



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

December 1, 2020

Via E-mail Only to [khaggart@fremont.net](mailto:khaggart@fremont.net)

Mr. Ken Haggart  
Superintendent  
Fremont Public Schools  
450 East Pine  
Fremont, Michigan 49412

Re: OCR Docket No. XXXXXXXXX

Dear Mr. Haggart:

This letter is to notify you of the disposition of the above-referenced complaint filed on March 27, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Fremont Public Schools (the District) alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the Complainant alleged that from the beginning of the 2016-2017 school year until the end of January 2017 the District:

- 1) refused to evaluate the Student and provide him with a free appropriate public education (FAPE), even after the District had information that should have led it to suspect that the Student had a disability;
- 2) failed to provide the Student's parent with information regarding procedural safeguards; and
- 3) retaliated against the Student because his parent advocated on the Student's behalf as a student with a disability by ignoring the Student, refusing to give him the assistance he needed to succeed in school, and excessively scrutinizing and criticizing him.

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. Persons who seek to enforce their rights under these laws are also protected from retaliation. 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 conduct an evaluation of a student who, because of disability, needed or was believed to need special education or related services, in violation of Section 504’s implementing regulation at 34 C.F.R. § 104.35;
- whether the District denied a qualified student with a disability a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33;
- whether the District failed to establish and implement a system of procedural safeguards that included notice, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.36 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; and
- 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 the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504 or Title II, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61 and/or the Title II implementing regulation at 28 C.F.R. § 35.134.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District staff and administrators. All District witnesses are referred to herein by their title at the time of the events at issue in the complaint allegations.

After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulation implementing Section 504 with respect to allegation #s 1 and 2, but is insufficient to support a finding that the District retaliated against the Student as alleged in allegation #3. The bases for OCR’s determination are explained below.

### **Summary of OCR’s Investigation**

- **Allegations #1 and #2 – Alleged Failure to Evaluate the Student and Provide Parent with Information Regarding Procedural Safeguards**

During the XXXXXXXXXX school year, the year prior to the events alleged in this complaint, the Student was in the XXXXXX grade at the District’s XXXXXX XXXXXX. The Student XXXXXXXXXX XXX XXXXXXXXXX XXXXXX during the XXXXXXXXXX school year, at the request of his guardian.

The Complainant said that starting in XXXXXX XXXX and at every meeting with the District thereafter he requested that the District evaluate the Student because he knew the Student needed to be on XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX for XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX. The

Complainant said that the principal refused to look at anything the Complainant provided to support the Student’s need to XX XXXX XXXX and XXXXX XXX XXXXX. In response to these allegations the District denied that the Complainant requested to have the Student evaluated for Section 504 eligibility. District staff believed that the Complainant was primarily concerned that the Student’s teachers were not XXXXXX XXXXXX with the Student and did not XXXXX XXX XXXXX XXXXX XXXXXX XXXXXXXXX. According to the District, neither the school’s XXXXXXXXX XXXXXXXXXXXXXXXXXXXX, who was also the XXXXXX XXXXXXXXX Section 504 coordinator, nor the Student’s teachers believed that the Student needed to be evaluated for Section 504 eligibility.

The Complainant told OCR that starting in XXXX XXXX and throughout the XXXXXX he spoke with or left messages for the XXXXXX XXXXXX XXXXXXXXX, the Complainant met with District staff and administrators and at that meeting noted that the Student’s teachers XXXX XXX XXXXXXXX XXXXXX XXX XXXXXXXX XXXX. The Complainant said that he requested that the District put a plan in place to address the Student’s “XXXXXXX XXXXXX and that he presented a plan that the District would not consider. A copy of the plan the Complainant said he presented at the meeting included the following list of areas XXXXX XXX XXXXXXXX XXXXXX XXXXXXXXXXXXXXXXXXXX XXXXX XXXXXXXXXXXXXXXXXXXX XXXXX XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXX XXXXXXXXXXXXXXXXXXXX XXX XXXXX XXXXX. The Complainant said the principal and the teachers focused entirely on the Student’s XXXXX XXXXX XXXXX XXXXXX XXXXX XXXX XXXXX. Although the teachers recognized that the Student had not XXXX XXXX XX XXX XXXX XXXXX XXXXXXXXXXXXXXXXXXXX, they attributed this to XXXXX XXXXXX XXXXXX XXXX<sup>1</sup>

Immediately following the meeting and after everyone else left, the Complainant and the Student XXX XXXX XXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX that, because of the Student’s XXXXXXXX, the Student needed his teachers to check on him to ensure that he understood the work, was doing it correctly, and was held accountable when he was not. According to the Complainant, the XXXXXXXXX XXXXXXXXXXXXXXXXXXXX assured the Complainant that she would put a plan in place and share it with all of the Student’s teachers.

The XXXXXXXXX XXXXXXXXXXXXXXXXXXXX told OCR that they did not discuss a structured program for the Student or say that they would put a plan in place for him, nor did they discuss the Student’s XXXXXXXX. The XXXXXXXXX XXXXXXXXXXXXXXXXXXXX said that no one suggested that the Student be evaluated to determine his eligibility for services under Section 504, nor did they discuss Section 504 in general or give the Complainant procedural safeguards, information on due process, or information on how to request that the District evaluate the Student, because the Complainant was the only person concerned about the Student’s performance, and his primary concern was

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<sup>1</sup> X-Footer Redacted-X.

that the Student’s teachers XXXXXX XXXX XXXXX XXXX XXXX XXXXX XXXXX. Her notes from that meeting (drafted several months later) do not reference XXXXXXXX or any kind of a plan for the Student.

Although none of the meeting participants except the Complainant felt that the Student should be XXXXXXXX XX XXX XXXXXXXX XXXXX, the Student’s XXXX teacher stated that the Student would be placed in aXXXXXXX XXXX XXXXXXXX XX XXX XXXXXXXX XXX XXXXXXXX XXXXX. Nonetheless, XXX XXXXXXXXXX XXXXXXXX XX XXXXXXX XXX XXXXXXXX XXX XXXX XXX XXX XXX XXXXXXXXXX.

The Complainant said that on XXXXXXXXXX he was at the school and had a conversation with the XXXXXXXX XXXXXXXXXXXXXXXX, who told him that she would meet with the Student’s XXX teachers and “make sure they were aware of everything that was going on, including the plan to address his XXXXXXXX.”

[ X Paragraph Redacted X]

On XXXXXXXXXX XXX XXXX, the Complainant met with the XXXXXXXX XXXXXXXXXXXXXXXXXXXX and the XXXXXXXXXX XXXXXXXXXXXX. According to the Complainant, the XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX told the Complainant that she would give the Student’s teachers the plan they had discussed at the beginning of the school year. The Complainant reviewed the Student’s file after the meeting and learned that there was no documentation regarding XXXXXXXX XXX XXXXXXXX. The XXXXXXXX XXXXXXXXXXXXXXXXXXXX told OCR that she learned of the Student’s XXXXXXXX for the first time at this meeting, which she described as a XXXXXXX XXXXXXX XXXXXXX. Her notes of that meeting indicate that the Complainant said that the Student had been XXXXXXX XXXXXXXXXXXXXX for XXXXXXX since the XXXXXXX grade and that he was recently XXXXXXXXXXX XXX XXXXXXXXXXXX. Both the XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX and the XXXXXXXXXX XXXXXXXXXXXX said that no one at this meeting raised the possibility of evaluating the Student for Section 504 eligibility. The XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX said that they did, however, XXXXXXX XXXXXXX XXXXXXX XXXX XXXX XXXX, and she sent the Complainant a meeting summary by e-mail.

The summary described requests the Complainant made at the meeting for supports for the Student, but did not state whether the District agreed to implement any of the requests. On XXXXXXXXXX XXX XXXX, the Complainant met with the superintendent and, according to the Complainant, the superintendent told the Complainant that he would do a XXXXXXXXXX XXX XXXXXXXXXX XXXX XXXX XXXXX. The Complainant told OCR that the superintendent also said

that he would XXX XX XXX XXXXXXXXXXXXXXXXXXXX XXXXXXXX XXX XXXX XXXX XXX the assistant principal and the Student’s teachers to implement a Section 504 plan to address the Student’s XXXXXXXX.

[X-Paragraph Redacted-X]

[X Paragraph Redacted X]

On XXXXXXXX XXX XXXX, the Complainant requested another meeting. In his e-mail to the superintendent requesting the meeting, he stated that “XXXXXXXXXX XX XXXX XX XXXX XX XXXX XX XXXXXXXX XXX XXXXXXXX . . . XXX XXXXXXXX XXXX XXXXXXXX XXX XXXXXXXX XX XXX XXXXXXXXXXXXXXXX XXX XXXX XXXXXXXX XXX XXXX.” On XXXXXXXX XXX XXXX, the Complainant sent an e-mail to the assistant principal stating that because this was the XXXXXXXX meeting he has had to ask for during the XXXXXXXX school year (including two meetings on XXXXXXXX XX), and because the same staff members had been unable to identify and resolve the problems with the Student, the Complainant felt it “necessary” to have an XXXXXXXX XXXXXXXXXXXXXXXXXXXX from the XXXX XXXXXXXX at the meeting.

The meeting occurred on XXXXXXXX XXX XXXX, and initially included the superintendent, XXXXXXXX XXXXXXXX administrators, and staff members (no XXXX XXXXXXXX XXXXXXXXXXXXXXXXXXXX was invited). However, the meeting XXXXXXXX XXXXXXXX and the superintendent asked everyone but the assistant principal and the Complainant to leave. The assistant principal’s notes from the meeting included the statement that the Complainant “XXXX X XXXXXXXX XX XXX XXXXXXX XXXXXXX X XXX XXXX XXXX XXX XXXX XXXXXXXX XX XXXXXXXX XXX X XXX XXX XXXXXXX XX XXX XXXXXXXX XXX X XXX XXXX XXXX XXX XXXX XXXX XXX XXXX XXXX XXXXXXXX.” The following day, the Complainant XXXXXXXX XXX XXXXXXX XXXX XXXXXXX XXXXXXX.

The assistant principal reiterated what the XXXXXXXX XXXXXXXXXXXXXXXXXXXX and the superintendent told OCR, that in general the District thought that the Student was doing fine and should be in the XXXXXXX XXXXXXX. The assistant principal acknowledged that the XXXX teacher had some concern and that the Student had XXXXXXXXXXXXXXXXXXXX X support in XXXX the previous year. The District produced a form, titled “XXXXXXXXXX XX XXXXXXXXXXXXXXXXXXXX XXXX,” showing that during the previous (XXXXXXXXXXXX) school year the Student received XXXXXXXX XXXXXXX XXXXXXX XXXX and XXXXXXX XXXXXXXX for XXXXXXX XXXXXXX. Notes in the XXXX area of the form stated that “[the Student] XXXX XXX XXXXXXX XXXXXXX XX XXXX XX XXX XX. XX XXXXXXX XXXXXXXX XX XXXX XXX XX XX XXXX XX XXXXXXX.” Notes in the XXXXXXX XXXXXXXX section stated that “[the Student] is XXXXXXX XXXXXXXX from the XXXXXXXX XXXXXXXXXXXXXXXXXXXX XXX XXX XXXXXXX XXXXXXX.”

District witnesses uniformly stated that only the Complainant believed that the Student was XXXXX XXXXXXXX XXXXXXXX XXXXXXXXXX XXXXXXXXXX XX XXXXXXX XXXX XXXX XXXX XXXX, and for this reason no one discussed Section 504 with the Complainant.

The Complainant told OCR that no one ever gave him information regarding procedural safeguards or his rights with respect to the District’s decisions about the Student. The District acknowledged that this was true, and also that no one from the District gave the Complainant information regarding how to request an evaluation of the Student to determine his eligibility under Section 504 or how to challenge any District decision to not evaluate the Student. The XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, who as mentioned above was the school’s XXXXXXXXXX XXX XXXXXXXXXXXXXXX, stated that although documents with this information are included in the Newaygo County Regional Educational Service Agency (NC RESA) Section 504 Manual, which the District uses, the District only provides parents or guardians this information after it determines to evaluate a student for Section 504 eligibility, and thus no one gave the Complainant this information.

