



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

March 29, 2022

**Via E-mail Only to [redacted]**

Kenneth B. Chapie, Esq.  
Giarmarco, Mullins & Horton, P.C.  
101 West Big Beaver Road  
Troy, Michigan 48084-5280

Re: OCR Docket No. 15-17-1313

Dear Mr. Chapie:

This letter is to notify you of the disposition of the above-referenced complaint received on March 6, 2017, by the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Genesee Intermediate School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that the District excluded the Student with a disability, and her trained service animal, from school activities in [redacted]. The complaint also alleged that the District unilaterally placed the Student on [redacted] and did not provide the Student's parent notice of procedural safeguards to challenge its unilateral placement.

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.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- whether the District failed to modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability in violation of the Title II implementing regulation at 28 C.F.R. § 35.136(a);
- whether the District failed to appropriately reevaluate a student with a disability before making a significant change in her placement, in violation of the Section 504 regulation at 34 C.F.R. § 104.35(a);

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- whether the District, in making a placement decision regarding a student with a disability, failed to ensure the placement decision was made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, in violation of the Section 504 regulation at 34 C.F.R. § 104.35(c)(3); and
- whether the District failed to effectively establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.36.

During its investigation to date, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff. As explained below, the evidence obtained raised several concerns about the District's compliance with Section 504 and Title II. Prior to OCR's completion of its investigation, the District expressed an interest in resolving this complaint under Section 302 of OCR's Case Processing Manual, and OCR determined that such resolution would be appropriate. The District signed the enclosed Resolution Agreement to address OCR's compliance concerns. The resolution is explained below.

### **OCR's Investigation to Date**

The Complainant filed this complaint on behalf of the Student, who returned to school at the District with a service animal [redacted]. The Student has [redacted]. The Student received placement and services through an individualized education program (IEP) at the District. For the [redacted] school year, she was in the [redacted] grade and placed at the District's [redacted]. At the time of the events at issue in this complaint, the Student was [redacted] years old. [sentence redacted]. The service animal was trained for [redacted] alerts and to obtain the Student's medications.

- **Alleged Exclusion of the Service Animal**

The Complainant indicated that from the outset the service animal was not welcomed by District staff. [sentences redacted]

The Complainant alleged [redacted] the Student and service animal were instructed to sit in the back of the room by the bleachers away from her classmates, due to the [redacted] teacher's allergies. The Complainant stated to OCR that she did not believe the teacher had an allergy. The Complainant stated that, if the teacher had an allergy, she would have stayed away from them. [sentence redacted] The Complainant stated that there was another service animal that attended the assembly; that service animal was placed on the right front side of the room.

The Complainant alleged that the next day, [redacted], the Student was to attend [redacted] activities as part of her program. The Complainant stated that the Student and her service animal were excluded from going to a [redacted] on that day. She said this happened again the following week.

The Complainant provided OCR with an e-mail she received from the principal on [redacted], in which the principal suspended [redacted] for the Student and the service animal for two weeks (including the [redacted]). The principal's exact language as written in the e-mail to the Complainant on [redacted] stated "...I have suspended [redacted] for this week and next. This gives us an opportunity to get into a routine with [the service animal]." The Complainant stated she did not recall why the [redacted] were cancelled in [redacted]. An e-mail sent earlier that day from the teacher to the Complainant had invited the Student and her service animal to attend the [redacted] and said they were welcome there. When OCR asked the Complainant if the principal cancelled the events for everyone or just the Student and her service animal, the Complainant stated she did not know. The Complainant stated that the District said the Student could not attend the outings, so the Complainant decided to keep the Student home during those days. The Complainant did not want the Student to attend school and just sit with an aide all day.

The District denied the above allegations and stated in its position statement to OCR that the District never denied the service animal from entering the school building or participating in school activities. The principal stated to OCR that, [redacted] months before the service animal began attending school at the District, the Complainant notified the District of their intent to acquire a service animal on behalf of the Student. In preparation for the service animal, the [redacted] principal issued a letter on [redacted], addressed to all the parents and guardians of students within the Student's class, to notify them that [redacted] was expecting the arrival of a service dog. The principal also notified [redacted] staff of the service animal's arrival at a staff meeting, as noted in the meeting notes from [redacted]. Additionally, the principal issued a handwritten note on [redacted], addressed to parents and guardians in the Student's class, noting that the service animal had a successful first day at [redacted]. The District asserted to OCR that the District has successfully had service dogs at the District—both before and after the Student's service animal attended the District.

