



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 12, 2019

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXX, Michigan XXXXX

Re: OCR Docket No. 15-15-1087

Dear XXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Lansing School District (the District) alleging that the District discriminated against students on the basis of disability. Specifically, the complaint alleged that the District discriminated against students with mental health disabilities, including students identified as having emotional impairments and/or other health impairments, at the District's Pattengill Middle School; Gardner Leadership, Law & Government Academy; and Lansing STEM Academy (collectively the Schools), by:

1. failing to conduct manifestation determinations before enacting significant disciplinary changes of placement of students with mental health disabilities, through informal removals and suspensions, long-term formal suspensions, and patterns of suspensions that amount to more than 10 school days within a school year; and
2. requiring parents of students with mental health disabilities to pick their students up from school and/or otherwise removing these students for partial or whole school days by sending them home, to the office, or the hallway through undocumented, informal removals; or reassigning students with mental health disabilities to the PASS program, where they wait for weeks to receive any instruction or where they receive only part-time instruction.

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 by recipients of 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 on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity the District is subject to these laws, and OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues: whether the District, at the Schools:

1. failed to evaluate students with mental health disabilities prior to significant changes in placement through the imposition of disciplinary removals of more than 10 days or a pattern of removals of more than 10 days, in violation of the Section 504 regulation at 34 C.F.R. § 104.35(a); and/or
2. excluded qualified persons with mental health disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination under any of its programs or activities, in violation of the Section 504 regulation at 34 C.F.R. § 104.4 and the Title II regulation at 28 C.F.R. § 35.130.

During its investigation to date, OCR obtained information and documentation from the Complainants and reviewed relevant documentation from the District from the 2013-2014 and 2014-2015 school years. OCR also interviewed the District's special education director/Section 504 coordinator (as of the 2017-2018 school year) (the District administrator). Prior to the completion of OCR's investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM), and OCR determined that resolution was appropriate. The District signed the enclosed agreement, which, once implemented, will address the compliance concerns OCR identified. OCR's investigation to date and the voluntary resolution are discussed below.

Applicable Legal Standards

Under the Section 504 regulation, a recipient school district may not, on the basis of disability, exclude a qualified student with a disability from participation in, deny the student the benefits of, or otherwise subject the student to discrimination under any of its programs or activities. 34 C.F.R. § 104.4. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130.

The Section 504 regulation also provides that a recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. 34 C.F.R. § 104.33. 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 students with disabilities as adequately as the needs of students without disabilities are met and that are based upon adherence to procedures that satisfy the educational setting, evaluation and placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

Section 504 places an affirmative duty on recipient school districts to individually evaluate any student who, because of disability, needs or is believed to need special education or related aids and services. 34 C.F.R. § 104.35(a). In addition, Section 504 requires that, in interpreting evaluation data and making placement decisions for students with disabilities, a recipient must: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is

documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options; and (4) ensure that the placement decision is made in conformance with the educational setting requirements at 34 C.F.R. § 104.34.

Finally, pursuant to Section 504, a recipient school district must reevaluate a student with a disability before any significant change in placement. 34 C.F.R. § 104.35(a). OCR considers transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement. Under OCR policy, any suspension, exclusion (including in-school removal or suspension that removes a student from his/her program), or expulsion in a disciplinary context that exceeds ten days or any series of shorter suspensions or exclusions that in the aggregate totals more than ten days and creates a pattern of exclusion, constitutes a significant change of placement that would trigger the district's duty to reevaluate a student under Section 504.

The first step of a reevaluation before a proposed discipline that constitutes a significant change in placement is to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the conduct giving rise to the disciplinary removal was a manifestation of the student's disability. This determination is to be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options.

If the group determines that the conduct was a manifestation of the student's disability, the student may not be removed for a period that would constitute a significant change in placement, as defined above. Instead, the group must continue with the reevaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, and determine if the student needs modifications to his or her existing placement and disability-related aids and services in order to receive FAPE. The group must have available to it information that competent professionals would require, such as psychological evaluation data related to behavior, and the relevant information must be recent enough to afford an understanding of the child's current behavior. If the group determines that the conduct was not a manifestation of the student's disability, the school district may exclude the student from school in the same manner as it excludes similarly situated students without disabilities. 34 C.F.R. § 104.35(a)

Summary of OCR's Investigation to Date

As noted above, OCR opened the above allegations with respect to the three Schools, the Lansing STEM School, Gardner Leadership, Law and Government Academy, and Pattengill Middle School. However, during the course of the investigation, the District closed these schools. According to information provided by the District and the District's website, the Lansing STEM School was renamed the Dwight Rich School of the Arts, was moved to a new location, and now operates an arts integration program. The District closed Gardner Leadership, Law, and Government Academy, which as of the 2016-2017 school year served students in the fourth through eighth grades, and replaced it with a new elementary school under new leadership. The new school, the Gardner International Magnet School, offers an immersive international studies program for students in kindergarten through eighth grade. Pattengill

Middle School also closed and a new Pattengill Biotechnical Magnet School opened in a different building for the 2018-2019 school year. It now serves students in pre-kindergarten through sixth grade.

OCR's investigation to date raised compliance concerns related to the discipline of students with disabilities and, in that context, concerns regarding the District inappropriately subjecting students with mental health disabilities to significant changes of placement. Although the three schools identified in the complaint have since closed, the documents and information provided to date support that the compliance concerns raised were district-wide rather than limited to the specific schools identified in the complaint. OCR's investigation to date raised concerns that the District: 1) did not conduct manifestation determinations prior to significantly changing the placements of students with disabilities; 2) did not count informal removals, including removals to the office or hallways and sending students home early, when determining whether a series of removals constituted a significant change of placement; 3) sent students with disabilities to the PASS program, a disciplinary placement, despite determining that the students' behaviors were a manifestation of the students' disabilities; 4) did not reevaluate students whose behaviors were deemed a manifestation of their disabilities; and 5) did not conduct additional evaluations of students after receiving sufficient information during the manifestation determination process to suspect that the student(s) had additional disabilities.

- **Manifestation Determinations Prior to Significant Changes of Placement**

The Complainants alleged that the District failed to conduct manifestation determination meetings prior to significantly changing the placement of students with mental health disabilities. Although the District did not provide OCR with a copy of its policies or procedures specific to disciplinary removals of students with disabilities, on March 21, 2018, OCR located on the District's website a document titled "Section 504 Manual for Identifying and Serving Eligible Students: Policies, Guidelines, and Forms" (the Manual), which went into effect on April 15, 2013.¹ OCR reviewed the provisions of the Manual addressing manifestation determinations. The Manual requires that the District conduct a manifestation determination for any disciplinary suspension or expulsion of a student with a disability that is for a period of more than 10 consecutive days or where a series of suspensions adding up to more than 10 days constitutes a pattern of removals. In those circumstances, the Manual states that the District is required to conduct a manifestation determination before any significant change in a student's placement occurs. The Manual goes on to state, "The manifestation determination should be conducted within 10 school days of the decision to change the student's placement." The Manual further addresses who must be invited to the meeting, the purpose of the meeting, and who makes the determination at the meeting, as well as addressing procedural safeguards. Additionally, the Manual provides, "(i)f the 504 Team concludes that the student's conduct is a manifestation of the student's disability, the student must remain in or be returned to his/her current educational placement, unless the parent and the District agree to change the student's placement." The Manual does not require any additional steps beyond the manifestation determination in circumstances where the team finds the behavior is a manifestation of a disability.

¹ The Manual contains a footer with the date April 2011, but the document was saved with a document name that appears to indicate it was version 15, dated April 15, 2013.

OCR interviewed the individual who currently serves as the District's Section 504 coordinator and special education director (the District administrator). She told OCR that the District has separate written manifestation determination procedures for students eligible under Section 504 only and for students who have an Individualized Education Program (IEP). Although the District did not provide OCR a copy of the District's procedures applicable to students with IEPs, the District administrator told OCR that the District's Individuals with Disabilities Education Act (IDEA) policies require the manifestation determination to occur within 10 days of the decision to suspend the student for the behavior at issue. She also told OCR that during the 2013-2014 school year the District's special education teacher consultants, who were assigned to multiple schools, were responsible for tracking disciplinary removals of students with disabilities, determining when the accumulated removals triggered the District's obligation to conduct a manifestation determination, and scheduling and running meetings convened for determining whether a student's misconduct was a manifestation of the student's disability.

The District provided OCR with a copy of its form titled "Manifestation Determination Review Form" (the MDR form), as well as documentation of 91 manifestation determination meetings held for students with disabilities, including students whose category of disability was identified on the MDR form as emotional impairment (EI), other health impairment (OHI), or specific learning disability (SLD), who attended one or more of the Schools during the 2013-2014 and 2014-2015 school years. Based on the MDR forms reviewed to date, there is evidence that the District did not ensure all manifestation determinations occurred prior to significantly changing the placement of students with mental health disabilities. Although all of the MDR forms reviewed by OCR indicate the date of the manifestation determination, not all of the MDR forms or accompanying documents reviewed to date contain the date of the behavioral incident/initial removal that resulted in the manifestation determination meeting. Nevertheless, of the documents provided by the District containing the date of the behavioral incident/removal and resulting manifestation determination, OCR identified 41 instances where the manifestation determinations appear to have been held after a significant change of placement, e.g., after a suspension of more than 10 days, had already been served. In fact, the documents indicate that in numerous instances students served lengthy suspensions prior to when the manifestation determination was held. This includes instances where the behavior at issue was ultimately found to be a manifestation of the student's disability. Based on a review of the documents, OCR also noted that in many instances where the manifestation determination was held after a significant change of placement the student had served other suspensions during the same school year; thus, the student reached the eleventh day of suspension within the first few days of a subsequent suspension in that school year. Thus, OCR's review of the documents to date raised the concern that the District did not consistently conduct manifestation determinations of students with disabilities prior to significantly changing their placement for disciplinary reasons.

- **Informal Removals Contributing to Significant Changes of Placement**

The Complainants also provided OCR with examples of students with mental health disabilities whom the District allegedly repeatedly removed from the classroom informally for disciplinary reasons, for example, by sending the student to the office or by calling the student's parent to pick the student up early from school.² The Complainants alleged that these informal removals

² OCR noted that the examples provided regarding individual students were untimely. OCR gave the Complainants

were not documented. The Complainants also alleged that the District excluded students with disabilities from the classroom by referring them to its PASS program, which was a disciplinary placement³. The Complainants alleged that the District used these informal, undocumented removals and referrals to its PASS program to discriminate against students with mental health disabilities in violation of Section 504.

In response to a request for a written narrative of all school practices regarding the removal of students with disabilities, the District provided a copy of its discipline policies, which require documentation for any removal of a student from a class, subject, or activity. Specifically, according to the District's Codes of Conduct for the 2013-2014 and the 2014-2015 school years, when a teacher requires a student to leave a classroom for disciplinary reasons, the principal must receive documentation of that removal "as promptly as teaching obligations allow and in no case later than the end of the teacher day." The Codes of Conduct further provide "Notice of the corrective action shall be recorded in the student's disciplinary file."

OCR also reviewed the sections of the Manual that discuss discipline. Based on that review, OCR noted that the only portion of the Manual addressing significant changes of placement in the disciplinary context is under the subheading "Suspension and Expulsion of Section 504 Students." The Manual provides the following language:

Students who are eligible under Section 504 have certain additional protections when charged with a violation of the Code of Student Conduct which may result in a suspension or expulsion of a student with a disability that constitutes a significant change of placement.

The Manual further states that "whether a series of suspensions creates a pattern of exclusion is determined on a case by case basis..."

In addition to its policies and procedures, the District provided OCR with copies of three types of records it used to document removals of students with and without disabilities from the classroom, including handwritten logs of student behavioral incidents, completed forms documenting student removals from the classroom, and completed forms with the title "Student Discipline Referral Form." These documents identified the behavior at issue and the response to the behavior, including removals to the office, detentions, calls to parents, and sending students home early. The District additionally provided copies of sign-in/out sheets for students leaving school before the end of the school day for the 2013-2014 and 2014-2015 school years. OCR noted that many of the documents were handwritten and illegible, and it was not clear which school provided which documents.

an opportunity to provide timely examples, prior to when OCR opened this complaint, but they declined to do so.

³ The District administrator described the PASS program as interim alternative educational placement (IAES) for students who would otherwise be expelled or receive long-term suspensions if they were not eligible to continue to receive services as students with disabilities. The District's document responses described in more detail in a later section of this letter included documents indicating that PASS stands for Positive Alternative Secondary Setting, that this program was located at one District elementary school, that the program only ran for a few hours a day on only three school days each week, and that referral to PASS could only occur following an MDR and additional requirements.

Although the forms for documenting informal removals of students differed at each of the three Schools, the District provided a copy of the MDR form it uses across all schools. The District's MDR form requires a summary of the removal or series of removals that the District determined constituted a significant change of placement, including a list of removals where a series of removals created a pattern of removal of more than 10 days. The District also provided completed forms for students with disabilities at the three schools, and OCR examined the MDR forms provided to date for evidence that, with respect to students with mental health disabilities, the District considered informal removals when determining whether a series of removals of a student with a disability constituted a significant change of placement, triggering the District's obligation to conduct a reevaluation, including a manifestation determination.

The 91 completed MDR forms OCR reviewed generally included a description of the behavioral incident resulting in the District convening the team. Where the District convened the meeting due to a series of removals, the MDR form also included a list of dates and basic information about the prior suspensions. OCR noted that these lists did not reference informal removals, e.g., a removal to the office for half of a day. All of the removals listed as contributing to a significant change of placement were suspensions. OCR was able to find limited examples where a prior discipline referenced as a "suspension" on the MDR form seemed to match an informal removal for the same student on the same date on one of the discipline forms; however, OCR was unable to do this consistently. OCR noted that other areas of the MDR forms at times referenced examples of informal removals, such as removals to detention, the hallways, or the office, under the general heading "Information Reviewed." In the limited instances where the MDR forms included those types of informal removals, those removals were considered for purposes of determining whether students' behavior was a manifestation of a disability but were not considered in determining whether the District's obligation to conduct a manifestation determination had been triggered.

The lack of informal removals on the list of removals triggering the manifestation determinations on the MDR forms and the plain language of the Manual limiting a disciplinary significant change of placement to a series of suspensions, raised a concern that the District was excluding students with disabilities informally without consistently counting these informal removals for purposes of determining when a manifestation determination was necessary.

As stated above, the District administrator told OCR that, during the 2013-2014 school year, the special education teacher consultants were responsible for tracking disciplinary removals of students with disabilities and determining when the accumulated removals triggered the District's obligation to conduct a manifestation determination. However, as she was a principal of one school and did not hold a District-wide position during the 2013-2014 and 2014-2015 school years, she could not speak to whether this was done consistently for informal removals across the District during that time.

The District administrator also told OCR that as of the 2017-2018 school year, all disciplinary removals were being recorded in the District's Synergy program, which tracks the number of disciplinary removals by student for the school year, as well as cumulative removals. She said access to that program assumes supervisory credentials, so not all district employees have access to that information. She stated that she created three special education supervisor positions in

her department, which were in place for the 2017-2018 school year. She stated that these individuals oversee tracking removals of students with disabilities. She told OCR that designated staff at each building are responsible for monitoring the removals of students with disabilities at the building level and must notify the special education supervisors when a student with a disability reaches five days of disciplinary removal. The supervisor then tracks the removals of those students. The supervisor is responsible for determining when disciplinary removals of students with disabilities constitute a significant change of placement, triggering the District's obligation to reevaluate. She further stated that, pursuant to the District's policies, the District treats a removal for a partial day as a removal for a full day for purposes of determining whether a student's removals within a school year constitute a significant change of placement. The District administrator also stressed that, under the current Student Handbook, the District is required to implement positive behavioral interventions before imposing disciplinary removals. The District administrator told OCR that the school formalized a positive behavioral intervention system (PBIS) districtwide during the 2017-2018 school year. She also stated that the District replaced its Code of Conduct with a Student Handbook, which requires the District to implement this system of positive interventions prior to resorting to disciplinary removals, and the District's Student Handbook continues to require District staff to document disciplinary removals.

