX, the Complainant emailed the Principal and the Teacher confirming a meeting for the following week and stated that she wanted “this to be as smooth as possible but I also want to not feel under the microscope. XXXXX I just shouldn’t have to even think about it.”

XXXXX Meeting

The Division convened a meeting to discuss the SA on or about XXXXX, and included the Director, as well as the Division’s Director XXXXX. The Complainant told OCR that she was asked to submit a written request for the SA to attend XXXXX with the Student, which she did on XXXXX. Staff explained that the Complainant wanted the SA in XXXXX. However, with respect to the rest of the Student’s school day, the Complainant expressed concern about the SA upsetting the

⁴ The Complainant also indicated that she was having the organization who trained the dog draft a letter to send in response to the Policy the Principal had shared with her.

⁵ The letter described that the Student is XXXXX

Student's instructional program and wanted to ease the SA into the Student's classroom. After the meeting, the Principal again sent the Complainant a copy of the Policy.

According to Division and School staff, the meeting was not a prerequisite to having the SA come to the School, and the Division was not providing "permission" for the SA to be at the School. Rather, staff wanted to have a better understanding of when the SA would start coming to the School, and what that would look like, so they could have a plan for the SA, the Student, and everyone else in the School community, "be mindful of other students in the building", and plan for situations like fire drills. The Division indicated that the written request was based on the Policy and for their records.

XXXXX Incident and Subsequent XXXXX Correspondence

The Division scheduled an IEP meeting for the Student on XXXXX. XXXXX He explained to OCR that he was trying to adhere to the Policy, and it did not appear that the SA would be performing any task or work for the Student, as the Student wouldn't be there.

Later that day, the Complainant submitted a letter to the Principal as a "formal request" for the SA to accompany the Student to School "during any activity pertaining to [the Student's] care as a special needs student." The Principal responded in an email later that afternoon and asserted that he had explained they had originally agreed on XXXXX as the date for when the SA could begin attending XXXXX with the Student, and the Complainant had not requested to bring the SA into the building otherwise. The Principal explained that because the Complainant modified her request and it was open ended, that they "needed to meet about it."

The Principal asserted to OCR that the SA was never prohibited from being in the building, but that he continuously tried to explain to the Complainant that the Division needed to understand what the plan was. He told OCR that he felt "a sense of responsibility that if [he] didn't follow [the Policy], and allow her to come and go as she pleases, it becomes unpredictable." The Director told OCR that they were trying to get clarification on the Complainant's new request and if she meant "full access."⁶ When OCR asked the Principal whether he told the Complainant that he needed notice for when the SA would come to school, he responded "I can't say yes or no to that." When OCR asked him whether he ever asked the Complainant to provide notice each time she brought the SA to school, he responded that he thinks that would have been a "pretty unreasonable request, so I can't picture myself telling her that each time she walked in the door that request be made."

On XXXXX, the Complainant sent the Superintendent a letter including, among other things, a description of what transpired the day prior; that every time she took the SA into the School the Principal told her that she needs to give him notice; and that the trainer was denied access during instructional hours. In a letter sent on XXXXX, the Superintendent responded to the Complainant. He wrote that an individual with a disability is permitted to be accompanied by a service animal on school property, and that to date, the Complainant had stated that the SA would accompany the Student XXXXX. He stated that the Division had requested to meet with her to better understand

⁶ The Director explained that "any activity pertaining to [the Student's] care" is not the same thing as requesting to accompany the Student "during the school day and all day long." She also said that if the letter had said "to accompany [the Student] at school" that they would have gone ahead and accommodated that request. She told OCR that at a meeting in XXXXX, discussed below, the Complainant clarified that she meant access to School parties.

what work or tasks the SA has been trained to do and how the Division can best accommodate the Student and the SA “while simultaneously maintaining an inviting environment that is conducive to learning for all of its students.”⁷ The Superintendent proposed three dates for a meeting and stated that if the Complainant was not willing to meet, he asked that she provide a written statement explaining the tasks or work the SA is trained to do related to the Student’s disabilities.

XXXXXX

In the interim, the Complainant informed OCR that on XXXXX, she and the SA arrived at the School to pick the Student up early, and as she wasn’t able to grab the door before it locked after School staff buzzed her into the building, she rang the doorbell again and overheard a staff member saying “does she have the dog with her” and talking about whether to let her into the School. The Complainant confirmed that she and the SA were allowed into the School, although they were made to wait out XXXXX. According to the Principal, the Complainant was buzzed in when she arrived and was not made to wait XXXXX. He also said that he gave no instructions to front office staff regarding the SA other than when to expect the SA coming to the school.⁸

The Complainant told OCR that front office staff told her that they would let the Teacher know she was there, and she proceeded to the classroom. She said that shortly thereafter, the Principal approached her and told her that she needed to wait in the office for a staff person to bring the Student to her. According to the Complainant, no one had spoken to her about the visitor check-in policy procedures prior to that day, and it was her understanding that she was acting in the same manner as the other parents/guardians of students in the Teacher’s class.

The Principal explained that the Complainant did not sign herself in and went directly to the Student’s classroom to retrieve the Student. The Principal became aware that the Complainant was in the School and waited for her in the hallway when she was coming back with the Student. He told OCR that he told the Complainant that she could not walk the halls unless she signed in as a visitor. The Principal also told OCR that he had had a prior conversation with the Complainant about the check-in policy, as had the Teacher in XXXXX. He described the check-in policy as one for safety and security of the School building.

The Principal explained that parents who come into the building to pick up their child and immediately leave with their child are allowed to wait in the office area while the homeroom teacher or other staff escorts the child to the office, and do not need to sign in. Parents are supposed to sign in any other time they are in the building. The Principal told OCR that in XXXXX, homeroom teachers were reminded, at a staff meeting and individually, of the visitor check-in policy, as School staff had witnessed parents/guardians not following the policy. He explained that because the Teacher was new to the School for the XXXXX school year, she was not that familiar with the process until those reminders were made. The Teacher confirmed that because she was new to the Division, she assumed that all parents/guardians who came early to pick up their child would come directly to the classroom, and she believed that was the policy. She recalled that partway through the school year, and prior to XXXXX, the Principal corrected her, and she relayed to all

⁷ He further stated that the Division would like to discuss the logistics of the SA’s transportation, whether the Student’s IEP would be impacted, what assistance the Student may require when the SA accompanies him, and other logistical issues, but that the Complainant had declined to participate in such a meeting.

⁸ The Principal explained this was because there was a plan for how the SA would go to classroom based on other students in the hallway.

parents/guardians of students in her class, including the Complainant, that she had misunderstood the policy.

On XXXXX, the Complainant sent a letter to the Superintendent regarding continuing issues with the Principal, and explained that the day before, she had to wait XXXXX while she “could hear office staff discuss whether they would let me in the building with ‘the dog’.” She also asserted that the Principal asked her to follow a different protocol for picking up the Student than what she had done all year, and that the SA was not welcome. She also explained that she had filed the current complaint with the U.S. Department of Justice.⁹

On, the Superintendent responded to the Complainant that he was aware that the Complainant was not made to stand XXXXX and that no staff member told her that the SA was not welcome at the School. He stated that after entering the building, she proceeded to the office to sign the Student out and went to his classroom without permission. He explained that School Board as well as School policy is that visitors must sign in at the reception desk and receive approval before entering the building, that visitors must wear a visitor badge during their visit and that students are brought to the main office for early dismissal, and referred to the Student Handbook and Policies KGB and KK.¹⁰ He stated that the Complainant violated the procedure when she did not sign in at the front office and went directly to the classroom without a badge, and the Principal and Teacher had previously informed her of the need to follow the visitation policy. He also reiterated the Division’s request to meet with the Complainant to discuss logistics regarding the SA. Ultimately, the Complainant, her attorney, the School Board’s attorney, and the Superintendent scheduled a meeting for XXXXX.

Plan of Access

After the Complainant and Division staff met on XXXXX, on XXXXX, the Director sent the Complainant a “Plan of Access”, a letter memorializing what was discussed at a meeting. The letter outlined what tasks the SA performs; XXXXX; and that the SA would accompany the Student to his XXXXX. The letter also stated, however, that the Complainant would provide “reasonable notice” to the Principal should that change, such that she would provide at least three days’ notice of bringing the SA to classroom celebrations and events, but she would not need to provide notice for school-wide events open to the community.¹¹ According to Division staff, the Complainant’s attorney suggested the provision of “reasonable notice.” The Director further explained that the SA was allowed to accompany the Student in the classroom at any point in time, but described that XXXXX and that “we really need to have a conversation about an agreement so that the teacher can plan for it.”

Analysis

⁹ The U.S. Department of Justice referred the complaint to OCR.

¹⁰ Policy KGB includes that “[v]isitors shall register at the school office on arrival and wear a badge issued by the school division.” Policy KK includes that “[u]pon arriving at a school, all visitors must report to the administrative office.”

¹¹ Further, the letter stated that the SA’s training would not interfere with classroom instruction, and the Complainant and Principal would work out a training schedule. Check-in, check-out procedures, and pick-up procedures if the Student is picked up at the regular pick-up time as well as for early dismissal were also outlined. For early dismissal, the Complainant is asked to go to the office to sign the Student out, and someone will have the Student brought to the office for dismissal.

The Complainant alleged that the Division discriminated against the Student on the basis of disability, when School staff asked the Complainant to leave campus when she had the SA with her in advance of her picking up the Student from the School, on XXXXX and XXXXX and told the Complainant to give notice of when she would be on the School's campus with the SA.

With respect to the IEP meeting held on XXXXX, the Principal did not dispute that he prohibited the SA from being in the IEP meeting; XXXXX The right to be accompanied by a service animal under Title II is attached to the individual with a disability, which in this case is the Student. XXXXX As the Student was not participating in the IEP meeting, there was no work or task for the SA to perform in the meeting.¹² Therefore, OCR determined that there was insufficient evidence to substantiate this portion of Allegation 1, as alleged.¹³

Regarding the alleged incident on XXXXX, based upon a preponderance of the evidence, OCR determined that, ultimately, the Complainant and the SA were allowed into the School to pick the Student up. While there is some dispute over how long the Complainant was made to wait outside the building, a few minutes delay to pick up the Student from school does not constitute disability discrimination. Therefore, OCR determined that there was insufficient evidence to substantiate this portion of Allegation 1, as alleged.

Lastly, OCR identified a compliance concern regarding the provision of notice of when the Complainant would be on campus with the SA XXXXX¹⁴

The evidence OCR obtained indicates that the Complainant was asked or required to provide notice before bringing the SA to the School. Division and School Staff repeatedly told OCR that they were following the Policy and were mindful not to deviate from it, including by asking for a written request for the SA to be at the School; and School staff provided the Complainant with a copy of the Policy on multiple occasions. Further, the Policy, in and of itself, requires a student bringing a service animal to make a request before bringing the service animal to campus. Specifically, Section B of the Policy is titled "Requirements That Must be Satisfied Before a Service Animal Will be Allowed on School Property" and includes: "[a] person who wants to be accompanied by his/her service animal must make a prior written request of the school's principal if the service animal will come into a school" and that such requests must be renewed each school year. In other words, the Policy requires the provision of notice.

As discussed above, before issuing a final determination, the Division expressed a willingness to resolve this concern under Section 302 of OCR's *Case Processing Manual*.

Allegation 2

¹² OCR considered that that the SA may have been at the School because the SA was providing services to the Student XXXXX However, the mere act of precluding a service animal from an IEP meeting in which the individual with a disability would not be present is not a violation of Title II.

¹³ Nevertheless, OCR cautions the Division from engaging in conduct that prevents or inhibits a service animal from doing the work or tasks it is trained to perform for the individual with a disability that it serves. XXXXX

¹⁴ XXXXX

The Complainant alleged that the Division discriminated against the Student on the basis of disability, by not allowing the SA into his classroom. Specifically, the Complainant asserted that the Division denied the SA and its trainer access to the classroom during the regular school day, in XXXXX. She also alleged that the “Plan of Access”, sent to her after a XXXXX meeting with Division staff, does not accurately reflect her request to have the service animal attend class at 30-minute intervals.

Facts

Trainer

On XXXXX, the Complainant emailed the Principal that the trainer for the SA would be in town on XXXXX. She asked if the Principal wanted to meet with the trainer or just have the trainer accompany the SA for classroom training, and explained that she wanted the trainer to get a feel for the class so that he could provide suggestions for when the SA XXXXX¹⁵ The Principal responded that he would be in touch. The Principal told OCR that he communicated to the Complainant that the trainer could come before and after school; he explained that this was because he did not want the trainer’s presence to interfere with instruction. He also explained that he was concerned that the trainer’s visit XXXXX

Plan of Access

As discussed above with respect to Allegation 1, on XXXXX, the Director sent the Complainant a “Plan of Access” memorializing what was discussed at the meeting on XXXXX. The Complainant asserted that during the meeting, they also discussed XXXXX The Principal XXXXX “[s]o long as we had the plan, and we were all on the same page.” The Director recalled a discussion of XXXXX¹⁶

Analysis

With respect to the trainer, the Complainant informed OCR that although the SA had already been trained, the purpose of the trainer coming into the classroom would have been to “get a better sense of the classroom for how to assist [the Student]” and to “deepen the training.” Title II specifically does not address service-animals-in-training.¹⁷ Therefore, the exclusion of the trainer from the Student’s classroom does not constitute a violation of Title II. For these reasons, OCR found insufficient evidence that the Division impermissibly excluded the trainer from the classroom during the school day.

Regarding the Plan of Access, while it may not have reflected the Complainant’s request to have XXXXX, the Complainant had the opportunity to respond to the Director if she felt that something was overlooked. Furthermore, while the Plan of Access may have been a guide for how and when

¹⁵ The Complainant stated that XXXXX

¹⁶ The Director also explained that after the Complainant was sent the Plan of Access, the Complainant never responded requesting any changes or additions to it. OCR notes that the email the Director sent to the Complainant asked her to reach out if the Complainant “feel[s] anything was overlooked in [her] summary of [the] meeting.”

¹⁷ If the trainer was coming into the classroom solely to act as the SA’s handler for the Student, then the trainer may have been impermissibly excluded. However, there is no indication that the trainer was planning to act solely as the SA’s handler for the Student while in the classroom.

the SA was planning to attend school with the Student, Title II permits persons with disabilities to be accompanied by service animals in all parts of facilities where the public, participants in programs and activities, or invitees are allowed, and therefore the Plan of Access was unenforceable. Therefore, any provisions contained (or not) in the Plan of Access are not relevant for the purposes of whether the Division acted in violation of Title II. OCR addressed any concerns regarding the presence of the SA XXXXX through the Resolution Agreement obtained regarding Allegation 1. Accordingly, OCR will take no further action regarding Allegation 2.

Allegation 3: Retaliation

The Complainant alleged that in retaliation for her disability-related advocacy, the Division: (a) accused her of breaking the visitor check-in policy, in XXXXX; (b) delayed in rescheduling the Student's IEP meeting from XXXXX until XXXXX; and (c) called the Complainant regarding the Student's unexcused absences, in XXXXX, even though such absences previously were excused.

Legal Standards

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 determined that the Complainant established an initial, or prima facie, case of retaliation with respect to each allegation. Below, OCR analyzed whether the Division asserted a legitimate non-retaliatory reason for each adverse action, and whether each reason was a pretext for unlawful retaliation.

Allegation 3(a)

The Complainant alleged that the Division retaliated when it accused her of breaking the visitor check-in policy, in XXXXX.¹⁸ As previously discussed, the Division asserted that its legitimate non-retaliatory reason for reminding the Complainant of the check-in policy, is because School Board as well as School policy is that visitors must sign in at the reception desk and receive approval before entering the building, and that visitors must wear a visitor badge during their visit and that students are brought to the main office for early dismissal. A preponderance of the evidence substantiates that the Complainant violated the policy when she did not sign in at the front office and went directly to the classroom without a badge, and the Principal and Teacher had previously informed her of the need to follow the visitation policy. OCR also determined that the Division's reason is not a pretext, as it had also communicated the policy to other parents/guardians who had not engaged in a protected activity. Therefore, based on the foregoing, OCR determined that there was insufficient evidence that the Division retaliated against the Complainant as alleged. Accordingly, OCR will take no further action regarding Allegation 3(a).

¹⁸ The Complainant also expressed concern that she was now being asked XXXXX

Allegation 3(b)

The Complainant alleged that the Division retaliated, when it delayed in rescheduling the Student's IEP meeting from XXXXX until XXXXX. OCR reviewed correspondence between the Teacher and the Complainant regarding scheduling of the IEP meeting and interviewed the Teacher. On the morning of XXXXX, the Complainant emailed the Teacher asking to confirm the IEP meeting scheduled for XXXXX, which the Teacher did. However, XXXXX The Complainant responded, and after some back and forth, they settled on XXXXX.

Based on the foregoing, OCR determined that there was insufficient evidence that the Division's legitimate non-retaliatory reason for rescheduling the IEP for over a month after it was originally scheduled was pretext for unlawful retaliation. As described, the XXXXX meeting was cancelled and could not be rescheduled until XXXXX, due to XXXXX. Furthermore, the Teacher consistently corresponded with the Complainant about rescheduling the meeting. Accordingly, OCR will take no further action regarding Allegation 3(b).

Allegation 3(c)

The Complainant alleged that the Division retaliated, when it called the Complainant regarding the Student's unexcused absences, in XXXXX, even though such absences previously were excused. The Complainant informed OCR that she wrote the Teacher on days when the Student missed School, and the Teacher was supposed to let the office know so that the reasons for his absences were accurately reflected in his attendance records.

OCR interviewed the Principal, the XXXXX, and the Director XXXXX. The Principal told OCR that he checked in weekly with the XXXXX to discuss students whose attendance was becoming concerning, and on many occasions, he asked her to reach out to parents. The XXXXX told OCR that she works with students who have five or more unexcused absences once a student is referred to her, and she contacts parents to discuss strategies to get a student "back on track." The XXXXX confirmed that it was typical for an administrator to ask her to reach out to a parent, and that the Principal had asked her to do this in the past.

With respect to the Student, the Principal told OCR that he asked that the XXXXX reach out to the Complainant because he noticed that the Student had seven unexcused absences. As a result, on XXXXX called the Complainant and expressed that the Student may have exceeded five absences as well as discussed her picking the Student up early.

Subsequently, after reviewing a list of special education students with attendance concerns, including the Student, the Director XXXXX emailed the Complainant on XXXXX and informed her that the XXXXX told her that the Student had 8 unexcused absences that school year, and asked if the Complainant had any questions. The Complainant responded on XXXXX, and she attached photos of emails she had exchanged with the Teacher regarding the reason for some of the absences, as well as responses to automatic messages regarding his attendance. On XXXXX responded that she would meet with the XXXXX to review the absences and would confirm with the Complainant which dates would be considered to be excused. The XXXXX told OCR that the Teacher, who was new to the Division as previously discussed, may not have considered the emails the Complainant

sent to her as attendance notes, and that is why his attendance records did not accurately reflect his absences. OCR reviewed documentation indicating that four of the Student's unexcused absences were revised as a result of the information provided by the Complainant – three were changed to excused absences and one to an early dismissal.

Based on the foregoing, OCR determined that the Division had a legitimate non-retaliatory reason for contacting the Complainant regarding the Student's unexcused absences. Namely, the Teacher, who was in her first year at the Division, was unaware that she was required to submit the Complainant's emails as part of the Student's attendance records; and the Principal asked the XXXXX to contact the Complainant per his practice. Once the Complainant resent her emails as proof of attendance to the XXXXX, the Student's records were updated accordingly. In addition, OCR determined that the Division's reason was not a pretext, as it similarly contacted other parents of students with documented attendance concerns. Therefore, OCR determined that there was insufficient evidence that the Division retaliated against the Complainant as alleged. Accordingly, OCR will take no further action regarding Allegation 3(c).

Conclusion

On November 20, 2019, the Division signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address OCR's concerns related to Allegation 1, pursuant to Section 302 of OCR's *Case Processing Manual*. The provisions of the Agreement are aligned with Allegation 1 and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to review and assess the Division's "Service Animals in Public Schools Policy" (the Policy) and amend it, as needed, to ensure its compliance with Title II. The Agreement also requires the Division to train relevant Division and School administrators regarding service animals and the Division's obligation to comply with Title II, as well as any revisions to the Policy. The Agreement further requires the Division to notify the Complainant that the Student is permitted to be accompanied by the SA to Division facilities and provide a copy of the updated Policy, if applicable. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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.

The Complainant has a right to appeal OCR's determination regarding the relevant portions of Allegation 1 for which OCR found insufficient evidence, and Allegations 2 and 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 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 Division. The Division 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 Division.

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, 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 Division's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Shana Heller, the OCR attorney assigned to this complaint, at 415-486-5377 or Shana.Heller@ed.gov.

Sincerely,

Letisha Morgan-Cosic
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: LaRana Owens, Counsel for the Division