With respect to the alleged exclusion of the Student and her service animal on [redacted], the Student's attendance record indicates that the Student was absent from school that day, and the District documented her attendance as absence excused, "AE". The District did not provide further documentation explaining what occurred that day.

With respect to the alleged events of [redacted], the District's documentation shows that the District held a student assembly that day. The principal stated she did not attend the assembly and was not at [redacted] that day. The District confirmed that there were [redacted] students with service dogs in attendance, including the Student and her service animal. The District placed the Student and her service animal, as well as the Complainant, on one side of the gym and the other service dog on the other side. The principal told OCR that the Complainant was upset with this arrangement and notified the principal. The evidence obtained from the District does not indicate the principal's response.

Regarding [redacted], the District's documents included handwritten notes dated [redacted], under a header indicating they were about the Student and the service animal. The notes stated, in relevant part: "[redacted] cancelled for today. Need to have a smooth day. Need coverage for all kids." The notes state that the Student was absent that day. The District's documents did not indicate what happened with [redacted] for the next week. The Student's attendance record

indicated that [redacted] was closed for all students for the first half of that week and the Student was absent for the second half of the week.

Although the District denies excluding the service animal from school and school-related activities, the District asserted that the service animal repeatedly acted improperly. During an interview with OCR, the Student's teacher stated that during [redacted] the service animal repeatedly barked and growled at students, scaring them. The teacher also stated that the service animal did not respond to commands, and that on one occasion the service animal failed to respond to the Student's [redacted]. The principal also stated that, during the service animal's first visit to school, the service animal jumped up on the office counter when a parent came in to pick up their child. According to the principal, the Complainant stated that the service animal jumped on a parent because the service animal believed that the parent needed assistance.

The evidence gathered by OCR shows that the District contemporaneously documented misbehavior by the service animal in an e-mail exchange between the principal and the District's [redacted] (the director), from [redacted]. Specifically, one of the e-mails stated that the "dog is exhibiting a few behaviors that the owner has not seen elsewhere (growled at some people, wouldn't sit or stay a couple of times, jumped up and put paws on office countertop when a parent came in to pick up their child)." In that same e-mail, the principal wrote that the Complainant informed the principal that the classroom was loud and that a couple of the students required additional behavioral supports. According to a letter written to the Complainant by the principal dated [redacted], the Complainant additionally wrote to the principal on [redacted], that the Complainant was unhappy with the way she was treated "in regards to having a service animal" and she asked to [redacted]. The District's documents do not indicate what it did to follow up on the Complainant's concern, except they show that the District excused absences for the Student while the Complainant looked for a new school.

- **Handling of the Service Animal**

The principal informed OCR that in [redacted] the Complainant and the Student traveled out of state for a two-week training session with the service animal. In [redacted], the Student returned to school with the service animal and the Complainant handled the service animal. The principal informed OCR that the District never reached the point where they could assign the service animal to a staff member, as it appeared that the service animal was not under the control of the Complainant. The principal stated that the District designated an area for the service animal in the Student's classroom, and both the Complainant and the Student were in the classroom with the service animal. The District said that there was never a point at which the Complainant was able to leave the service animal at the school, without being present.

The teacher informed OCR that she was prepared to welcome the service animal into the classroom by the principal, as the principal gave her documents to review including the service animal's commands and the District's policies regarding the service animal. The teacher stated that she was to be ultimately in charge of the dog while it was in her classroom.

In the complaint, the Complainant stated she was present during the service animal's first few days at school to train the teacher and classroom aide to be the handler. On [redacted], the Complainant provided the District with a handwritten note indicating the Student would

participate in a two-week training with the service animal in [redacted]. The District provided OCR with internal e-mails dated [redacted], regarding the District's efforts to schedule an opportunity for the Complainant to train the Student's teacher to be the handler, as well as provide the service animal with an opportunity to familiarize itself with the students and staff in the classroom. The District further submitted a copy of a note documenting a missed call from the Complainant on [redacted]. On the same page the District included a copy of a handwritten note, which stated, "10 days of training." Additionally, the District submitted other handwritten notes that referenced the service animal having received "10 days of training". The notes further referenced the Student's teacher by name with the notation "Handler one week."

The District provided a copy of an internal e-mail from the principal to District staff on [redacted], that referenced a scheduled date for the Student, the Complainant, and the service animal to come to school to introduce the service animal to students and staff. The e-mail stated that the introductions were to be made one person at a time in the classroom. Additionally, the internal District e-mail stated that the Student's classroom teacher would be considered the handler and learn the basic commands from the Complainant.

A subsequent internal e-mail between District staff on [redacted], referenced that the Complainant kept the service animal at the school for only a couple hours the prior week. The District's e-mail further indicated that the classroom was loud with a couple of students that required behavioral supports. Per the District e-mail, the principal met with the Complainant to further develop a new protocol to assist the service animal with providing services in the classroom. The District also submitted the [redacted]'s notes that stated on [redacted], the service animal was at school with the Complainant and "protocol in progress." The District submitted a 1-page document titled Service Dog Protocol for [the Student]; the document outlined the service animal's commands and interventions. However, the protocol did not identify the person assigned as the service animal's handler. Nor did the protocol identify any particular trainings provided to the assigned handler by the District or a third party.

OCR requested the District submit copies of any policies or procedures it has related to service animals. It did not provide any.

- **[Redacted] Change in the Student's Placement to [redacted]**

The complaint alleged that during the events concerning the Student's service animal detailed above, on [redacted], the Complainant and the Student went into [redacted] and the principal handed the Complainant a paper and told her to please sign it. When the Complainant asked what it was, the principal told her it was to [redacted] the Student. The Complainant stated that she told the principal she would not sign the document and did not know about [redacted]. She said the principal told her to call the truancy officer listed on the bottom of the form so she would not get in trouble. She said the principal asked her where she would be moving to and that the principal would call surrounding schools to learn their service dog protocols. The Complainant stated she investigated her options and the Student went on [redacted] services until they could move to another district. She said that at first the principal was delaying scheduling an IEP meeting to make this change to [redacted] but as of the [redacted] the District had scheduled an IEP meeting.

In response to this allegation, the District submitted a position statement asserting that the Student was regularly absent from school, including for a significant amount of time in [redacted]. The District stated that, in total, the Student missed [redacted] days of school between [redacted], and [redacted], and that, as a result of her significant absences, the Student's educational needs were not being met. The District stated that on [redacted], District administrators had multiple conversations with the Complainant regarding the Student's frequent absences. The District asserted that during these conversations the Complainant raised [redacted] services or [redacted] instruction as options for the Student. However, when interviewed by OCR, the principal stated that the Complainant began to inquire about the possibility of [redacted] instruction after the Student was separated from other students during the assembly on [redacted], described above.

The District stated that, pursuant to the Complainant's request for [redacted] services, on [redacted], the District provided her with paperwork for both [redacted] and [redacted] instruction. The District stated that an IEP meeting was held for the Student on [redacted], and the team agreed to change the Student's placement to [redacted] instruction, which the District asserted it immediately began providing the Student. The principal corroborated the District's version of events during her OCR interview. Specifically, the principal stated that the Complainant was the first person to suggest [redacted] instruction and advocated for [redacted] instruction during the [redacted], IEP meeting. However, the principal also stated that the Complainant expressed concerns about the Student meeting her IEP goals while on [redacted] instruction.

The District submitted documentation showing that the Student's IEP in place for the beginning of the [redacted] school year provided for the following: [redacted]. With respect to educational setting, the IEP stated that [redacted] students are provided limited opportunity for joint interaction with regular education students through participation in volunteer programs and community services offered at [redacted].

The District's documents included a copy of a letter from the principal to the Complainant dated [redacted], indicating that the principal had conducted a review of the Student's attendance records at the Complainant's request. In the letter, the principal stated the Student had a documented health condition that at times required medical appointments and caused sickness, resulting in her missing school. The letter stated that the District most recently had received a physician statement excusing her from school [redacted] for illness. The letter also stated that the District had documentation from the Complainant supporting acquisition and training needed for the service animal. The letter stated an IEP meeting was held to place the Student on [redacted] services "per her physician" and that the first [redacted] session occurred [redacted]. The attached attendance records for the Student showed [redacted] excused absences from the beginning of the [redacted] school year until the change of the Student's placement to [redacted] services.

[Redacted] notes for the Student from the [redacted] school year indicated that the Student had [redacted] at school on [redacted], the latter requiring the Complainant to pick the Student up from school. An additional note dated [redacted] stated that [redacted] and that the Student's doctors had increased her medications. The District did not provide any documentation showing the Student's IEP team had convened during the [redacted] school year to determine whether any

reevaluation or changes to the IEP were appropriate based on attendance concerns related to her disabilities.

The District's documentation showed that [redacted] issued a notice to the Complainant stating that the Student's IEP team would meet on [redacted], for her annual IEP review. Inter-District e-mails the District provided included e-mails on [redacted] between the principal and the director. The principal stated that the Complainant had requested that the Student's service animal be included in the IEP, but that the principal had "explained that it was not necessary as we can provide instruction to her daughter without a service animal" although they would "implement the service dog for [redacted] and follow all ADA guidelines." The director replied that she could capture this in the parent concern section of the IEP and explain why the team did not select the service animal option and gave an example of the reason the team could provide. The team ultimately met on [redacted], and the documentation states that this was for "Annual/Review IEP, Other [redacted] IEP." The District indicated eight District staff members participated in the [redacted], IEP; the signature page shows four.

OCR reviewed the [redacted], IEP, which states "[redacted] Parent has requested [redacted] instruction for [Student]." The IEP form further documents that the Student would be receiving [redacted] instruction from [redacted], to [redacted], [redacted] per week for [redacted] hour each session. The [redacted], IEP was signed by the Complainant. The District did not submit any documentation showing the Student was reevaluated prior to the change in her placement to [redacted] instruction, nor indicating that the team discussed the placement options. The IEP "Factors to Consider" section includes information dated [redacted] such as

[paragraphs redacted]

The District submitted a copy of a District form titled "Parent/Physician Medical Release" with the Student's name, birthdate, and contact information typed in, not signed by the Complainant, and signed by hand and completed by a physician and dated [redacted]. The physician section of the form shows handwritten checkmarks in the "No" boxes for the following questions:

1. Any medical/physical restrictions during [redacted] instruction?
2. Is there a limit of instructional time for health reasons?
3. Is there any medication being taken that could affect the student's work?

Next to the line for "Additional Comments" is a typed statement: "Receive [redacted] services for the [redacted] school year." The "School" segment of the form at the bottom is typed in with the principal's information, in the same typeset as the student information at the top of the form.

The District also submitted a copy of a District "[Redacted] Report Form" on which there is a statement for a parent to sign stating their intent to educate their child [redacted]. The form had information for the Complainant and the Student typed in but was unsigned by the Complainant. The District submitted a copy of a handwritten note with this form dated "[redacted]" that stated "[The Complainant] picked up original copy – didn't want to sign at this time."

OCR reviewed District e-mails between the principal and the District's [redacted] (the assistant superintendent) from [redacted]. The principal stated to the assistant superintendent that "the

parent of the student with the service animal” was requesting [redacted] instruction “during the time that she is in transition to a new school.” The principal’s [redacted], e-mail stated that the Complainant “is coming to get the paperwork tomorrow to have her doctor fill it out.” The assistant superintendent replied to this e-mail, indicating that the District needed to implement a new IEP for the Student regarding [redacted] instruction.

On [redacted], the Complainant notified OCR by e-mail that the District [redacted] teacher had continuously canceled [redacted] instruction. The Complainant’s concerns were not mentioned in the instant complaint. The only documents submitted by the parties regarding cancellation of [redacted] instruction was a single e-mail from the Complainant to the District on [redacted], in which the Complainant notified District staff she would be unable to attend services that morning.

According to the Complainant, the Complainant and the Student moved to a district within a different intermediate school district in [redacted] and did not return. They have since moved to a third intermediate school district in a different part of the state from the District.

### **Applicable Legal and Regulatory Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in its programs or activities by recipients of federal financial assistance from the U.S. Department of Education. Title II’s implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). In addition, the Title II regulation requires that public entities such as the District make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7).

Title II contains service-animal specific provisions at 28 C.F.R. §§ 35.104 and 35.136. The Title II implementing regulation defines a service animal as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to: assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. Under 28 C.F.R. § 35.136(a), the regulations also provide that a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Public entities must permit individuals with disabilities to be accompanied by their service animals in all areas of a public entity’s facilities where members of the public, participants in services, programs, or activities, or invitees, as relevant, are permitted to go. 28 C.F.R. § 35.136(g).



A public entity is not permitted to require documentation, such as proof that an animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that the animal is trained to do work or perform tasks for the individual with a disability, the public entity is permitted to make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability; and 2) what work or task the animal has been trained to perform. Those inquiries would not be permitted if, for example, the dog is observed guiding an individual who is blind or has low vision. 28 C.F.R. § 35.136(f).

A public entity may ask an individual with a disability to remove a service animal from the premises under certain, delineated circumstances: if the animal is out of control and the animal's handler does not take effective action to control it, if the animal is not housebroken, or if the animal poses a direct threat to the health and safety of others. 28 C.F.R. §§ 35.136(b) and 35.139. The determination of whether a service animal poses a direct threat must be based on an individualized assessment and reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 34 C.F.R. § 35.139. When there is a legitimate reason to ask that a service animal be removed, the public entity must offer the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

Allergies and fear of dogs are not valid reasons for denying access or refusing services to persons with service animals. For example, in a classroom, the individuals concerned should both be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility. Furthermore, persons with disabilities who use service animals cannot be isolated from others, treated less favorably than others, or charged fees that are not charged to others without animals.

Service animals must be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place.

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36 regarding educational setting, evaluation, placement, and procedural

safeguards. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

The Section 504 regulation at 34 C.F.R. § 104.34, further provides that a recipient shall educate, or shall provide for the education of, each qualified person with a disability in its jurisdiction with persons without disabilities to the maximum extent appropriate to the needs of the person with a disability. A recipient shall place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Section 104.35(a) of the Section 504 regulation provides that a recipient that operates a public elementary or secondary education program or activity must conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35(b) of any student who needs or is believed to need special education or related services because of disability before taking any action with respect to the student's initial placement. That provision also requires a school district to conduct an evaluation of any student who has been identified as having a disability under Section 504 before making any subsequent significant change in the student's placement. Subsection (b) requires a recipient school district to establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services. The Section 504 regulation also requires a recipient school district, in interpreting evaluation data and in making placement decisions, to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is carefully considered; and 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 the placement options. 34 C.F.R. § 104.35(c).

Section 104.36 of the Section 504 regulation further requires a recipient school district to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of a disability, need or are believed to need special instruction or related services, a system of procedural safeguards, including notice, an opportunity for the student's parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure.

### **Voluntary Resolution Prior to Conclusion of Investigation**

As a threshold matter, the evidence OCR obtained establishes that the Student has a disability as defined by Section 504 and Title II. The evidence also supports that the dog in question met the definition of a "service animal." The information submitted by the District indicates that the service animal may not have always been in control of the handler at all times. However, the evidence also shows that, although the District apparently intended for the Student's teacher to act as the service animal's supplemental handler, the District's developed protocol for the service animal did not formally identify anyone as responsible for the handling of the service animal other than the Student or the Complainant. The evidence also raises a concern as to whether the District failed to make additional modifications to its practices that were necessary for the service animal to successfully attend school with the Student. In addition, the evidence supports

that at least some exclusions of or limits placed on the use of the service animal were not related to the dog being out of control of the Complainant or a direct threat to the health and safety of others.

The evidence obtained to date also raises a concern that the District did not just exclude the service animal on the dates described above, but also excluded the Student from participating in her program at [redacted] on those dates. For example, the documentary evidence submitted by the Complainant indicated that during the weeks of [redacted], the principal suspended [redacted] for the purpose of getting “into a routine with [the service animal].”

The parties provided conflicting versions of events about how the Student came to be on [redacted] services. OCR concludes that the evidence supports that [redacted] instruction was only considered after the Complainant notified the District of her concerns that the service animal was being excluded and segregated from school activities in [redacted]. OCR notes that the District conveyed in an inter-district e-mail from [redacted], that it was unnecessary to include a provision regarding the service animal in the Student’s IEP. This may have precluded the IEP team from considering and providing additional accommodations and supports for the Student and her service animal in the classroom.

Regardless of who first proposed [redacted] instruction for the Student, the evidence to date raises concerns about this change in placement. First, OCR did not obtain any evidence supporting that the District conducted a reevaluation of the Student prior to this significant change in placement. In addition, the evidence does not support that the significant reduction and removal of services and programming in the Student’s [redacted], IEP was based on the Student’s individual needs or on evaluation data, or that the IEP team meaningfully discussed the placement options. Finally, the evidence raises concern that the change in placement did not provide for the education of the Student with persons without disabilities to the maximum extent appropriate to her needs.

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 concerns 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 March 24, 2022, 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.

## **Conclusion**

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 May 2, 2022. For questions about implementation of the Agreement, please contact OCR attorney Kiran Mikhael. Ms. Mikhael will be overseeing the monitoring and can be reached by telephone at (216) 522-4971 or by e-mail at [Anne.Mikhael@ed.gov](mailto:Anne.Mikhael@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-4709 or by e-mail at [John.Cohen@ed.gov](mailto:John.Cohen@ed.gov).

Sincerely,

/s/

John Cohen  
Supervisory Attorney/Team Leader

Enclosure