



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV
MICHIGAN
OHIO

September 11, 2014

Lisa E. Pizza, Esq.
Spengler Nathanson P.L.L.
Four SeaGate, Suite 400
Toledo, Ohio 43604-2622

Re: OCR Docket #15-14-1084

Dear Ms. Pizza:

This letter is to notify you of the disposition of the complaint filed on January 9, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) against the Perrysburg Schools (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that during the xxxxxxxx school year:

1. The District failed to implement the Student's xxxxxxxx xxx xxxx in Spanish, math, language arts, and science classes with respect to the provisions xxxxxxxxx x xxxxx xxxxx xxxxxxxx xxx xxxxx and having tests xxxx xx xxxx and certain staff offered his xxxxxxxx xxx xxxx services only outside of the normal class period or school day and required him to xxxx xxxxx indicating that he refused his services.
2. The District failed to address the Student's parent's complaints of disability discrimination.
3. The District retaliated against the Student's parent, xx xxxxxxxx xx x xxxxxxxxxxxx xxxxxxx xxxxxxx when an administrator threatened to inform the parent's employer that the parent was advocating on the Student's behalf and when school staff spoke to the parent disrespectfully and refused to answer the parent's questions.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation against individuals who seek to enforce rights pursuant to these statutes. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

- Whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE), including the provision of related aids and services designed to meet his individual needs, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.
- Whether the District adopted grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 and Title II regulations, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b).
- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II, or because that individual made a complaint under Section 504 or Title II, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61 and the Title II implementing regulation at 28 C.F.R. § 35.134.

During the course of the investigation, OCR interviewed the Student's parent and relevant District staff, and reviewed documentation submitted by the parties. OCR also interviewed the Student and provided the Student's parent with the opportunity to respond to information submitted by the District.

After a careful review of the information obtained during the investigation, OCR has determined that there is sufficient evidence to conclude that the District discriminated against the Student based on his disability in violation of Section 504 and Title II when it failed to implement the Student's xxxxxxxx xxx xxxx in science, Spanish, math, and language arts from xxxxxxxxxx xxx xxxxx through the remainder of the xxxxx xxxxxxxx of the xxxxxxxxxx school year. OCR also has determined that there is sufficient evidence to conclude that the District failed to respond to the Student's parent's complaints of disability discrimination and that the District failed to adopt grievance procedures that

provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation or the Title II regulation, in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b). OCR finds that there is insufficient evidence to conclude that the District retaliated against the Student's parent in violation of Section 504 and Title II, as alleged. The bases for OCR's determinations are explained below.

Factual Background

During the xxxxxxxx school year, the Student was xx years old and was enrolled in the ninth grade at the District's high school. He was diagnosed with xxxxxxxx xxxxxxxx xxxxxxxx xxxxxx in the first grade and has received services pursuant to a xxxxxxxx xxx xxxx for a number of years, including the xxxxxxxx school year.

The Student's xxxxxxxx xxx xxxx in effect for the xxxxxxxx school year included the following provisions:

1. Extended time for tests, as needed.
2. The Student will read tests aloud or have tests read to him.
3. Tests will be given in a small group setting or one-on-one.

The xxxxxxxx xxx xxxx specified that these services would be implemented in the Student's classroom by the classroom teacher.

Alleged Failure to Implement the Student's Section 504 Plan

- **Summary of OCR's Investigation**

The Student's parent alleged that the Student's math, science, language arts, and Spanish teachers failed to implement the Student's xxxxxxxx xxx xxxx during the first semester of the xxxxxxxx school year. She stated that, at the beginning of the xxxxxxxx school year, she advised the Student's xxxxxxxx xxxxxxxx by e-mail, to delay implementing the Student's xxxxxxxx xxx xxxx for a few weeks because she did not want him to feel singled out. She stated that after she reviewed the Student's mid-term grades, which were xxxxxx she asked the xxxxxxxx xxxxxxxx via e-mail, to advise all of the Student's teachers to implement the Student's xxxxxxxx xxx xxxx. The Student's parent stated that, at approximately the same time she sent her e-mail to the xxxxxxxx xxxxxxxx the xxxxxxxx xxxxxxxx called her to advise her that the Student's grades were xxx and to notify her that the Student had been identified as someone needing xxxxxxxx xx xxxxxxxx xxxxxx services. The Student's parent stated that she then mentioned that the Student had a xxxxxxxx xxx xxxx and was surprised to learn that the xxxxxxxx xxxxxxxx was unaware of the plan.

The parent stated that, after she asked to have the Student's teachers implement the xxxxxxxx xxx xxxxx many of them never did. She stated that some teachers did not implement the plan at all; others thought it applied only if the Student requested his services; and some thought that it did not have to be implemented during class time.

The Student's parent stated that the math teacher told her that the Student did not need to have tests read to him or given in a small group setting in her class because there was not a lot of reading in math. The Student's parent stated that, after the math teacher was told to follow the Student's xxxxxxxx xxx xxxxx the math teacher would only offer services to the Student after school or during study hall, and required the Student to xxxxx x xxxxxxxx on his tests that he was told he could either take the test in class without accommodations, or take it in his study hall with accommodations and lose his study hall. The parent also stated that the Spanish teacher forgot to provide services to the Student for tests; the language arts teacher failed to read the Student's tests to him during the entire first quarter; and the science teacher failed to provide any testing accommodations during the first quarter.

The District provided documentation showing that, on xxxxxxxx xxx xxxxx and again on xxxxxxxxxx xx xxxxx the Student's guidance counselor e-mailed all of the Student's teachers a copy of his xxxxxxxx xxx xxxxx from the xxxxxxxxxx school year and noted that a meeting would be held in the next few weeks to review the plan for the xxxxxxxxxx school year. The District also provided a copy of a xxxxxxxxer xxx xxxxx e-mail from the Student's parent to the xxxxxxxx xxxxxxxxxx in which the parent stated that she now believed it was in the Student's best interest to implement the xxxxxxxx xxx xxxxx because the Student's grades were low. In that same e-mail, the parent gave the District permission to hold the Student's xxxxxxxx xxx meeting without her due to her scheduling conflicts and indicated that she would sign the xxxxxxxx xxx xxxxx once it was sent home. The Student's xxxxxxxx xxx team subsequently agreed to provide the Student with the same services that were provided in his xxxxxxxxxx xxxxxxxx xxxxx xxxxx for the xxxxxxxxxx school year with no objection from the Student's parent.

The District and the Student's parent provided OCR copies of numerous e-mails between the parent and District staff from xxxxxxxxxx xxxxx through xxxxx xxxxx in which the parent expressed her concern about whether the Student's teachers were implementing the Student's xxxxxxxx xxx xxxxx. By e-mail dated xxxxxxxx xxx xxxxx the parent specifically asked the guidance counselor whether the Student was receiving the services in his xxxxxxxx xxx xxxxx for all of his classes.

In response to the parent's xxxxxxxx xx inquiry, the Student's math teacher reported to the xxxxxxxxxx xxxxxxxxxx via e-mail, that she gave the Student copies of xxxxx xx xxxxx and did review and review sheets for tests. The math teacher stated that she offered xxxxx xxxxx on tests, but that the Student had not needed it. The Student's language arts teacher reported that the Student was coming xxxxxxxx xxxxx xxx xxxxx xxxxx xx xxxxxxxx xxxxxxxx xxxxx for his tests. The Student's science teacher reported that the Student never needed or asked for xxxxxxxxxx xxxxx for tests or quizzes. The Student's science teacher also stated that at the

beginning of the school year she asked the Student if he wanted to go down to the xxxxxxxx xxxxxxxx center to have his xxxx xxxxx and the Student refused, stating that he did not want his xxxx xxxxx and wanted to xxxx in his xxxxxxxx class. The Student's Spanish teacher stated that the Student received as much time as he needed on tests and quizzes. The Spanish teacher also stated that she did not have the ability to send the Student to have his xxxxx xxxxx xx xxx because of the time she gave the tests and quizzes in her classroom.

On xxxxxxxx xxx xxxxx the Student's parent again expressed concern to the xxxxxxxx xxxxxxxx that the Student's xxxxxxxx xxx xxxxx was not being implemented, specifically with respect to xxxxxx xxxxxx xxxxx xx xxx xxxxxxxx and tests given in a xxxxxx xxxxxx xxxxxxxx or xxxxxxxxxxxxxx. The xxxxxxxx xxxxxxxx sent an e-mail to all of the Student's teachers on xxxxxxxx xx reminding them that it was imperative that they follow the Student's xxxxxxxx xxx xxxxx.

As summarized below, OCR obtained evidence demonstrating that the District failed to implement the Student's xxxxxxxx xxx xxxxx in science, Spanish, math, and language arts from xxxxxxxxxxx xxx xxxxx through the remainder of the first semester of the school year.

- Science

The District provided a copy of the science teacher's response to the guidance counselor's xxxxxxxx xx e-mail in which she stated that, to the extent the Student would allow, she had followed the Student's xxxxxxxx xxx xxxxx since the xxxxxxxx xx inquiry from the Student's parent. For instance, the science teacher stated that, on some occasions, the Student had refused to accept assistance in xxxxxxxx xxx xxxxx xxxxxxxx. The science teacher told OCR that, after it was made clear in the parent's xxxxxxxx xx e-mail that the Student should be receiving his xxxxxxxx xxx services, she attempted to ensure that he did, even if he initially refused. The science teacher confirmed to OCR that she had not been providing the Student with the services in his xxxxxxxx xxx xxxxx prior to receiving the xxxxxxxx xx e-mail. OCR reviewed the science teacher's notes regarding the Student in which she recorded the specific dates and efforts she undertook to implement the Student's xxxxxxxx xxx xxxxx including her use of xxxxxxxx xxxxxxxx that allowed the Student to have his xxxxxx xxxxxxxxxxxxxxxxxxx xxxxx xx xxx in the science lab. OCR found only one incidence on xxxxxxxx xx xxxxx in which the Student did not have his tests read to him and he was permitted to xxxxxx xxxxx xxxxxxxxxxxxxx xxxxx xxxxx xxx xxxxxxxxxxxxxxxxxxx on xxxxxxxx xxx xxxxx. The science teacher's notes also indicate that she gave the Student the opportunity to xxxxxxxx xxx xx xxx xxxxx from the beginning of year that were given without his accommodations, and the Student did so, with his accommodations, in xxxxxx xxxxxx.

- Spanish

The Spanish teacher also responded to the guidance counselor's xxxxxxxx xx e-mail, stating that, on all but one occasion since xxxxxxxx xxx she sent the Student down to the high school's foreign language lab to have his xxxxxx xxxx xx xxxx The Spanish teacher stated in her e-mail response that on the one occasion in which that did not occur, she simply forgot to send the Student and apologized to the parent via e-mail on xxxxxxxx xxx xxxxx The Spanish teacher also stated in her response e-mail that she gave all of her students the opportunity to take extra time on any tests and quizzes, including the Student. OCR reviewed the Spanish teacher's notes regarding the Student in which she recorded the dates from xxxxxxxx xxx xxxxx to xxxxxxxx xxx xxxxx on which the Student's tests were read to him in the foreign language lab and two occasions, xxxxxxxx xx xxx xxxxxxxx xxx xxxxx on which the Student indicated that he did not want services. The Spanish teacher told OCR that she did not initially provide the Student with the services listed in his xxxxxxxx xxx xxxxx at the beginning of the school year unless he specifically requested them. The Spanish teacher told OCR that, towards the end of the first quarter of the school year, she began asking the Student if he wanted his xxxxxxxx xxx accommodations and the Student always refused. The Spanish teacher stated that, during the second quarter of the school year, she did not give the Student a choice and insisted that he use his accommodations. The Spanish teacher told OCR that she did not give the Student the opportunity to make-up the work he did during the first quarter without his accommodations.

- Math

OCR reviewed the math teacher's notes regarding the Student and noted that on xxxxxxxx xxx xxxxx she recorded that she did not xxxx xxx xxxxxxxxxx xxxx xxxx xx xxx because she did not have clear directions as to when and how to xxxx xxx xxxxx xxx during the regular class period. The Student received an x on the test. OCR also reviewed a series of e-mails between the Student's math teacher and the Student's parent from xxxxxxxx xx xx xxxxxxxx xx xxxxx in which the math teacher indicated that she would only xxxx xxx xxxxxxxxxx xxxx xxxxx xxx xxxxxxxx to him after school or during his study hall; not during his math class. The parent objected to the math teacher's proposed arrangements.

The math teacher told OCR that she was a new teacher and, although she received the Student's xxxxxxxx xxx xxxxx at the beginning of the school year, she did not realize it applied to the current year until she attended the Student's xxxxxxxx xxx meeting on xxxxxxxx xx xxxxx because the plan was dated for the xxxxxxxxxx school year. The math teacher told OCR that she did not provide the Student with any services in his xxxxxxxx xxx xxxxx prior to xxxxxxxx xx The math teacher also confirmed to OCR that, once she was aware that she needed to provide the services to the Student, she only gave him the option of having his xxxxxx xxxx xx xxx during his study hall or after school, not during the regular classroom period. The math teacher also confirmed that on one occasion, xx xxxxxxxxxxxxxxxx xx xxxxxxxxxxxxxxxx xxxxx when the Student refused her offer of testing accommodations for the second time (i.e., to take the test after school or during study hall), she had him xxxx x xxxxxxxxxx xx xxx xxxxx indicating that he had

refused accommodations. Per the parent's request, the Student was xxxxxxxx from the math teacher's class on xxxxxxxx xx xxxxx

- **Language Arts**

As previously noted, the Student's first-quarter language arts teacher reported in his xxxxxxxx xx e-mail to the guidance counselor that he implemented the Student's xxxxxxxx xxx xxxx by having the Student xxxx xx xxxxxxx xxx xxxxx xxx xxxxx xxxxx to receive xxxxxxxx xxxx xxx xxxxxxxx xx xxxxx xxx xxxxxxxx xxx xx xxx xxxxxxxxxxx xxxxxxxxxxxxxx xxxx the teacher. The language arts teacher told OCR that the xxxxxxxx xxx xxxxx services were provided in the classroom, if the Student chose to use them, but also confirmed that he xxxxxxx xxx xxxxxxx xxxxx xxxxx xxxxx xx xxxxx xxx xxxxx xxxxx xx xxxxxxx xxxxxxx. The language arts teacher explained that he offered the Student the option to go to the testing center for small-group testing, which the Student regularly declined. The language arts teacher told OCR that the Student was given xxxxxxxx xxxxx xx xxx xxxxxxx but that it was rarely used by the Student because he would xxxxxxx xx xxx xxxxx xxxxxxxxxxx. The language arts teacher told OCR that the Student did not want his xxxxx xxxxx xx xxx in front of his peers and regularly refused this accommodation. The language arts teacher stated that he did not offer the Student any other options for having his xxxxx xxxxx xx xxxxx

The Student told OCR that he wanted his xxxxxxx xxx xxxxx services implemented, but that he did not realize that some teachers expected him to ask for them. The Student told OCR that some teachers would only allow him to have his services during study hall or lunch time. The Student told OCR that the only time he declined services was when his math teacher said he had to xxxxxxx xxxxx xxx xxxxx xx xxxxx xxxxxxxx xxxxxxxxxxx xx xxxxxxx xxxxx xxxxx xxxxxxxxxxx. The Student stated that he did not want to xxxxx xx xxx xxxxx xxxxx because he had other tests for which he needed to study.

All of the Student's teachers and the Student's parent told OCR that the Student received xxxxx xxxxxxx during the first semester of the xxxxxxxxxx school year.

- **Applicable Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. For purposes of FAPE, an appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met and which have been developed in accordance with process requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards).

Teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

A recipient school district should secure parental consent for a student to secure services under Section 504 after the student is determined eligible for services.

- **Analysis and Conclusion**

The evidence shows that, during various portions of the first semester of the xxxxxxxx school year, the Student's math, science, Spanish, and language arts teachers failed to implement the Student's xxxxxxx xxx xxxxx. It is undisputed that during the first few weeks of the school year the Student's parent advised the District not to implement the Student's xxxxxxx xxx xxxxx to see if he could be successful without receiving his services. This arguably functioned as a revocation of parental consent for the District to provide the xxxxxxx xxx xxxxx services to the Student. However, the evidence also demonstrates that on xxxxxxxxxx xxx xxxxx the Student's parent communicated to the District that she wanted the xxxxxxx xxx xxxxx implemented. The evidence, as described above, shows that the Student's science and Spanish teachers did not begin implementing the plan until xxxxxxx xxx and then did so with some inconsistency; the Student's language arts teacher implemented the plan by requiring the Student to come in during his lunch or study hall; and the Student's math teacher did not implement the plan at all until xxxxxxx xx and then would only do so if the Student gave up his study hall or came in after school.

The Student's xxxxxxx xxx xxxxx clearly states that services were to be provided in the classroom by the classroom teacher. Due to the nature of the services, OCR finds that it was not a denial of FAPE to provide services at the xxxxxxx xxxxxx during class time or on the computer, so as to provide the Student a xxxxxxxxxxxx environment, where his tests could be read to him, without requiring him to receive his services in front of his classmates. OCR finds, however, that it was not appropriate to for the Student's teachers to require him to come in after school or take tests during his study hall in order to receive his xxxxxxx xxx services and that this denied him FAPE.

Although there is some evidence indicating that the Student occasionally rejected his accommodations, OCR finds that the preponderance of the evidence supports that the District regularly failed to implement the Student's xxxxxxx xxx xxxxx in science, Spanish, math, and language arts from xxxxxxxxxx xxx xxxxx through the remainder of the first semester of the school year.

Alleged Failure to Respond to Disability Discrimination Complaints

- **Summary of OCR's Investigation**

The Student's parent also alleged that the District failed to address her complaints of disability discrimination during the xxxxxxxx school year. The parent stated to OCR that, over the course of several years, including the xxxxxxxx school year, she complained to the District's superintendent, as well as other District staff and administrators, that the Student's xxxxxxxx xxx xxxx was not being implemented. In a xxxxxxxx xx xxxxx e-mail, the parent specifically notified the superintendent and the high school principal that District staff had continuously failed to implement the Student's xxxxxxxx xxx xxxxx. The parent also voiced her displeasure with the Student's guidance counselor, the Student's math teacher, and the District's Section 504 coordinator with respect to their responses to her concerns, or lack thereof, about the implementation of the Student's xxxxxxxx xxx xxxxx. In that e-mail, the parent demanded to have both the Student's guidance counselor and math teacher immediately changed.

The superintendent told OCR that he did not recall receiving or reviewing the parent's xxxxxxxx x e-mail. The superintendent explained that parents and staff often copy him on numerous e-mails but that he does not necessarily review all of them closely. The superintendent also told OCR that he was not aware of any specific complaints about the Student or the implementation of the Student's xxxxxxxx xxx xxxxx.

The principal acknowledged to OCR that he did receive the xxxxxxxx x e-mail from the parent alleging that the Student's teachers were not implementing the Student's xxxxxxxx xxx xxxxx. The principal stated that in response to the e-mail he talked to the guidance counselor and the Student's math and science teachers. The principal reported to OCR that, based on the information he obtained from those individuals, he believed the teachers were following the Student's xxxxxxxx xxx xxxxx. The principal stated that he never communicated the results of his findings to the parent.

The assistant principal told OCR that the xxxxxxxx x e-mail from the Student's parent was forwarded to her and that she took action within days of receiving it by changing the Student's math class and guidance counselor. The assistant principal sent an e-mail to the parent on xxxxxxxx xx xxxxx confirming that she had made the requested changes for the Student. The assistant principal told OCR she spoke with the guidance counselor in response to the parent's e-mail, but saw no evidence of inappropriate conduct on the guidance counselor's part. She and the principal also said that the school regularly honors parent requests for class changes and that the Student's parent's request to have the Student's math teacher changed was treated in that manner.

The principal and the District's Section 504 coordinator told OCR that the Student's parent never filed a complaint using the District's Section 504 grievance procedures. OCR asked several District staff members about the availability of grievance procedures under which complaints of disability discrimination could be brought. Several staff reported to OCR that they were unsure as to whether there was such a grievance process and, if there was a process, where the grievance procedures could be found.

OCR reviewed the District's "Section 504/ADA – Complaint and Due Process Procedures," identified as District Policy 2260.01B (the procedures), which the District

revised during the course of OCR's investigation. The revised procedures designate the executive director of pupil services as the District Section 504 Compliance Officer/ADA Coordinator for students. Building principals are designated as Building Section 504/ADA Compliance Officers, and are the individuals with whom disability discrimination complaints are to be filed. The revised procedures (1) provide notice to students and parents of the procedures and where complaints may be filed; (2) apply to any complaint in which the individual believes that a violation, misapplication, or misinterpretation of Section 504 has occurred; (3) provide for an adequate, reliable, and impartial investigation of the complaint, including allowing the complainant to present witnesses and other evidence; (4) include designated and reasonably prompt timeframes for the major stages of the complaint process; (5) provide written notice to the complainant of the outcome; (6) include the opportunity to appeal the findings to the District's Section 504 Compliance Officer; and (7) prohibit retaliation.

The procedures do not identify an individual with whom Section 504 complaints may be filed if the complaint is against the building principal or the complaint is not regarding one specific school or contains a District-level allegation. The procedures also do not allow both parties to present witnesses or other evidence and they do not include an assurance that the District will take steps to prevent recurrence of any harassment or other discrimination, and to correct discriminatory effects on the complainant and others, if appropriate. Additionally, OCR notes that the District's procedures do not indicate that they are applicable to employees.

Also, OCR's review of the District's website found a different complaint procedure entitled "Notice of Nondiscrimination and Complaint Procedures," for internal complaints alleging discrimination under, among other things, Section 504. This document is identified as District Policy 3122/F2, and dated as having its most recent revisions approved on November 14, 2013. This complaint procedure contains many of the same deficiencies identified in the procedures described above. In addition, this complaint procedure identifies a different individual with whom complaints may be filed and states that that individual, and not building compliance officers, will investigate complaints, includes a different appeal process, and includes the incorrect address for OCR's regional office in Cleveland.

- **Applicable Legal and Policy Standards**

The Section 504 implementing regulation at 35 C.F.R. § 104.7(b) states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation at 28 C.F.R. § 35.107(b) provides that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II.

When evaluating a recipient's grievance procedures under Section 504 and Title II, OCR considers a number of factors to determine if the grievance procedures meet regulatory requirements, including whether the procedures provide for:

1. Notice of the procedures, including where complaints may be filed.
2. Application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties.
3. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.
4. Designated and reasonably prompt timeframes for the major stages of the complaint process.
5. Notice to the parties of the outcome of the complaint.
6. An assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

- **Analysis and Conclusion**

The evidence shows that on xxxxxxxx xx xxxxx the Student's parent made a complaint to the District's superintendent and high school principal about the District's failure to implement the Student's xxxxxxxx xxx xxxxx. The evidence also demonstrates that, although the high school principal, who is the Section 504 building compliance officer, investigated the complaint by talking to the Student's teachers, he did not permit the Student's parent to identify witnesses and other evidence in support of the complaint and he failed to provide written notice of the outcome of the investigation to her. Accordingly, OCR has determined that the evidence is sufficient to support that the District failed to respond to the Student's parent's disability discrimination allegation.

OCR also finds that the District has not adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation or the Title II regulation, in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b). The District has two separate and conflicting procedures that purport to address the same issue, and, in addition, OCR has identified compliance concerns with both sets of grievance procedures. Further, many District staff and administrators told OCR that they were either unaware of the existence of the District's disability discrimination grievance procedures or were unclear of their requirements and location.

Alleged Retaliation

- **Summary of OCR's Investigation**

The Student's parent is an xxxxxxxx in a xxxxxxxxxxxx xxxxxx xxxxxxxxxxxx She alleged that the District retaliated against her when the guidance counselor xxxxxxxxxxxx xx xxxxxxxx xxx xxxxxxxxxxxx xxxxx xxx xxx xxxxxxxxxxxx xx xxx xxxxxxxxxxxx xxxxxxxx spoke to the parent disrespectfully, and refused to answer the parent's questions.

The Student's parent informed OCR that the guidance counselor had mentioned the name of a xxxxx xxxxxx from the xxxxxxxx xxxxx xxx xxxxx on two occasions during their conversations. That xxxxx xxxxxx also teaches in the District. The parent said that, the first time the xxxxx xxxxxxxxxxx name was mentioned, she did not have a problem with it, although she did not see the relevance because she believes that the xxxxx xxxxxx teaches industrial arts.

The second time the xxxxx xxxxxxxxxxx name was mentioned was during a heated phone conversation at 9:30 p.m. on xxxxxxxx x between the parent and the counselor. The parent told OCR that the purpose of the phone call was to inform the parent that there was a meeting scheduled between her and staff on xxxxxxxx xx xxxxx Initially, the parent said that she could not attend because it was scheduled during her work hours. She said that the guidance counselor tried to pressure her to attend the meeting, became louder and louder on the phone, and was talking over her. She told the guidance counselor that the guidance counselor and one of the Student's teachers did not know how to do their jobs. The guidance counselor insisted that they knew how to do their jobs. The parent told the counselor repeatedly that, if the guidance counselor did not lower her voice, she would hang up the phone, and eventually did. The parent stated that the guidance counselor tried to call back twice, but she ignored the call. The parent stated that, during the conversation, the guidance counselor "dropped the name of" the xxxxx xxxxxx from the xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx The parent stated that when the guidance counselor mentioned the xxxxx xxxxxxxxxxx name in the context of their angry exchange she felt that the guidance counselor was threatening to tell the xxxxx xxxxxxx something negative about the parent.

The guidance counselor advised OCR that her xxxxxxx worked in the same xxxxxxx xxxxxxxxxxx where the Student's xxxxxxx xxxxxxx and that the xxxxx xxxxxxx was a xxxxxxxx xxxxxxxxxxxx teacher xx xxxxx xxxxxxxxxxxx She said that she mentioned xxx xxxxx because she thought the xxxxxxx might feel more comfortable speaking with that individual and that there was no intent to intimidate. The guidance counselor said that she did not suggest that she would discuss the xxxxxxxx xxxxxxxxxxx with the xxxxx xxxxxxx and told OCR that she would not have done so. When offered an opportunity to respond to this information, the parent completely disagreed with the guidance counselor's characterization of the conversation. OCR asked whether she had reason to believe that the guidance counselor had spoken with the xxxxx xxxxxxx about the Student's situation and whether she experienced any adverse xxxxxxxxxxxx actions as a result. She stated that, to the best of her knowledge, no such conversation occurred and that there were no negative repercussions concerning her employment.

- **Applicable Legal and Policy Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose or interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. Title II's implementing regulation contains a similar prohibition against retaliation at 28 C.F.R. 35.134.

In analyzing retaliation claims, OCR first examines: 1) whether the individual engaged in a protected activity; 2) whether the recipient had notice of the individual's protected activity; 3) whether the recipient took a materially adverse action contemporaneous with or subsequent to the protected activity; and 4) whether there was a causal connection between the protected activity and the adverse action. If all of these elements establish a prima facie case, OCR next considers whether the recipient has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for discrimination. Even if the recipient produces evidence of a legitimate, non-retaliatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide retaliatory motive.

In addition to the retaliation analysis discussed above, OCR may utilize an "interference" analysis in circumstances where a recipient allegedly sought to interfere with rights or privileges secured under the statutes and regulations enforced by OCR. To establish a prima facie case of interference, OCR must find the following: (1) the individual suffered a materially adverse action by the recipient; and (2) the recipient intended the materially adverse action to deter, prevent, or stop the individual from engaging in a protected activity.

Protected activity includes opposition in a reasonable form by the individual to an act or policy that is unlawful under Section 504 or Title II.

To determine whether a "materially adverse action" has occurred, OCR considers whether the alleged adverse action could well dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination. Normally, petty slights, minor annoyances, and lack of good manners do not constitute materially adverse actions. Whether an action is materially adverse is judged from the perspective of a reasonable person in the individual's position. Although the materiality of an action may depend on the context, an individual's idiosyncratic personal preference is not sufficient to establish an adverse action. Depending on the particular factual circumstances of a case, OCR will also consider whether a series of incidents, which standing alone do not conclusively demonstrate material adversity, may, taken together, constitute a materially adverse action.

If one of the above-listed elements of a *prima facie* case of retaliation or interference cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements establish a *prima facie* case, OCR next considers whether the recipient has articulated a legitimate, non-retaliatory, non-interfering reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for prohibited retaliation or interference.

- **Analysis and Conclusion**

Here, the evidence shows that the Student's parent engaged in a protected activity (advocating on behalf of her son concerning the District's alleged failure to implement his xxxxxxxx xxx xxxxx and that the District had notice of her protected activity. However, there is no evidence that the District took any adverse action against the parent. Although the parent was offended by the guidance counselor's mention of a xxxxxx xxxxxxxx name during a heated conversation between the two of them, there is no evidence to suggest that the parent's xxxxxxxxxxxx was in any way harmed. Similarly, there is no evidence to suggest that she was dissuaded from making or supporting a charge of discrimination or that she reasonably would have been so dissuaded. For this reason, OCR finds that the evidence is insufficient to support that the District retaliated against the parent, as alleged.

Resolution and Conclusion

To resolve the compliance findings made with respect to the District's failure to implement the Student's xxxxxxxx xxx xxxxx the District's failure to respond to the Student's parent's disability discrimination allegation, and the District's failure to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation or the Title II regulation, the District submitted the enclosed resolution agreement (the Agreement) on September 8, 2014. Under the terms of the Agreement, the District will determine what compensatory education or other remedial services the Student requires for the time period from xxxxxxxxxxx xxx xxxxx to xxxxxxxxxxx xx xxxxx during which period the District failed to implement the Student's xxxxxxxx xxx xxxxx. The Agreement also requires the District to revise Section 504 grievance procedures and, once approved, adopt, implement, and publicize the revised procedures, and train staff on the revised procedures. OCR will monitor the implementation of the agreement. If the District does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file another complaint alleging such treatment. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates your cooperation and that of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact xxxx x. xxxx, Supervisory Attorney/Team Leader, at (216) 522-xxxx or by e-mail at xxxxxxxxxxxx@ed.gov.

For questions about implementation of the Agreement, please contact xxx xxxxx xxxxxxxx, who will be monitoring the District's implementation, by e-mail at xxxxxxxxxxxxxxxx@ed.gov or by telephone at (216) 522-xxxxx. We look forward to receiving the District's first monitoring report by September 30, 2014. Should you choose to submit your monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure