



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

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NEW YORK, NY 10005-2500

REGION II  
NEW JERSEY  
NEW YORK  
PUERTO RICO  
VIRGIN ISLANDS

June 15, 2015

Joseph Martino  
Executive Director  
The Norman Howard School  
275 Pinnacle Road  
Rochester, New York 14623

Re: Case No. 02-14-1494  
Norman Howard School

Dear Mr. Martino:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Norman Howard School (the School). The complainant alleged that the School failed to respond appropriately to complaints that students subjected her daughter (the Student) to harassment, on the basis of her sex, from school year 2013-2014 to in or around November 2014 (Allegation 1). The complainant also alleged that a School xxxxxxxxxx retaliated for her complaints of discrimination on the bases of sex, race and disability filed on behalf of the Student, by refusing to work with the Student from the end of school year 2013-2014 to in or around November 2014 (Allegation 2).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department); Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department; Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. The School is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI, Title IX, and Section 504.

The regulations implementing Section 504, at 34 C.F.R. § 104.61, and Title IX, at 34 C.F.R. § 106.71, incorporate by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

In its investigation, OCR interviewed the complainant and School staff. OCR also reviewed documentation that the complainant and the School submitted. OCR made the following determinations.

*Title IX's Procedural Requirements*

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the educational program or activity which it operates and that it is required by Title IX not to discriminate in such a manner.

In addition, the regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. The recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed. Additionally, OCR policy states that recipients should provide the electronic mail (email) address of the designated Title IX coordinator.

Further, the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (2) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint (both parties must be notified, in writing, about the outcome of both the complaint and any appeal); and (6) an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

*Title IX Coordinator*

During the course of OCR's investigation, OCR determined that the School had failed to designate a Title IX Coordinator as required by the regulation implementing Title IX, at 34 C.F.R. § 106.8(a). On March 9, 2015, the School provided OCR with documentation indicating that it had designated the Co-Head of the School as the Title IX Coordinator, and published this information and the Title IX Coordinator's contact information (including name, mailing address, phone number and email address) in the Parent Handbook; however, OCR determined that the identification of the Title IX Coordinator was not widely disseminated enough to ensure that students and employees are appropriately notified of the designation.

*Grievance Procedures*

OCR determined that the School has a Student Harassment and Bullying Prevention and Intervention Policy (the Policy) that prohibits all forms of discrimination and harassment, including on the basis of sex and gender. Pursuant to the Policy, students (or parents on behalf of those students) who believe they have been subjected to discrimination/harassment are encouraged to make a written or oral complaint. Additionally, all school personnel have a duty to report any harassment/discrimination that they observe, or of which they become aware. The Policy states that any reported instances of discrimination/harassment will be referred to the appropriate personnel for an investigation; the results of the investigation will be provided to the targeted student and alleged offender, as well as to their parents; and the parties will be provided information regarding their rights if they are not satisfied with the outcome.<sup>1</sup> The Policy also contains a prohibition against retaliation. OCR determined, however, that the Policy does not apply to complaints alleging harassment by third parties; lacks timeframes for the major stages of the grievance process; and does not provide an opportunity for the parties to submit witnesses or other evidence, and an assurance that the School will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate. Therefore, OCR determined that the School had failed to adopt and publish grievance procedures for the prompt and equitable resolution of complaints of sex discrimination/harassment.

*Non-Discrimination Notice*

OCR determined that the School has a notice of nondiscrimination, found in the Parent Handbook; the Employee Handbook; and on its webpage for employment opportunities. The Notice prohibits discrimination or harassment on the basis of race, color, religion, national origin, ancestry, sex, age, marital status, familial status, sexual orientation, disability or status as a disabled veteran or a veteran of the Vietnam era and applies to admissions, employment, and access to the School's programs and activities. OCR determined that the Notice failed to identify or provide contact information for the School's Title IX Coordinator or indicate that inquiries concerning the application of the regulation implementing Title IX may be referred to the Title IX Coordinator or to OCR as required by regulation implementing Title IX, at 34 C.F.R. § 106.8(a).

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<sup>1</sup> The Policy does not contain a right to appeal, but instead states that the parties will be advised of local policies regarding how to proceed.

In addition to requirements under the regulation implementing Title IX, the regulations implementing Section 504, the Age Discrimination Act, and the Boy Scouts Act contain requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not discriminate. (See 34 C.F.R. §§ 104.8, 110.25, and 108.9, respectively.)

The regulation implementing Section 504, at 34 C.F.R. § 104.8, requires a recipient's notice of non-discrimination to indicate that the recipient does not discriminate on the basis of disability; and, state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notice is also required to include identification of the responsible employee designated to pursuant to 34 C.F.R. § 104.7(a) to coordinate its efforts to comply with the regulation implementing Section 504. Further, pursuant to 34 C.F.R. § 104.8(b), if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it must include the Notice in those materials or publications. During the course of reviewing the notice of non-discrimination for compliance with the regulation implementing Title IX, OCR determined that the Notice directs inquiries and/or complaints to the School's 504 Coordinator, but does not provide the contact information for the 504 Coordinator.

The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25, requires recipients to notify beneficiaries and others of the identity of its Age Discrimination Act coordinator.<sup>2</sup> OCR determined that the School's Notice failed to identify its Age Discrimination Act Coordinator.

The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires a recipient to notify beneficiaries and others that it provides equal access to the Boy Scouts and other designated youth groups.<sup>3</sup> OCR determined that the School's Notice failed to state that the School provides equal access to the Boy Scouts and other designated youth groups.

Based on the above, OCR determined that the School failed to publish an adequate notice of non-discrimination.

On June 10, 2015, the School agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with regard to the School's Title IX Coordinator, Title IX grievance procedures and non-discrimination notices. OCR will monitor the implementation of the resolution agreement. If the School fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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<sup>2</sup> The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25(b), states that the notification must identify the responsible employee by name or title, address and telephone number.

<sup>3</sup> The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires this by reference to the regulation implementing Title VI at 34 C.F.R. § 100.6(d).

Allegation 1

With respect to Allegation 1, the complainant alleged that the School failed to respond appropriately to complaints that students at the School had subjected the Student to harassment, on the basis of her sex, from school year 2013-2014 to in or around November 2014. Specifically, the complainant alleged that she and/or the Student made the following complaints to School officials:

- In January 2014, the complainant notified the School that students at the School had been harassing the Student, on the basis of her sex, by posting about the Student on social network sites beginning in October/November 2013 (Allegation 1(a));
- By letter, dated May 28, 2014, the complainant complained to the School that students at the School had harassed the Student, on the basis of her sex, during school year 2013-2014 (Allegation 1(b)); and
- On June 2, 2014, September 8, 2014, September 12, 2014, and October 2, 2014, the Student recorded notes in a journal of additional instances of alleged sexual/sex-based harassment (Allegation 1(c)).<sup>4</sup>

Harassment based on sex, which can include verbal, written, graphic, physical, or other conduct by an employee, a student, or a third party, are forms of discrimination prohibited by the regulation implementing Title IX. Harassment can create a hostile environment if it is sufficiently serious to limit an individual's ability to participate in, or receive benefits, services, or opportunities from the institution's program. If OCR determines that harassing conduct occurred and the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

With respect to Allegation 1(a), the complainant alleged that in January 2014, she notified the School that students had been harassing the Student, on the basis of her sex, by posting about the Student on social network sites beginning in October/November 2013. The complainant alleged that the School failed to respond appropriately to this complaint.

The Student was xx years old and in the xxx grade at the School during school year 2013-2014. OCR determined that on January 13, 2014, the complainant complained to the School via a telephone call to one of the School's Co-Heads (Co-Head 1) that the Student's classmates had subjected her to harassment on the basis of her sex, by placing postings about the Student on social network sites. Specifically, the complainant complained that the postings questioned the validity of the Student's statements that she had been the xxxxxxxxxx in the past. The

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<sup>4</sup> The complainant and/or Student also reported several other complaints and/or incidents of bullying/harassment that were not related to sex or any other protected basis, and some in which the Student was the actor.

complainant did not allege that the postings contained any other language that she believed constituted sexual harassment.

OCR determined that the School's xxxxx met with the Student on January 14, 2014, who confirmed the complainant's allegation. Additionally, the Student reported a number of other incidents of alleged sexual harassment that had occurred over the prior few months, including that a male student (Student A) made a sexual gesture in xxxxxx class to a female student (Student B); Student A was involved in rough-housing during gym with another male student; Student A told another female student that she was a "ho" and looked like a porn star; and Student A called a male student "gay". The Student also gave the xxxxxx the names of six students whom she stated were involved in the alleged harassment of her on the internet; including Student A, Student B, two other male students (Students C and D), and another female student (Student E). Neither the complainant nor the Student provided any documentation to the School to support their allegation, such as copies of the alleged postings.

The xxxxxxx stated that she began her investigation by speaking with Student A on January 14, 2014. The xxxxxxx informed OCR that Student A denied knowing anything about the alleged sexual harassment. After speaking with the xxxxxxx, Student A, visibly upset, returned to xxxxxxx class, xxxxxxxxxxx was the Student. Student A threatened to 'pop' whoever was spreading rumors about him; and, a conversation ensued between Student A and the Student. Thereafter, Student A and the Student had a physical altercation. As a result of the altercation, the Student went to the xxxxxxx; the xxxxxxx filed a police report; and both students were picked up by their parents. Student A xxxxxxx after the incident on January 14, 2014.<sup>5</sup> The two Co-Heads of the School (Co-Head 1 and Co-Head 2), and the xxxxxx met with the complainant on January 17, and 29, 2014, to discuss the School's response to the altercation on January 14, 2014.

The xxxxxxx informed OCR that as a result of the physical altercation between the Student and Student A, she did not complete her investigation of the complainant's and Student's allegations of sexual harassment. The xxxxxxx admitted that she did not check social media to corroborate the complainant's allegations; interview Student A about the specific allegations made against him; or speak with any of the other students the Student identified. The xxxxxx informed OCR that Co-Head 1 spoke with two other students,<sup>6</sup> who denied knowledge of any sexual harassment. The xxxxxxx informed OCR that she was unable to conclude that the Student was being subjected to ongoing harassment based on her sex.

Based on the above, OCR determined that the complainant placed the School on notice on January 13, 2014, that sexual harassment was potentially occurring; and the Student confirmed the allegations on January 14, 2014. OCR determined that in response to the complainant's complaint and the Student's report, the School xxxxxx and Co-Head 1 conducted an investigation by speaking with one of the alleged harassers and two other students thought to have knowledge of the harassment; however, OCR determined that the xxxxxx questioned Student A, generally, and did not investigate the alleged social media postings or the other

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<sup>5</sup> OCR determined that Student A xxxxxx because of the physical altercation, not because of a finding that he had engaged in sexual harassment.

<sup>6</sup> The School did not indicate with which two students Co-Head 1 spoke.

alleged sexual conduct the complainant and Student reported. Therefore, OCR determined that the School failed to respond appropriately to the complainant's and Student's allegations of sexual harassment made on January 13 and 14, 2014.

On June 10, 2015, the School agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with regard to Allegation 1(a). OCR will monitor the implementation of the resolution agreement. If the School fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 1(b), the complainant alleged that by letter, dated May 28, 2014, she complained to the Executive Director of the School that students had harassed the Student, on the basis of her sex, during school year 2013-2014. The complainant alleged that the School failed to respond appropriately to this complaint.

OCR's review of the complainant's letter, dated May 28, 2014, revealed that the complainant complained of various incidents of alleged bullying and harassment. The complainant reiterated her complaints that in or around January 14, 2014, Student A and Student B made sexual gestures and used slang terms to describe fellatio; a group of students, including Student A, Student C, Student D, Student E, and two other male students (Students F and G) had harassed and intimidated the Student;<sup>7</sup> and, Students A and B had mocked the Student, saying that she "was a snitch and [had] lied xxxxxxxx." The complainant further stated that since returning to School, some of the students had continued to harass and intimidate the Student.

In response to the complainant's letter of May 28, 2014, the xxxxxxxx promptly started an internal investigation by interviewing the Student the following day.<sup>8</sup> During this interview, the xxxxxxxx stated that she asked the Student for more specific information regarding her concerns, and that the Student shared examples of behaviors that she felt were harassing. Specifically, the xxxxxxxx stated that the Student told her that Student C, a male student, moved the Student's chair during xxxxxx; and, Student F, a male student, bumped into her in the hallway, sent other students into xxx class to "harass"<sup>9</sup> her and xxxxxxxx during xxxx class. The xxxxxxxx stated that the Student did not mention any sexual or sex-based harassment.

Even though the complainant again raised allegations that she and the Student had previously raised on January 13 and 14, 2014, OCR did not find any evidence that the xxxxxxxx reviewed the allegations from January 13 and 14, 2014, with the Student, or spoke with anyone else regarding those allegations. The xxxxxxxx said she encouraged the Student to report any of her concerns to 'Triage,' a room managed by a staff member throughout the day to address concerns students may be experiencing. She stated that she also advised the Student that if she felt uncomfortable, she should bring concerns to a teacher's attention, either during or after class. The xxxxxxxx stated that she also spoke with the Student's teachers, who informed her that the students the

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<sup>7</sup> The complainant did not allege that this was sexual harassment. Rather, the complainant alleged that the students followed close behind the Student in the hallways; came into her classes and into the library; talked about guns and killing people; and, encouraged other students to go into her classes and "intimidate" her.

<sup>8</sup> The xxxxxxxx also met with the Student on a weekly basis to provide individual counseling, as required by the Student's Individualized Education Program (IEP).

<sup>9</sup> As stated above, the Student did not allege that this was sexual harassment.

complainant and Student had mentioned had not been engaging with the Student or coming into her classes without a reason. The counselor stated that she also spoke with the xxxx teacher, who could not corroborate the Student's allegations; and stated that he had not witnessed any inappropriate behavior by Student F during xxxx class. The School stated that it could not corroborate any of the complainant's allegations of sexual or sex-based harassment; however, OCR found no evidence that the School investigated these allegations. The xxxxxx stated that she, nevertheless, made the Student an ongoing agenda item for Team<sup>10</sup> discussion, and requested that teachers monitor the Student's peer interactions in both structured and unstructured areas and report any harassing behavior regarding the Student to either herself or to Co-Heads 1 and 2. OCR determined that the xxxxx did not interview any of the students named by the complainant. OCR determined that on June 25, 2014, School personnel, including its Executive Director, Co-Head 1 and its Director of Human Resources, met with the complainant, the complainant's attorney, and the Student's xxxxxx to discuss the complainant's concerns described in the letter of May 28, 2014, and regarding the physical assault that occurred on January 14, 2014.

Based on the above, OCR determined that the School investigated the then new allegations, albeit not sexual in nature, that the complainant and Student reported on May 28, 2014; however, the School took no action to revisit the complainant's and Student's allegations of sexual harassment from January 13 and 14, 2014, which the complainant had raised again on May 28, 2014. The School failed to interview the named students or otherwise follow up on the complainant's allegations from January 2014. Therefore, OCR determined that the School failed to respond appropriately to the complainant's allegations of sexual harassment made on May 28, 2014.

On June 10, 2015, the School agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with regard to Allegation 1(b). OCR will monitor the implementation of the resolution agreement. If the School fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 1(c), the complainant alleged that on June 2, 2014, September 8, 2014, September 12, 2014, and October 2, 2014, the Student recorded notes in a journal of additional instances of alleged sexual/sex-based harassment, which the complainant alleged the Student reported orally to the xxxxxx during counselling sessions. The complainant alleged that the School failed to respond appropriately. Specifically, the Student wrote in her journal that:

- on June 2, 2014, she left xxxxxx class to get a computer from another classroom, and a male student (Student H) said in the hallway, "I can still taste sperm in my mouth," and another male student (Student I) repeated the comment;
- on September 8, 2014, during xxxxxx class, a male student (Student J) "is always making masturbation gestures with his hand" and another male student (Student K) told Student J that he needed to "open his mouth and slurp;"<sup>11</sup>

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<sup>10</sup> The Team is made up of all 11<sup>th</sup> and 12<sup>th</sup> grade teachers.

<sup>11</sup> The Student further wrote that Students B, C, and F called her a liar with respect to the incident of January 14, 2014, involving Student A.



- on September 12, 2014, during xxxxxx, a male student (Student L) mumbled “ho” when the Student was leaving the room; during xxxxxx class a male student (Student M) pointed at her and laughed, and during lunch, a male student (Student P) and a female student (Student N) made comments about a girl fight; and
- on October 2, 2014, in the hallway with two female students present (Student B and Student O) and two male students (Student G and Student M ) were saying, “Dick sucked, sucked dick.”<sup>12</sup>

The complainant stated that she had instructed the Student to memorialize the alleged harassment she experienced in her classes, but that she told the Student not to share her written reports with the School. The complainant stated that the Student nevertheless orally reported the incidents to the xxxxxxxx.

The xxxxxxxx denied that the Student ever reported to her any of the alleged incidents or concerns noted in the journal regarding Students B, C, H, I, J, K, L, M, N, O or P. The xxxxxxxx also denied that she otherwise had notice of the alleged incidents. The xxxxxxxx stated that during her weekly counseling sessions with the Student, she had ongoing conversations with the Student about reporting concerns of harassment by either going to Triage or reporting alleged incidents to a teacher; but, the Student did not raise any of the alleged incidents with her during the counseling sessions. The xxxxxxxx noted that the School has a total of 120 students in grades 5-12; and often there were only 2-3 students in the Student’s classes. Therefore, if inappropriate conduct had been occurring, a School staff member would have observed it and taken action.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that a preponderance of the evidence substantiated the complainant’s assertions that the Student complained to the xxxxxxxx about the incidents alleged in Allegation 1(c). Accordingly, OCR could not conclude that the xxxxxxxx had actual or constructive notice of the incidents alleged in Allegation 1(c). Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the School failed to respond appropriately to complaints regarding incidents that allegedly occurred on June 2, 2014, September 8, 2014, September 12, 2014, and October 2, 2014, which the Student recorded in her journal. Accordingly, OCR will take no further action regarding Allegation 1(c).

The School informed OCR of an instance of alleged harassment, on the basis of sex, that the Student reported to the School on or about October 23, 2014 (Allegation 1(d)). On or about October 23, 2014, the Student reported to the xxxxxxxxx that Student M walked into her classroom and said, “Something smells in here – somebody must need to wash their pussy”; and that it was likely that the teacher heard the remark.

The xxxxxxxxx stated that in response to the Student’s complaint, she interviewed the Teacher, who denied that he heard the alleged remark. The Teacher stated that he was positioned in the front of the classroom, and the Student sat in the back of the classroom. The Teacher asserted

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<sup>12</sup> OCR determined that the Student made complaints regarding Students G and M to the counselor in or around October 2014, which are detailed below in Allegation 1(d).

that if the remark had been made as the Student alleged, he would have heard it. The xxxxx informed OCR that Co-Head 1 interviewed Student M, who denied making any sexual comments. In relaying the results of her investigation to the Student, the Student made additional allegations concerning Student C and Student M, neither of which was sexual in nature.<sup>13</sup>

OCR determined that School staff investigated the complaint that the Student made on or about October 23, 2014, but were unable to substantiate that the incidents occurred as the Student alleged. Based on the above, OCR determined that there was insufficient evidence to conclude that the School failed to respond appropriately to the Student's complaint of sexual harassment made on or about October 23, 2014. Accordingly, OCR will take no further action regarding Allegation 1(d).

### Allegation 2

With respect to Allegation 2, the complainant alleged that the School's xxxxxxx retaliated for her complaints of discrimination on the bases of sex, race and disability filed on behalf of the Student, by refusing to work with the Student from the end of school year 2013-2014 to in or around November 2014. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/alleged injured party suffered an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activities on January 13, 2014, and by letter dated May 28, 2014, by making complaints of alleged incidents of sex-based harassment of the Student, and informing the School that she believed that the Student was entitled to 'protections under state and federal law to protect her from physical harassment, discrimination and verbal abuse' under Section 504, Title VI, Title IX and Title II of the ADA. The complainant further stated that the School has a duty to fully investigate all allegations of discrimination that she and others report; and asked the School to take appropriate action going forward. OCR determined that the School was aware of the complainant's protected activities.

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<sup>13</sup> The Student reported that Student C came to her homeroom every morning and sat next to her or stood behind her, but admitted that Student C did not say anything offensive or sexual in nature to her. The xxxxxxx spoke with the Student's xxxxxxx teacher, who stated that Student C came into the room to speak with him or another teacher, but that he did not engage with the Student in any way. The Student also reported that Student M said, "expose" or "exposé," but did not provide specific details, and was not sure what it meant or if the comment was directed at her. The xxxxx stated that she did not investigate the alleged comment further as the Student could not give her any specific information regarding the alleged incident.

The Student's IEP, dated May 5, 2014, recommended the Student receive xxxxxxxx services two times per six-day cycle for 30 minutes. OCR reviewed the xxxxxx logs for the period from January 2014 through December 2014, during which time xxxxxxx provided the Student with xxxxxxx services. OCR determined that during this period, any occasions on which the xxxxxxx did not provide the Student with services were due to the Student's absences,<sup>14</sup> the xxxxxxx absences,<sup>15</sup> or other events, such as the Student's CSE meeting being scheduled at the time she typically received therapy.<sup>16</sup> OCR did not find any evidence indicating that the xxxxxxx refused to work with the Student or that the Student did not receive xxxxxx services, other than for the reasons indicated above during school year 2013-2014 to the present.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that there were any occasions on which the xxxxxxx refused to work with the Student. Absent an adverse action, OCR does not proceed further with the retaliation analysis. Accordingly, OCR will take no further action with respect to Allegation 2.

This letter should not be interpreted to address the School's compliance concerns 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 School 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 should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

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, it 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.

If you have any questions regarding OCR's determination, please contact Marykate O'Neil, Compliance Team Attorney, at (646) 428-3814 or [marykate.oneil@ed.gov](mailto:marykate.oneil@ed.gov); or Jocelyn M. Panicali, Compliance Team Attorney at (646) 428-3796 or [jocelyn.panicali@ed.gov](mailto:jocelyn.panicali@ed.gov); or me, at (646) 428-3801 or [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

/s/

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<sup>14</sup> The xxxxxxx logs indicated that during this period, the Student missed 10 sessions due to absences.

<sup>15</sup> The Student missed four sessions due to the xxxxxxx absences.

<sup>16</sup> The Student missed three additional sessions due to the xxxxxxx unavailability due to a professional development day, ASHA conference, and CSE meeting.

Timothy C.J. Blanchard

cc: XXXXXX XXXXXXXXX, Esq.