- **Significant Changes of Placement to the PASS Program for Behavior Determined to be a Manifestation of a Disability Without Completing Reevaluation**

Because the Complainants also alleged the District discriminated against students with mental health disabilities in its use of the PASS program and provided examples of students reassigned to the PASS program, OCR also examined information provided by the District to date regarding the District's reassignment of students with disabilities to the PASS program.

According to the documents provided by the District, the PASS program is the "Positive Alternative Secondary Setting," but the documents also refer to it as the "Interim Alternative Placement Services (PASS)." Based on the documents reviewed and information provided by the District administrator, students are only eligible for referral to the PASS program after a manifestation determination regarding the behavior triggering the referral.

Based on documentation provided by the District, including the required PASS referral packet, since at least November 11, 2014, District staff could not refer a student with a disability to the PASS program, which was located at Wainwright Elementary, unless a complete referral packet for the student was first sent to and reviewed by designated Student Services staff. According to the documents provided by the District, including an email sent to all special education teacher consultants and building principals, dated March 5, 2015, the referral packet must contain all of the following information: 1) current MDR with 2-5 years file review included with all areas explained and detailed; 2) a Pattern of Behavior Administrative Review form with all suspensions from the current school year; 3) current IEP academic goals sheets; 4) the most recent FBA/BIP with current interventions used in the school if applicable; 5) the PASS referral form, completed with dates; and 6) an Interim Alternative Educational Setting (IAES) form completed with documentation of provided IAES service (11th day and on).

The “Interim Alternative Placement Services (PASS) Referral Form” (the PASS referral form) explicitly requires that the “(r)eturn to school date must be provided” by the school referring a student to the program, indicating that the program is a temporary or “interim” placement. Additionally, based on a review of the documents, in some instances a form entitled “Interim Alternative Educational Setting” (IAES form) accompanied the MDR form in the documents provided by the District. In those instances where the District provided an IAES form when a student was referred to the IAES/PASS program for up to 45 days, the length of removal was identified on the form as “Removal of Special Circumstances – up to 45 days.” None of the completed forms the District submitted to OCR explain what “removals of special circumstances” means or when they may be used; however, the form suggests such placements are temporary placements as they last for a maximum duration of 45 days.

Based on a review of the Manual, the only reference to “interim alternative educational settings” is in the context of a student who carries or possesses a weapon to or at school, on school premises, or to or at a school function. The Manual does not use or define the term “removals for special circumstances” or otherwise state the circumstances under which such removals may be used.

The documents further indicate students assigned to the PASS program receive a shortened school day and school week. According to the documents provided, as of at least November 11, 2014, the PASS program was only open for a total of 11 hours and 30 minutes per week: Mondays 12:45-3:55; Tuesdays and Thursdays 11:00-12:00, 12:45-3:55; Wednesdays 11:00-12:00, 12:45-3:55. According to the District’s website, students in general education placements would typically attend school for a total of 34 hours and 30 minutes per week.

In addition, based on the documents and information provided by the District administrator interviewed, it appears that occupational therapy (OT), physical therapy (PT), and speech services may not have been available to students at the PASS program prior to the 2017-2018 school year. It also appears that the program offered only limited assistance to students from a teacher consultant or self-directed online learning rather than classroom instruction.

The documents reviewed to date also contain multiple instances where, during the 2013-2014 or 2014-2015 school years, the District removed students with disabilities to the PASS program (or the IAES, as the District appears to use these terms interchangeably.) Of students placed in PASS during that time, OCR identified a number of instances where the District changed the placement of students to the PASS program for 45 days for behavior that was deemed a manifestation of a disability. However, the documents reviewed lacked any indication that the District completed an evaluation of those students to support the change of placement that occurred in these instances, beyond conducting the manifestation determination. In one instance the District noted on the MDR form that the student’s behavior plan needed “to be updated,” but the documentation OCR reviewed to date regarding this student did not indicate that had been done.

OCR interviewed the District administrator, who as explained above was the District’s Section 504 coordinator and special education director for the 2017-2018 school year. According to the documents, the special education director and the Section 504 coordinator were separate

positions held by two different individuals during the 2013-2014 and 2014-2015 school years. OCR asked the District administrator about the use of IAES/PASS placements within the District. According to the District administrator, PASS exists solely to provide students with disabilities on IEPs educational services during periods of suspension or expulsion as required by IDEA. However, she did not know if that was how the District used PASS during the 2013-2014 and 2014-2015 school years. The District administrator told OCR that during the 2013-2014 school year through the 2017-2018 school year, either the teacher consultant or the supervisor assigned to each school building tracked the number of days of disciplinary removal of each student with a disability at the building. She said that, on the eleventh day of removal, the teacher consultant had twenty-four hours to provide the student services to ensure the provision of FAPE, which she said are individualized determinations but typically include a minimum of two hours of tutoring on non-consecutive days. A review of the documents to date supports that the District generally offered students with disabilities weekly services of two hours of tutoring on non-consecutive days, and there is some evidence that at least some related services, such as social worker services, were offered during that type of placement.

The District administrator further told OCR she could not speak to how referrals to the PASS program worked prior to the 2017-2018 school year and could only speak to the referral process for sending a student to PASS starting with the 2017-2018 school year. She told OCR she was not aware of any written procedures or guidance regarding the requirements for sending a student to the PASS program, though she said she had that “on her list of priorities” and hoped to develop such a guidance document. She told OCR that the District’s Student Services consultation team, which includes the special education director, reviews all potential referrals. She said that, although no such written guidance existed at the time of her OCR interview, students could not be placed in the PASS program without her approval. She further told OCR that, for the District to change a student’s placement to the PASS program, the student had to be eligible for that program. She told OCR that she had not and would not approve a request to place a student in the PASS program unless, at a minimum and at the time of the incident, the student had a disability, attended high school (i.e., ninth through twelfth grade), and engaged in behavior found not to be a manifestation of a disability and that would have resulted in a removal of more than 45 days if a general education student engaged in the same behavior.

Regarding the 2017-2018 school year, the District administrator told OCR that she reviewed and approved the placements of all students who attended the PASS program. She stated that only XXXX students attended the PASS program during the 2017-2018 school year, and all of those students were in high school. With the exception of XXX XXXXX, she said the District changed the placement of the remaining XXX students with disabilities to the PASS program after those students engaged in behavior that each student’s IEP team determined was not a manifestation of a disability. In all XXX cases, the students had engaged in behavior that would have resulted in a disciplinary removal of more than 45 days had the students not had disabilities. The District administrator said she accepted the referral of those students to the PASS program for 45 days and all XXX returned to their placement after the 45 days ended.

[xxx paragraph redacted xxx]

The District administrator told OCR she was not aware of any students being sent to the PASS program for behavior that was a manifestation of the student's disability prior to the 2017-2018 school year or after. She expressed certainty that the District has not sent students with disabilities to the PASS program for behavior deemed a manifestation of a disability since she became the District's special education director and Section 504 coordinator. She further stated that she does not have any reason to know or believe if it happened in the past. She also stated she has not and would not allow placement of non-high school students in the PASS program, which is not appropriate for students younger than high school, but she did not know whether the District placed students at grade levels below ninth grade there in the past.

- **Evaluation When Reason to Suspect Additional Disabilities**

Finally, in addition to the above information, OCR identified multiple instances in the documents provided where the District received information at a manifestation determination that a student with an SLD might also have a mental health disability not previously identified. In each identified instance, the student's placement appears to have been changed as a result of the misconduct. Although OCR would need to review the identified students' complete school files and, possibly, interview District staff to confirm that the District did not take steps to evaluate these students, the documents reviewed lacked any indication that the District considered conducting or conducted evaluations upon receiving information about an additional disability during the manifestation determination process. The records reviewed also do not indicate that the team conducting the manifestation determination meeting considered this information in making the determination that the conduct was not a manifestation of a disability.

Resolution and Conclusion

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 5, 2019, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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 individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the District's first monitoring report by October 30, 2019. For questions about implementation of the Agreement, please contact OCR attorney XXX, who will be overseeing the monitoring and can be reached by telephone at XXX or by e-mail at XXX@ed.gov. If you have questions about this letter, please contact me by telephone at XXX, or by e-mail at XXX@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure