



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

DATE

By email only to XXXXX

Dr. Debra Dowless
Superintendent
Hoke County Schools
310 Wooley St.
Raeford, NC 28376

Re: Case No. 11-22-1461
Hoke County Schools

Dear Dr. Dowless:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Hoke County Schools, which we will refer to as the District. The Complainant filed the complaint on behalf of a student at XXXXX, whom we will refer to as the Student. OCR investigated the following:

- Whether the District retaliated against the Complainant for XXXXX disability-related advocacy by suspending the Student on XXXXX (Allegation 1);
- Whether the District discriminated against the Student on the basis of disability by disciplining XXXXX more harshly than other students because of the nature of XXXXX disability on XXXXX (Allegation 2);
- Whether the District discriminated against the Student on the basis of disability by failing to include persons knowledgeable about the Student and the meaning of the evaluation data, to draw upon information from a variety of sources, and to carefully consider information from a variety of sources at the Student's XXXXX manifestation determination reviews (MDRs) (Allegation 3);
- Whether the District discriminated against the Student on the basis of disability by failing to provide Complainant with notice of procedural safeguards for the Student's MDRs during the XXXXX school year, beginning in XXXXX (Allegation 4);
- Whether the District discriminated against students with disabilities at XXXXX (the School) during the XXXXX school year by failing to provide push-in special education support for a XXXXX course (Allegation 5).

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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 disability in programs and activities that receive federal financial assistance. 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. 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. The District receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District staff; and viewed a video recording of a disciplinary incident involving the Student.

Before OCR completed its investigation, the District expressed interest in resolving Allegations 2 and 5 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that an allegation may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve the allegation because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

OCR completed its investigation of Allegations 1, 3, and 4. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1, 3, and 4. OCR's findings and conclusions regarding Allegations 1, 3, and 4 are discussed below, as well as a summary of the evidence obtained by OCR during the investigation to date regarding Allegations 2 and 5.

Background

During the XXXXX school year, the Student was in XXXXX at the School and received special education services pursuant to an Individualized Education Program (IEP).¹ The Student also had a Behavioral Intervention Plan (BIP). Pursuant to the Student's IEP from the beginning of school year XXXXX through XXXXX, the Student received XXXXX minutes of specially designed XXXXX instruction and XXXXX minutes of XXXXX instruction XXXXX times per week in a general education setting. Between XXXXX, the Student was suspended on multiple occasions. In XXXXX, the Student's IEP was amended to change the Student's placement to a special education classroom at the School.

Allegation 1: Whether the District retaliated against the Complainant for XXXXX disability-related advocacy by suspending the Student on XXXXX.

Legal Standard

¹ The services were to accommodate XXXXX and XXXXX.

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.

The following three elements must be satisfied to establish an initial, or prima facie, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action; and if so, whether the reason is a pretext, or excuse, for retaliation.

Facts & Analysis

On XXXXX, the Student received a one-day out-of-school suspension (OSS) for engaging in aggressive behavior, insubordination, disrespect of staff, and leaving class without permission; namely, XXXXX. The Complainant asserted that the District's decision to issue the Student the one-day OSS was in retaliation for XXXXX prior disability-related advocacy on the Student's behalf, including XXXXX requests for the Student to remain in school with supports following prior disciplinary incidents rather than be suspended. The Complainant also stated that the Assistant Principal issued the suspension because, during a telephone call to notify XXXXX of the incident, XXXXX refused to pick the Student up from school.

The Assistant Principal, who oversaw disciplinary decision-making related to the incident, denied that XXXXX issued the one-day OSS in retaliation for the Complainant's disability-related advocacy or because the Complainant refused to pick the Student up from school early on XXXXX. Rather, the Assistant Principal stated that XXXXX disciplined the Student in accordance with the District's Student Code of Conduct and that the sanction was appropriate given the nature of the Student's behavior. The Assistant Principal explained to OCR that the Student's behavior disrupted the flow of the school, and that the rationale for the decision was because the Student was disrespectful toward an administrator. The Assistant Principal also stated that XXXXX had already decided to suspend the Student by the time XXXXX called the Complainant to notify XXXXX of the incident. OCR reviewed video footage of the incident, in which the Student could be seen XXXXX.

Pursuant to the District's Code of Conduct, Insubordination and Leaving Class Without Permission are categorized as Minor Rule Violations under the Student Code of Conduct. First Consequences for these offenses may include a warning, the assignment of a Tier 1 or 2 behavior intervention, in-school suspension (ISS) or OSS. Second Consequences include the possible assignment of a parent conference, the assignment of a Tier 1 or 2 behavior intervention, short term suspension, or an Alternative Education Placement. Aggressive Behavior and Disrespect of Faculty/Staff are categorized as Major (Serious) Rule Violations. First Consequences for these behaviors included Tier II/III interventions, ISS, or short-term OSS. Second Consequences include Long-term OSS and/or transition to the District's Alternative School.

OCR determined that during the XXXXX school year, XXXXX students, including the Student, were disciplined for misconduct related to insubordination, disrespect of faculty/staff and/or aggressive behavior. Of these students, XXXXX were issued an OSS, and, the average length of suspension issued was 1.95 days. The District informed OCR that it was not aware of any protected activity by these students or their parents/guardians prior to issuing the suspensions.

Based on the above, OCR determined that the Assistant Principal provided a legitimate, non-retaliatory reason for issuing the Student a one-day OSS on XXXXX; namely, the XXXXX, in violation of the Code of Conduct. OCR determined that this stated reason was not a pretext, or excuse, for unlawful retaliation, because it was not disputed that the Student engaged in the conduct at issue and some of the Student's behavior was corroborated by video footage; the suspension was consistent with the Code of Conduct; and the District similarly disciplined students who engaged in similar misconduct who had not, and whose parents/guardians had not, engaged in prior protected activity. Therefore, OCR determined that there was insufficient evidence to substantiate that District retaliated against the Complainant for XXXXX disability-related advocacy by suspending the Student on XXXXX. Accordingly, OCR will take no further action with respect to Allegation 1.

Allegation 2: Whether the District discriminated against the Student on the basis of disability by disciplining XXXXX more harshly than other students on XXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a school's programs or activities on the basis of disability. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether a school treated an individual less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the school had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the school is a pretext, or excuse, for unlawful discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), also requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school

district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

Facts & Analysis

The Complainant alleged to OCR that the Student was disciplined more harshly than other students without disabilities on XXXXX, and that each of these punishments were inappropriate given that the behavior was a manifestation of the Student's disability.

As an initial matter, OCR learned that on XXXXX, the Complainant filed a complaint with the XXXXX. XXXXX investigated, in part, whether the District provided a FAPE specific to school discipline procedures under the Individuals with Disabilities Education Improvement Act (IDEA), the IDEA regulations, Article 9 § 115(c) of the North Carolina General Statutes, and/or the North Carolina *Policies Governing Services for Children with Disabilities*. The investigation considered the dates that the Student was removed up through XXXXX, and concluded that for any day beyond the 10th day of disciplinary removal where the student was not provided the opportunity to participate in the general education curriculum, and to progress toward meeting the goals set out on XXXXX IEP, compensatory services were required. As corrective action, the District was required to provide written documentation to accurately calculate any missed services, replacing any services the student should have received beyond the 10th day of disciplinary removal during the XXXXX school year. The investigative report further required a compensatory education plan, with services to be completed no later than XXXXX.

XXXXX, Incident

On XXXXX, the Student engaged in a physical altercation with another student (Student A). According to the disciplinary report, XXXXX.²

The Principal coded the incident as bullying, disruptive behavior, and insubordination; recommended moving the Student to an alternative learning program ("ALP"); and dismissed the Student early from school that day. The Student's attendance records indicate a suspension on XXXXX. The Student returned to school virtually on XXXXX, pending the results of the MDR. An MDR was held the following day, XXXXX, at which time the team determined that the Student's behavior was not a manifestation of XXXXX disability. The team reconvened on XXXXX, at the Complainant's request, to revisit the determination and determined that the Student's behavior was a manifestation of the Student's disability. The Student was not moved to an ALP.

The Complainant alleged that because the Student has difficulty following adult directives as a result of XXXXX disability, XXXXX was disciplined more harshly than other students, including Student A; specifically, with respect to the recommendation that the Student be moved to an ALP, and the Complainant's assertion that the Principal threatened to handcuff the Student during the incident. The Complainant further alleged that the District inappropriately disciplined the Student

² The District informed OCR that the Student XXXXX.

for misconduct that was a manifestation of XXXXX disability. The Principal denied that the recommendation to move the Student to an ALP was because of or motivated by the Student's disability, and explained that placement in an ALP was appropriate because the Student had engaged in multiple prior physical altercations during the school year. The District also identified that a School Resource Officer (SRO) was contacted during the incident as the Student left the office without permission; however, the SRO was not ultimately on campus and no interaction occurred related to the Student. OCR determined that the Student was disciplined for engaging in physical altercations on three occasions during school year XXXXX prior to the XXXXX incident.

Pursuant to the Code of Conduct, Bullying is categorized as a Major (Serious) rule violation while Disruptive behavior, and Insubordination are categorized as Minor Rule Violations. First Consequences for Bullying include Tier II/III interventions, ISS, or short-term OSS. Second Consequences include Long-term OSS and/or transition to the District's Alternative School. First Consequences for Disruptive behavior and Insubordination may include a warning, the assignment of a Tier 1 or 2 behavior intervention, ISS or OSS. Second Consequences include the possible assignment of a parent conference, the assignment of a Tier 1 or 2 behavior intervention, short term suspension, or an Alternative Education Placement. The District's policies regarding transfer to ALPs indicates that Students may be transferred to an alternative learning program or school on a voluntary or involuntary basis in the circumstances of mutual agreement between the student's parent or guardian; the principal and a multidisciplinary team; in the event of a long-term suspension or expulsion; where a student poses a significant disruption to the educational environment; where the student is at risk of dropping out or not meeting standards for promotion due to academic, developmental and/or behavioral concerns; in instances where the student poses a threat to the safety of other students or personnel; or where the student has been charged with a felony or a crime allegedly endangering the safety of others.

OCR determined that during the XXXXX school year, XXXXX students, including the Student, engaged in conduct similar to the Student's conduct during the XXXXX, incident; XXXXX of these students were assigned an ISS or OSS ranging from a half-day to three days, of whom XXXXX were identified as a student with a disability. XXXXX of the students were recommended for an ALP, including the Student; XXXXX of these XXXXX students were not identified as a student with a disability. Student A, who had not previously been referred for discipline, received a two-day OSS following the altercation.

Based on the above, OCR determined that the District proffered a legitimate, non-discriminatory reason for initially recommending moving the Student to an ALP; namely, the Student engaged in a physical altercation following multiple prior physical altercations that school year. OCR determined that the proffered reason was not a pretext, or excuse, for discrimination, because it is undisputed that the Student engaged in the physical altercation and several prior physical altercations; the recommendation was consistent with District practice; and similarly-situated students were referred to an ALP or given an OSS, regardless of disability status. Moreover, the Student was not ultimately referred to the ALP or disciplined further for the incident after being sent home early on the date of the incident. Therefore, OCR found insufficient evidence to substantiate Allegation 2 with respect to the XXXXX, incident.

Although OCR found insufficient evidence that the Student was treated more harshly than other

students related to the XXXXX incident, during its investigation, OCR identified a concern that the Student served a suspension on XXXXX for behavior that was ultimately found to be a manifestation of XXXXX disability. While OCR notes that the Complainant's previously filed state complaint addressed compensatory education for the Student with respect to the XXXXX suspension, OCR has concerns that the Student's disciplinary records were nonetheless not expunged once the determination was made that the incident was a manifestation of the Student's disability. Before OCR completed its investigation of the complaint, the District expressed an interest in resolving this concern pursuant to Section 302 of OCR's *Case Processing Manual*. On January 9, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

XXXXX, Incident

On XXXXX, the Student XXXXX.

The Principal issued the Student a three-day OSS for fighting. The District subsequently reduced the suspension to two days after the Student's behavior was found to be a manifestation of the Student's disability at an MDR on XXXXX. The Student's attendance records reflect that although the incidents considered at the XXXXX MDR were found to be a manifestation of the Student's disability, XXXXX records identify XXXXX as suspensions.³ The XXXXX informed OCR that XXXXX initially recommended a three-day OSS due to the Student's multiple physical altercations that school year, and due to the extent of Student B's lacerations.

The Student Code of Conduct identifies Fighting as a Major (Serious) Rule violation, for which students may receive consequences ranging (for a First Consequence) from Tier II/III interventions to ISS, short term OSS, Long term OSS, and/or transition to the District's alternative school pending a disciplinary hearing outcome. The Principal informed OCR that students generally receive a two- or three-day OSS for fighting.

OCR determined that during the XXXXX school year, XXXXX students, including the Student, were disciplined for fighting, XXXXX of whom were issued an OSS ranging from one to nine days. XXXXX of the students disciplined were identified as students with disabilities, with all but XXXXX of those students being referred to an OSS. Student B, who does not have a disability, received a three-day OSS following the incident.

Based on the above, OCR determined that the District proffered a legitimate, non-discriminatory reason for issuing the Student a three-day OSS following this incident; namely, the Student engaged in a physical altercation following multiple prior physical altercations. OCR determined that the proffered reason was not a pretext for discrimination, because it is undisputed that the Student engaged in the physical altercation; the Student's suspension was consistent with District policy; and the District disciplined similarly-situated students without disabilities, including

³ The XXXXX MDR also considered whether the Student's behavior related to a disciplinary incident on XXXXX was a manifestation of XXXXX disability. Although the behavior was also determined to be a manifestation of the Student's disability, XXXXX suspensions of XXXXX related to this incident also remain on XXXXX record.

Student B, the same or more severely. Therefore, OCR found insufficient evidence to substantiate Allegation 2 with respect to the XXXXX, incident.

Although OCR found insufficient evidence that the Student was punished more harshly than other students related to the XXXXX incident, during its investigation, OCR identified a concern that the Student's records reflect that the Student was suspended on XXXXX for behavior that was ultimately found to be a manifestation of XXXXX disability. Although OCR notes that, pursuant to Complainant's previously filed state complaint, compensatory education for the Student was considered related to the XXXXX suspension, the Student's records were not expunged once this determination was made. Before OCR completed its investigation of the complaint, the District expressed an interest in resolving this concern pursuant to Section 302 of OCR's *Case Processing Manual*. On XXXXX, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

XXXXX, Incident

On XXXXX, the Student engaged in disruptive behavior and was found in an unauthorized area. The Student XXXXX. Following that, the Principal assigned the Student to remote learning pending an MDR. Specifically, OCR determined that the Student would attend and be able to participate in XXXXX classes virtually using Zoom. The Complainant asserted that this was more severe than sanctions imposed on other students who engaged in similar misconduct. In support of her assertion, she stated that a student with XXXXX (Student C) had made a threat around the same time as the Student's XXXXX, incident and was suspended for four days, which the Complainant viewed as less harsh than attending school remotely pending an MDR.

The Principal informed OCR XXXXX decided to assign the Student to remote learning pending the MDR, which XXXXX distinguished from a suspension, because the Student was not following XXXXX assigned schedule and was out of place during the incident, which presented a safety concern. The Principal shared that typically a student would be suspended for engaging in such conduct, but that XXXXX instead assigned the Student to remote instruction so that XXXXX could continue to receive instruction pending the MDR, which took place on XXXXX.

OCR determined that during school year XXXXX, there were XXXXX incidents in which students engaged in similar disruptive behavior and/or were found in an unauthorized area. The majority of students involved in these XXXXX incidents were issued either an ISS or OSS ranging from one to five days. Of the students suspended, XXXXX were identified as a student with a disability.

Based on the above, OCR did not find that the Student was treated more harshly than other students, including students without a disability, who engaged in similar conduct. OCR found that the Student was assigned to remote learning for 4 days, after which the Student returned to school. During remote learning, the Student engaged in the same academic instruction as all other students in XXXXX class and was able to fully participate in the class. In contrast, similarly situated students without disabilities and students with different disabilities, such as Student C, were almost exclusively suspended from school for one to five days. Accordingly, OCR found insufficient

evidence to substantiate Allegation 2 with respect to the XXXXX, incident.

Allegation 3: Whether the District discriminated against the Student on the basis of disability by failing to provide the Complainant with notice of procedural safeguards for MDRs held for the Student during the XXXXX school year, beginning in XXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Facts & Analysis

During the period at issue, from XXXXX through the end of the XXXXX school year, there were four MDRs held for the Student, which took place on the following dates: XXXXX. The Complainant asserted that XXXXX did not receive notice of procedural safeguards for any of these MDRs.

The District denied this assertion, and stated that School staff provided the document, *Parent Rights & Responsibilities in Special Education, Notice of Procedural Safeguards* (also known as the Handbook), which is published by the North Carolina DPI, at each of the MDRs. The Handbook includes information regarding notice, the opportunity to examine records, and information concerning impartial hearings. Additionally, the District provided OCR with IEP meeting minutes related to the XXXXX MDRs, each of which indicated that a copy of the Handbook was provided to the Complainant. The District also provided signed statements from a XXXXX, each of whom attended the Student's MDRs throughout the year. Each stated above the signature that "[t]o the best of my memory, this document was offered to the parent" during the MDR attended. The statements also reiterated that it is standard practice for those facilitating IEP meetings to offer a copy of the Handbook to parents at IEP meetings. OCR interviewed each of the individuals who attested to the Handbook being provided at the Student's MDRs to confirm the information provided in their signed statements.

Based on the foregoing, OCR found insufficient evidence to substantiate that the District failed to provide the Complainant with notice of procedural safeguards for the Student's MDRs during the XXXXX school year, as alleged. For each of the meetings at issue, a witness was either able to recall providing the Handbook, or minutes from the meeting confirmed that the Handbook was offered. This was also supported by contemporaneous documentation. Accordingly, OCR will take no further action with respect to Allegation 3.

Allegation 4: Whether the District discriminated against the Student on the basis of disability by failing to include persons knowledgeable about the Student and the meaning of the evaluation data, to draw upon information from a variety of sources, and to carefully consider information from a variety of sources at the Student's XXXXX MDRs.

Legal Standard

As noted above, when a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct. That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options.

Facts & Analysis

OCR determined that the District held one MDR for the Student in XXXXX. Specifically, on XXXXX, the School held an MDR for the Student related to incidents that occurred on XXXXX, and determined that the Student's conduct during the incidents was a manifestation of XXXXX disability.⁴ The IEP team proceeded to update the Student's BIP and also proposed changing the Student's placement to a special education classroom at the School.

The Complainant asserted that the MDR discussion lasted five minutes and was limited to a statement, without discussion, that the conduct during the XXXXX incidents was a manifestation of the Student's disability. The Complainant also asserted that XXXXX and two special education teachers were the only individuals in attendance.

The District did not provide documentation to OCR generated at or for the MDR held on XXXXX. However, according to notes from the IEP meeting held that same day following the MDR, the Assistant Principal, two special education teachers, the Complainant, and a regular education teacher attended the MDR. OCR interviewed these individuals, who confirmed that they all attended the MDR. OCR found that each witness identified familiarity with the Student and XXXXX disability through serving as XXXXX case manager or teacher, or from addressing prior disciplinary incidents. OCR further found that on average, the witnesses reported approximately 8 years of professional experience in their respective areas of expertise.

Regarding the discussion during the MDR, three witnesses recalled discussing the Student's disability. Two specifically remembered the Complainant prompting the discussion by bringing records to the meeting that described the Student's disability. Regarding other data or information reviewed for the MDR, one witness asserted that the team likely had access to a variety of documents for the meeting, including the Student's IEP and the disciplinary referral, but did not remember specifics. Another recalled that the Assistant Principal reviewed a suspension log with the Complainant and that the Student's classroom behavior was discussed. Two witnesses remembered discussion of the XXXXX incidents, and two witnesses stated that the team specifically discussed whether the Student's conduct during the XXXXX incidents was a manifestation of XXXXX disability.

⁴ On XXXXX, the Student received a two-day OSS for XXXXX. As stated above with respect to Allegation 2, on XXXXX the Student received a three-day OSS for fighting.

Based on the foregoing, OCR determined that the MDR and subsequent IEP meeting were attended by the Complainant and four District staff members who were knowledgeable about the Student and the meaning of data considered. OCR also found information supporting that the team drew upon information from a variety of sources, including anecdotal/observational data, disciplinary logs, and documents that the Complainant brought to the meeting; and, OCR found insufficient evidence to substantiate that the team did not carefully consider this information. Accordingly, OCR finds insufficient evidence to substantiate that the District failed to include persons knowledgeable about the Student and the meaning of the evaluation data, to draw upon information from a variety of sources, and to carefully consider information from a variety of sources during the XXXXX MDR at issue.

Allegation 5: Whether the District discriminated against students with disabilities at the School during the XXXXX school year by failing to provide push-in special education support for a XXXXX course.⁵

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

If a school district fails to comply with a student's IEP, OCR determines whether that failure resulted in a denial of a FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

Facts & Analysis

Documentation provided by the District indicated that XXXXX students in the course, including the Student, had IEPs that provided for push-in special education support in the mathematics course. Such support ranged from 30 minutes of specialized instruction one time per week to 30 minutes of specialized instruction four times per week. The District asserted to OCR that it assigned a special education teacher to provide such services, and that the teacher reported to the course to provide the services. The District provided OCR with handwritten notes from the course general education teacher that indicated that the special education teacher was present during the

⁵ OCR notes that the XXXXX complaint cited previously also addressed the implementation of the Student's IEP in this class, which resulted in a recommendation that the Student be provided with compensatory services for the apparent failure to implement XXXXX IEP in the class. However, the Complainant's state complaint did not address whether the IEPs of other students in the class were implemented.

course on XXXXX. The District did not provide, nor could OCR otherwise find, any documentation indicating that the special education teacher provided all of the push-in services required during the course during the XXXXX school year.

The special education teacher indicated to OCR that XXXXX was generally present to provide required services during the course but that XXXXX was pulled from the classroom for substitute coverage two or more times and was also asked to attend IEP meetings during the class two to three times. The Principal indicated to OCR that the special education teacher was scheduled to be present during the course at least two times per week to provide services to students, but that the teacher was at times instead used for substitute services. The Principal could not recall the number of times this occurred. The general education teacher initially told OCR that the special education teacher reported to the classroom on one or two occasions total during the school year, and later stated that the special education teacher may have reported to the classroom a handful of times. The general education teacher indicated that it was XXXXX understanding that the special education teacher was at times required to provide substitute services or attend IEP meetings.

OCR is concerned, based on statements made by District staff as well as a lack of relevant documentation from the District, that special education push-in/inclusion services and supports may not have been consistently provided to students with disabilities in the course in accordance with their IEPs. Before OCR completed its investigation of the complaint, the District expressed an interest in resolving Allegation 5 pursuant to Section 302 of OCR's *Case Processing Manual*. On January 9, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

Conclusion

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. OCR would like to make you aware that individuals who file complaints with OCR 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 Allegations 1, 3, and 4, as well as the components of Allegation 2 for which OCR found insufficient evidence, within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here 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 of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit, to OCR, a response to the

appeal. The District must submit any response 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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Lee K. Robbins, the OCR attorney assigned to this complaint, at 202-245-8301 or lee.k.robbins@ed.gov.

Sincerely,

Jasmine Gibbs
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

cc: Lindsay Vance Smith, Counsel for the District