



receiving Federal financial assistance from the Department. The Title II implementing regulation, at 28 C.F.R. § 35.130, provides that no qualified individual with a disability may, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or subjected to discrimination by any public entity.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met.

Disability harassment can constitute a form of discrimination prohibited by Section 504 and Title II. Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

To state a claim of disability harassment under Section 504 and Title II, the complaint must allege facts showing that (1) the student is bullied based on disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately. In analyzing claims of disability harassment, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, i.e. whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on disability. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved.

When a school learns that disability harassment may have occurred, the school must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating the hostile environment if one has been created, preventing it from recurring and, where appropriate, remedying the effects on the student who was harassed.

While disability harassment must involve the bullying or harassing of a student "on the basis of" disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefits constitutes a denial of FAPE that must be

remedied, regardless of the nature of the bullying or harassment. Section 504 imposes on a recipient an ongoing obligation to provide FAPE to students with disabilities, and that obligation exists whether or not school officials know or should know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

### **District Policies and Procedures**

The District's Board of Education Policies available through the District's website at <http://www.pcwolves.net/domain/15>. The District's 2014-2015 Handbook (Handbook), which includes discipline policies, is available online at <http://pcwolves.net/cms/lib7/IL01905153/Centricity/Domain/4/20142015%20District%20Handbook.pdf>.

The District's Equal Educational Opportunities Policy, Board Policy 7:10, provides, in relevant part, that all educational and extracurricular opportunities will be equal and available for all students without regard to, among other things, physical or mental disability. The policy directs individuals wishing to file a discrimination grievance to the District's Uniform Grievance Procedure, Board Policy 2:260.

The District's Uniform Grievance Procedure, Board Policy 2:260, sets forth the process for filing and investigating complaints of disability discrimination and provides the names and contact information for the District's nondiscrimination coordinator and complaint managers. The Uniform Grievance Procedure identifies a Coordinator, including the Coordinator's address and telephone number and email address, and provides timelines for the investigation, issuance of a written report, and appeal, if any.

The District's Board Policy 6:120, Education of Children with Disabilities, states that the District will provide a free appropriate public education in the least restrictive environment and necessary related services to all children enrolled in the District with disabilities as required by Section 504 and the Individuals with Disabilities Act (IDEA). The policy further provides that the District will establish a system of procedural safeguards covering the identification, evaluation, and educational placement for students in need, or believed to be in need, of special instruction or related services under Section 504. This system includes notice, an opportunity for the student's parent(s)/guardian(s) to examine relevant records, an impartial hearing with opportunity for participation by the student's parent(s)/guardian(s), representation by counsel, and a review procedure.

The District's Board Policy 7:20 in effect during the 2014-2015 school year prohibits bullying, intimidation, and harassment of a student on the basis of actual or perceived physical or mental disability, directs students to report instances of bullying and harassment to the Nondiscrimination Coordinator or Building Principal, and includes procedures governing the District's investigation of complaints of harassment. Board Policy 7:180 in effect for the 2014-2015 school year outlines the District's complainant handling procedures; the policy includes a definition of harassment, provides for a prompt investigation within 10 days of a report, and states that the District shall inform the victim District services and counseling.

**Facts**

X---paragraph redacted---X

The Complainant identified several instances of alleged harassment that she reported to the District during the 2014-2015 school year and an additional one that was not reported. The Complainant asserted that, in Fall 2014, Student B and Student C pushed Student A XX XXX XXXXXXXX. This incident was reported to the District and the Complainant told OCR that the Principal XXXX XXX XXXX XXXXX XXXXX X XXXXXXXX XX XXX XXXXXXX XXXXX and she was satisfied at the time because the Principal took action to stop the harassment. The District reported that it investigated the incident, which identified Student C as the harasser and found there was insufficient evidence that Student C engaged in the alleged misconduct, XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXX XXX XXXX XXXXXXX XXXXXXX XXXX XXXXXXXXXXXXXXXXXXXX XX XXX XXXXXXX XXXX.

The Complainant reported that, XX XXXXXXXX XXXX, XXXXXXXX X was disciplined for calling XXXXXXXX X a name and XXXXXXXX X had retaliated against XXXXXXXX X for calling him a name and pushing him XX XXX XXX; the District did not have a record of this event. Additionally, the Complainant told OCR that Student A reported to her that Student B called him a XXXXXXXX XXXXXXXX on several occasions in or about XXXXXXXXXXXXXXXX, and that he did not report it because Student B threatened him and he did not think that Student B would be disciplined.

The Complainant reported to the school that, in XXXXXXXXXXXXXXXX, Student B was bullying Student A by, in part, “saying XXXXXXX XXXXXXX about what he is going to do to [Student A’s] XXX XXX XX XXXXXXXX.” The District reported that Student B admitted to making the inappropriate comments about Student A’s family members, but said he did so in response to Student A making similar comments about his mother. The Principal reportedly questioned Student A about whether it was true that he too made inappropriate comments to Student B, and Student A admitted to doing so. Both students were admonished and warned that the District would not tolerate such behavior. The District indicated that it shared the findings of its investigation with the Complainant, and that she never reported to them that she believed that Student A was harassed or bullied because of disability.

According to the Complainant, Student A was so upset by the incidents that he XXXXXXXXXXXXXXXXXXXX XXXXXXXX and XXXXXXX to XXXXXXX XX XXXXXXX. The District reported that Student A had difficulty completing his work before the incidents and notes that XXX XXXXXXX XXXX XXXXXXX XXXX XX XXXXXXXXXXXXXXX XXXX XXX XXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXX XXXX XX X XX XX XXXXXXXXXXXX XX the alleged incidents of bullying. XXXXXXXX X XX XXXXXXXXXXX XXXX XXXXXXXX.

**Conclusion**

The District requested to resolve the complaint allegation prior to the conclusion of OCR's investigation. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Based on the above, OCR determined that a Resolution Agreement is appropriate under the circumstances present in this particular case. The enclosed Agreement, when fully implemented, will address all of OCR's compliance concerns. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement until the District is in compliance with the regulations at issue in the case.

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 may file a private suit in Federal court, whether or not OCR finds a violation.

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 complainant 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, we 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, please contact Melissa Howard at 312-730-1527 or by email at [melissa.howard@ed.gov](mailto:melissa.howard@ed.gov).

Sincerely,

Dan Altschul  
Acting Team Leader

Enclosure

cc: Caroline Roselli, Esq.  
Heeral Patel, Esq.