OCR reviewed the NC RESA Section 504 Manual the District indicated it was following. The manual states that “Section 504 falls under the responsibility of the general education program.” The referral process to initiate a Section 504 evaluation as described in the manual starts with a Child Study Team or Student Intervention Team. Checklists, best practices, and flow charts that are included in the Section 504 Manual indicate that the District initiates one of these teams when a teacher or parent identifies a concern. Factors to consider in referring a student that are listed in the manual include whether students are mastering core content standards after a reasonable period of time, whether students with “severe XXXXXXXXXX XXXXXXXXXX concerns” can be accommodated in the classroom using strategies, and parent requests. The manual describes the intervention process as potentially lasting 9 weeks or more, and that if interventions are not effective either new interventions are tried or at that point a student might be referred for a Section 504 or special education evaluation. The school’s behavior interventionist confirmed to OCR that this is the process the District follows, and that interventions are typically tried for 6 weeks. If they are effective, the student is not referred for a Section 504 evaluation. If they are not effective, at that point the District might start consideration of Section 504 eligibility.

With respect to Section 504 eligibility, the manual states that in determining the severity of a student’s disability in order to assess whether it “substantially limits” a major life activity, the team should consider whether “the impact of the impairment [can] be mitigated through the use of assistive technology, medication or other means”. The principal told OCR that reading was a key factor in an intervention team’s assessment of whether a student should be referred for a Section 504 evaluation.

- **Allegation #3 – Alleged Retaliation**

The Complainant also alleged that the District retaliated against the Student because he advocated on the Student’s behalf as a student with a disability. Specifically, the Complainant alleged that after he requested to XXXX XXX XXXXXXXXXX XXXX and put him on a plan the District refused to give the Complainant the Student’s XXXXXXXXXX XXXX XXXX XXXXXXXXXXXXXXXXXXXX XXXXXX XXX XXXXXXX XXXX XXXXXXX and they would not address the Student’s XXXXXXXXXX. He said the District XXXXXXXXXX XXX XXXXXXXXXX XXXXXXXXXX XX XXXX XXX XXX XXXXXXXXXXXXXXXXXXXX XX XXXXXXX XXX XXXXXXXXXX XX XXXXXXXXXX XXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXX XXXXXXXXXX XXX XXXXXXXXXX XXX





The assistant principal told OCR that although the Complainant thought that the Student’s teachers XXXX XXX XXXXXXXXXXX XXXXXX XXXX had a XXXXXXXXXXX XXXXXXXXXXXX XX XXX, the assistant principal did not believe that there was any XXXXXXXXXXXX XXXXXXXX these teachers and the Student. The assistant principal told OCR that the Complainant requested that District staff XXXXXXXXXXX XXXXX XXXXXXXXXXXXXXXX XXXX XXX XXXXXXXX XXX XXXXXXXX XX XXXX, which may be why he XXXXXXXX XXXX XXXX XXXXXXXXXXXXXXXXXXX XXX XXXXXXXX XXXX. The meeting summary from the XXXXXXXXXXX XXX XXXX, meeting, mentioned above, stated that the Complainant gave the following “thoughts/requests” at the meeting, including that District staff X-Remainder of Paragraph Redacted-X.

The District’s XXXXXXX records for the Student show that the Student was XXXXXXX XXXXXXX XXXXXXX in the second half of the XXXXXXXXXXX school year, prior to the Complainant’s advocacy on his behalf related to his XXXXXXX, as he was after the Complainant began complaining about the services the District was providing the Student during the first half of the XXXXXXXXXXX school year. The Student’s XXXXXXX records also show that the Student received similar XXXXXXX (XXXXXXXXXXXX) for similar XXXXXXX before and after the asserted protected activity.

### **Applicable Regulatory Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified person with a disability in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. An appropriate education for purposes of FAPE 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 developed in accordance with the procedural requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities. Major life activities, as defined in the Section 504 regulation at 34 C.F.R. 104.3(j)(2)(ii), as amended by the Americans with Disabilities Act Amendments Act of 2008, include functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of major bodily functions, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. These lists are not exhaustive.

In determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, a school district must not consider the ameliorating effects of

any mitigating measures that student is using. Mitigating measures that may not be considered include: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications. The Section 504 regulation, at 34 C.F.R. § 104.35(a), further provides that a recipient school district must conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial placement in regular or special education and any subsequent significant change in placement.

As a first response to address the needs of any student experiencing challenges at school or in the classroom and prior to conducting an evaluation, many school districts choose to implement different intervention strategies, regardless of whether or not the student is suspected of having a disability. However, if the district suspects that a student has a disability and because of the disability needs special education or related aids and services, it would be a violation of Section 504 to delay the evaluation in order to first implement an intervention that is unrelated to the evaluation, or to determining the need for special education or related aids and services. Implementation of intervention strategies, such as interventions contained within a school's RTI program, must not be used to delay or deny the Section 504 evaluation of a student suspected of having a disability and needing regular or special education and related aids and services as a result of that disability.

A school district must evaluate a student if it has reason to believe the student has a disability and the student needs special education or related services as a result of that disability, even if the student only exhibits behavioral (and not academic) challenges.

Section 104.36 of the Section 504 regulation provides that a recipient school district must establish and implement a system of procedural safeguards 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. Under this section, the notice of procedural safeguards must include 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. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Finally, the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R § 100.7(e), which is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61, prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

In analyzing retaliation claims, OCR examines whether: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity. Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

Protected activity includes participation in an investigation, proceeding, or hearing under OCR’s regulations; actions taken in furtherance of a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR; or expression of opposition to any practice made unlawful by a statute or regulation that OCR enforces. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual’s position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions.

Causal connection between protected activity and adverse action may be established through either direct or circumstantial evidence. Direct evidence consists of a recipient’s written statement, oral statement, or action demonstrating unambiguously that the recipient took the adverse action because the individual engaged in a protected activity or for the purpose of interfering with protected activities. Circumstantial evidence of retaliatory motive can include (but is not limited to): changes to treatment of the individual after protected activity; the proximity in time between protected activity and the adverse action; the recipient’s treatment of the individual compared to others; or the recipient’s deviation from established policies or practices.

### **Analysis and Conclusions**

With respect to allegations ## 1 and 2, OCR finds that the preponderance of the evidence supports the conclusion that the District failed to timely evaluate the Student in violation of Section 504 as alleged. OCR further finds that the District failed to provide the Complainant with procedural safeguards including notice of its determination not to evaluate the Student and his right to challenge the District’s determination.

The evidence shows that as early as XXXX XXXX the Student’s XXXXX shared his concerns with the principal regarding the Student’s XXXXXXXXXXXXX in school and his need for XXXXX XXXX XXXXXXXX to address his XXXXXXXX. Between XXXX XXXX and XXXXXXXX XXXX, the Complainant expressed these concerns with District staff and administrators on numerous occasions. The Complainant shared that the Student had XXXXXXXX, stated he was XXXXXXXXXX XXX XXXXXXXXXX, XXXX XXX XXXXXXXX XXXX X XXXXX XXX XXXXX XXX XXXX XXXXX XXXX XXXXXXXXXX XXX XXXX XXXXXXXX XX XXX XXXXXXXXXX XXX XXX XXXXXXXXXX XXXXXXXX XX XXXXXXXX. By early XXXXXXXXXX, at least one of the Student’s teachers noted the Student’s XXXXXXXXXX XXXXXXXX in class and XXXXXXXXXX as causing his XXXXXXXX XX XX XXXXX. Throughout this time, the Complainant repeatedly requested a plan for providing the Student services that would help him XXXXX and XXXXXXXXXX XXX XXXXXXXXXX.

Because of the Complainant's repeated requests for meetings, plans, and services for the Student, related to the Student's XXXXXXXX, and the documented concerns of its own staff, the District should have either conducted a Section 504 evaluation or, if the District did not have reason to suspect the Student had a disability as defined by Section 504, provided the Complainant with notice of its determination not to evaluate and how to challenge the District's decision by requesting an impartial hearing. The District acknowledged that it did not give the Complainant any information on Section 504, nor did it consider, or even discuss, the possibility of evaluating the Student for Section 504 eligibility, and it further acknowledged that it did not give the Complainant information regarding procedural safeguards.

The evidence obtained during the investigation showed that, in its actions concerning the Student, the District was following a NC RESA manual that is inconsistent with Section 504 requirements. For example, the procedures state that the District can consider mitigating measures when determining whether a student is substantially limited in a major life activity. The Section 504 procedures also include a lengthy intervention process that could lead to delays in Section 504 evaluations when a student, because of disability, needs or is believed to need services under Section 504, and do not require a student to be referred for evaluation in all cases where a disability is suspected.

For these reasons, the evidence is sufficient for OCR to conclude that the District failed to evaluate the Student and to give the Complainant his procedural safeguards in violation of the Section 504 regulation at 34 C.F.R. §§ 104.35(a) and 104.36.

With respect to allegation #3, the evidence shows that starting as early as XXXX XXXX the Complainant engaged in protected activity when he requested that the District meet with him to discuss concerns he had about the Student's XXXXXXXXXXXXXXXXXXXXXXX, his XXXXXXXX, and the possibility of XXXXXXXXXXX XXX XXXXXXX and providing him with services during the XXXXXXXXXXX school year.

However, some of the actions the Complainant alleged as retaliatory, even if they occurred as alleged, do not constitute adverse actions for purposes of the Section 504 and Title II prohibitions against retaliation. For example, the Complainant alleged that the Student's teachers XXX XXX XXX XXXXX XX XXX XX XXX XXXX XXX XXX XXX XXXX XX XXX. These actions, while they may be petty slights if they occurred, do not constitute adverse actions. The Complainant also alleged that teachers XXXXXXX XXXXX XXXXXXX XXXXXXX XXXXX XXXXX. However, this also does not constitute adverse action. Finally, the Complainant alleged that the District would not XXXX XXX XXX XXXXXXXXXXX XXXXX XXXXXXXXXXX XXXXXXX. The evidence supports that when the Complainant next requested XX XXX XXXX the District did not deny the Complainant XXXXXXX. The Complainant was able to XXXXXXX XXX XXXXXXXXXXX XXXX, XXXXXXXXXXX XXX XXXXX XXXX XXXXXXX, in XXXXXXXXXXX XXXX. These alleged actions by the District would not be likely to dissuade a reasonable person in the Complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR

Additionally, there is insufficient evidence of a causal connection between the Complainant's protected activity starting in XXXX XXXX, when he requested a meeting to discuss the Student, and

most of the alleged adverse actions. The Complainant requested some of the actions that he alleged as adverse. For example, he X-Remainder of Paragraph Reacted-X.

X-Paragraph Redacted-X

Finally, the Complainant complained that many of the actions that he cited as adverse had been occurring prior to the protected activity. For example, X - Remainder of Paragraph Redacted-X.

For the above-stated reasons, the evidence is insufficient to support the conclusion that the District retaliated against the Student in violation of Section 504 or Title II as alleged.

### **Voluntary Resolution and Conclusion**

For these reasons, OCR finds the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 with respect to allegation #s 1 and 2, but is insufficient to support a finding that the District retaliated against the Student as alleged in allegation #3.

On December 1, 2020, OCR received the enclosed Resolution Agreement signed by the District, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. 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.

The complainant has a right to appeal OCR's insufficient evidence determination with respect to allegation #3 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 **December 8, 2020**. For questions about implementation of the Agreement, please contact XXXXX XXXXXXXXXX XXXXXXXX, the OCR attorney who will be overseeing the monitoring. XXX XXXXXXXXXX XXXXXXXX can be reached by e-mail at [XXXXXXXXXXXX@ed.gov](mailto:XXXXXXXXXXXX@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at [Brenda.Redmond@ed.gov](mailto:Brenda.Redmond@ed.gov).

Sincerely,

*Brenda Redmond* 2020.12.01  
15:26:35 -05'00'

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure