

On September 19, 2016, prior to the conclusion of the investigation, the School requested to resolve the case pursuant to Section 302 of the *Case Processing Manual*.

Applicable Legal Standards

Discrimination Generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance.

FAPE

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. The development and implementation of an individualized education plan (IEP) or Section 504 Plan is one means by which FAPE may be provided.

The Section 504 regulations, at 34 C.F.R. §104.34, require school districts to place a student with a disability in the regular educational environment operated by the district unless the district demonstrates that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Procedures in Disciplining Students with Disabilities

Evaluation and Placement

The Section 504 regulation at 34 C.F.R. §104.35(a) requires a recipient to conduct an evaluation in accordance with the requirements of 34 C.F.R. §104.35(b) of any person who, because of disability, needs or is believed to need special education or related services, before taking any action with respect to initial placement of the person in regular or special education, and any subsequent significant change in placement. OCR's interpretation of this requirement is that an exclusion of more than 10 days (*e.g.*, a long term suspension or expulsion) is a significant change in placement. Therefore, in order to implement discipline that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the student in accordance with the provisions of 34 C.F.R. §104.35.

A series of suspensions that are each ten days or fewer may also constitute a significant change in placement. The determination of whether a series of suspensions creates a pattern of exclusion that constitutes a significant change in placement must be made on a case-by-case basis taking into consideration factors including: (1) the length of each suspension; (2) the proximity of the suspensions to each other; and (3) the total amount of time the student is suspended.

Manifestation Determination

Where a proposed suspension or expulsion would constitute a significant change in placement, after providing notice, a school district must conduct a reevaluation of the student. The school district must first obtain information to determine whether the behavior in question is caused by or related to the student's disability. A group of persons who are knowledgeable about the student and the meaning of the evaluation data must make the determination about whether the student's behavior in question is caused by or related to the student's disability. This determination is often referred to as a "manifestation determination." Because the manifestation determination is part of a FAPE-required re-evaluation, a parent has the right to contest the determination.

If the group responsible for the manifestation determination decides that the behavior that resulted in misconduct *is* a manifestation of the student's disability, the proposed suspension or expulsion for the student's behavior would be on the basis of the student's disability. Section 504 prohibits long-term suspension (more than 10 days) or an expulsion for behavior caused by or related to the student's disability. The group responsible for placement decisions must then decide if the student's current placement is appropriate. The school district must comply with the Section 504 requirements applicable to placement, including tailoring the decision-making about services and setting to the individual student's behavior, caused by or related to the student's disability. Consideration of whether the current placement is appropriate necessarily includes whether the school implemented the student's current Section 504 plan, including by providing services required by the plan to address the student's behavior. To the extent that the group determines that there are additional services necessary to provide FAPE to the student and that those services would also enable the student to be in the regular education setting, the school is responsible for ensuring that the student receives these services. To the extent that the group determines that placement in the regular education environment with supplementary aids and services cannot be achieved satisfactorily, the school must nonetheless place the student so that she or he is educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. The student's parent can contest the placement decision.

Compensatory Services

If a school did not implement the Section 504 plan with respect to services to address the behavior of a student who is subject to discipline for behavior that was a manifestation of the

student's disability, the school is responsible for remedying its violation of Section 504. An appropriate remedy could include the school convening a group of knowledgeable persons who carefully consider information from a variety of resources to determine academic instruction and related aids and services necessary to compensate for what was denied to the student and expunging the student's disciplinary records, where determined necessary.

Disability Harassment

Disability harassment can constitute a form of discrimination prohibited by Section 504. Disability harassment under Section 504 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.

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 harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights.

School districts have a legal responsibility to prevent and respond to disability harassment. When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution 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 reasonably know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

Retaliation

The Section 504 implementing regulation, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

A *prima facie* case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (3) there is an inferable causal connection between the protected activity and the adverse action. To be considered adverse, an action must significantly disadvantage an individual or reasonably deter an individual from engaging in future protected activities.

If one of the elements cannot be established, OCR finds insufficient evidence of a violation. If all of the elements of a *prima facie* case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

Factual Background

The School provided a copy of its 2014-15 Student Handbook. The Handbook contains general information about Section 504 and special education services. Among other things, the handbook provides that the School will provide FAPE to all students with disabilities, and explains that eligibility determinations under Section 504 are made by a team that typically consists of teachers, administrators, counselors, special services staff, and parents. The Handbook also contains a link to North Dakota's Department of Public Instruction's website. However, the Handbook does not explain how parents or staff may initiate a request for an evaluation or describe the evaluation or placement process.

The School also provided OCR with a copy of its "Notice of Procedural Safeguards" (Notice). The Notice informs the School community of parents' rights under the School's policies and procedures related to the identification and evaluation of students with disabilities, and includes information about the right to examine relevant records, the right to obtain impartial hearings, and the right to seek review of placement decisions. In addition, the Notice describes the timeframe in which the School will make evaluation and placement determinations and contains information about the procedural safeguards in place related to the discipline of students with disabilities. However, the Notice does not contain a statement setting forth the School's commitment to provide FAPE to all qualified individuals enrolled

in the School, nor does it explain the procedures under which staff, parent(s), and guardian(s) may make an initial request for an evaluation.

Student A’s IEPs and BIPs

During the 2015-16 school year, Student A was an xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx with an IEP. Student A’s IEP was revised multiple times during the 2015-16 school year, including in January 2016, April 2016, and May 2016.¹ Each of the IEPs provided by the School included academic adjustments to allow Student A preferential seating, frequent breaks, the opportunity to move around. Moreover, the IEPs identified the least restrictive environment (LRE) as the general education classroom, placing him in the general education classroom for at least 80% of the school day. The January 2016 IEP indicated that Student A should spend 60 minutes per week in the special education classroom (hereafter, learning center).

In addition, Student A had a behavioral intervention plan (BIP) throughout the 2015-16 school year.² A BIP created in February 2015, when Student A was in 7th grade, provides multiple “antecedent supports,” including preferential seating, social work support, an assignment notebook, and “alternative setting in the learning center for quiet environment or emotional de-escalation.” The BIP indicates that the behavioral objective was for Student A to remain in the classroom with peers “as long as he is socially, emotionally, and behaviorally appropriate.” Finally, the BIP provides a series of “consequent supports,” that begin with notification to the xxxxxxxxxxx xxxxxxxxxxx xxxxxxx xxxxxx and continue to placement in the learning center, removal to the office for a conference with the principal, sent home for the day, and referral to law enforcement.

BIPs dated January 2016 and April 2015, discussed more fully below, appear to have been created after disciplinary incidents and in connection with a manifestation determination, and do not contain detailed intervention plans; instead they assess whether the recent disciplinary incident was a manifestation of Student A’s disability.

Implementation of IEP

According to the Complainant and Student A, the School frequently failed to implement the modifications in the IEPs. First, the Complainant and Student A assert that the School required Student A to spend more than 20% of his time outside of the general education classroom, regularly sending him to the learning center as a disciplinary measure rather than

¹ The documentation provided by the District did not include the IEP that was in place at the beginning of the 2015-16 school year. Further, it appears there was a team meeting in November 2015, but the documentation provided by the School does not make clear whether any IEP that was in place at that time was revised.

² The District’s documentation contains multiple BIPs. Some of the BIPs appear to have been prepared in connection with a manifestation determination meeting.

as an educational resource. Second, the Complainant and Student A assert that the School often disciplined Student A for utilizing the calm-down provisions of the IEPs (e.g., moving around in class, taking a break). Third, the Complainant asserts a general lack of communication from Student A’s teachers, in particular, failure to provide updates on Student A’s missing assignments.

Several emails document disciplinary actions taken when Student A took breaks or moved about the school or classroom. A January 11, 2016 email from Teacher A to the Complainant states that Student A left the classroom without saying anything and that it resulted in an office referral. The Complainant responded that at IEP meetings and reevaluations the team discussed that Student A often needed a “cool off” time to leave the classroom. The School’s disciplinary records indicate that Student A received referrals on November 23, 2015 and January 11, 2016 for leaving the classroom. Student A received a 1-day ISS for the November 23 referral. OCR did not interview School staff about these specific referrals to ascertain whether the discipline was awarded for conduct not contemplated by Student A’s IEP provisions. For example, whether Student A’s conduct in leaving the classroom was disruptive, and therefore warranted discipline.

Other emails and documentation demonstrate that the School sent Student A out of the classroom or to the learning center as a disciplinary measure. A March 23, 2016 email from Teacher C indicates that “for two days, [Student A] has been sent out of math to come to the learning center.” An April 5, 2016 email exchange between Teacher B and the Complainant indicates that Teacher B asked to meet with the Complainant about “some behaviors” Student A had exhibited. The email thread indicated that the Complainant asserted that Teacher B sent Student A out of the classroom to the learning center because he believed that Student A was not working on a test. Teacher B did not respond to the assertion. A May 17, 2016 email from Teacher C indicates that Student A was working in the learning center “due to his actions,” suggesting the referral to the learning center was disciplinary in nature. In addition, the School provided a log that documented services provided in the learning center. Some entries in the log indicate that Student A “refused” learning center, some indicate that he was a “no show,” some indicate that he “stayed in class,” and some indicate he was “sent to learning center.” The log does not explain the meaning of each entry. In addition, multiple entries in Student A’s attendance log include a comment for “counselor.” The Complainant and Student A told OCR that teachers sometimes sent Student A to the office to sit with the Counselor or his xxxxxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxxx.

Finally, several emails between the Complainant and Student A’s teachers indicate that the Complainant frequently requested updates about Student A’s academic progress or missing assignments. The School did not provide any documentation to indicate that it had regularly documented Student A’s progress with an assignment notebook; however Student A’s IEPs did not appear to require such documentation.

Discipline

The School provided Student A’s disciplinary records. The records indicate that Student A received a 1-day out-of-school suspension (OSS) on October 6, 2015 because he used profanity and threw a pen at a teacher. Student A received a one day in-school suspension (ISS) on November 24, 2015 because he left the classroom (and eventually the school) on November 23, 2015.³

Student A then received a 10-day OSS beginning on December 9, 2015 and lasting through January 4, 2016, when the school year resumed after winter break. According to the discipline report, Student A xxxxxxxx xxxxxxxxxxxxxx xxx. It is not clear from the information provided by the School whether it held a manifestation determination prior to Student A serving the suspension; however the School did convene the IEP team on January 4, 2016 to review Student A’s BIP. The BIP created at the January 4, 2016 meeting indicated that the team concluded that because Student A’s 10-day suspension was part of a series of removals totaling more than 10 days, a manifestation determination needed to be made. The team further concluded that Student A’s conduct was a manifestation of his disability. Although the form indicates that if the conduct is a manifestation of a student’s disability the student should return to a previous placement unless the parent and school agree otherwise, Student A’s attendance record, provided by the School, suggests that it nonetheless enforced the 10-day suspension. The team later met on January 14, 2016 to revise Student A’s IEP. OCR cannot determine the extent of the revisions, however, because the School did not provide OCR the IEP that was in place prior to January 14, 2016.

Student A’s disciplinary records also indicate that he received a second 10-day OSS on April 11, 2016 because he xxxxxx xxxxxx xxxxxx xxxxxx after being sent from the classroom for excessive talking. According to the Complainant, the School requested criminal charges be brought against Student A for this incident that ultimately were dismissed. The School convened Student A’s IEP team on April 14, 2016 to review whether Student A’s behavior was a manifestation of his disability. The team concluded that it was a manifestation of his disability, and again, the School’s attendance records suggest that Student A served the 10-day suspension. Documentation provided by the School does not establish whether the School provided Student A with educational services while he served the suspension, and if so, whether the educational services were comparable to those the School would have provided to Student A if he were not suspended. The team later met on April 28, 2016 to further revise Student A’s IEP. The principal change between the January 14 IEP and the April 28 IEP was that the team placed Student A in the learning center for math and reading, the subjects taught by Teachers A and B respectively.

The School convened another IEP meeting on May 12, 2016, after Student A xxxxxxxx xxxxxx xxxxxxxxxxxxxx. The May 12, 2016 IEP confirms that Student A was placed in the learning center for math and reading (although the IEP also indicates that he is to receive only

³ The Complainant and Student A assert that he was sent out of the classroom to the learning center on that day.

60 minutes per week in the learning center). It also confirms that Student A “is allowed to come out of the regular classroom when he feels the need to calm himself.”

Finally, Student A received a seven-day OSS on May 18, 2016 (which lasted until the end of the School year), when another student joked xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxx
xxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx.”
The Complainant and Student A deny that Student A made this remark and assert instead that he merely laughed at the other student’s joke. Although Student A had previously served 22 days of out-of-school suspension, the School did not determine whether Student A’s behavior was a manifestation of his disability before suspending him again on May 18. School attendance records include a notation that Student A was “done for the year,” suggesting that the School determined he would not return to school before the end of the school year. It is not clear whether the School ever held a manifestation hearing in connection with the May 18 disciplinary incident.

In addition to the documented suspensions, the Complainant and Student A assert that Student A was frequently sent to the office where the School xxxxxx xxxxxxxx xxxxxxxx
xxxxx, or the Complainant were instructed to take him home. The Complainant and Student A assert that these instances were not recorded in Student A’s attendance log or disciplinary records, and constituted informal discipline during which Student A was also denied FAPE.

Harassment

The School did not have any written records documenting that Student A faced harassment by other students. The Complainant and Student A told OCR that other students harassed Student A, precipitating disciplinary incidents when he responded to their provocations. In addition, the Complainant and Student A reported that the School would not record the precipitating harassment in Student A’s disciplinary records when they raised those issues. Moreover, the Complainant and Student A also asserted that other students would laugh at Student A when teachers sent him to the learning center. However, the Complainant and Student A did not identify particular incidents or students who engaged in the alleged harassment.

Retaliation

The Complainant also asserts that the School’s frequent discipline of Student A was done in retaliation for her advocacy on Student A’s behalf, including her requests that teachers implement his IEP. As noted previously, several emails document the Complainant’s request that teachers inform her of Student A’s missing assignments (e.g. complete an assignment notebook) and that teachers allow him to move around and take breaks when he needed to cool down.

Analysis and Conclusions of Law

Prior to the conclusion of OCR’s investigation, the School requested to resolve the allegations. The provisions of the resolution agreement are aligned with this allegation and consistent with the applicable regulations.

FAPE

The development and implementation of an individualized education plan (IEP) or Section 504 Plan is one means by which FAPE may be provided. Further, the Section 504 regulations, at 34 C.F.R. §104.34, require school districts to place a student with a disability in the regular educational environment operated by the district unless the district demonstrates that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.

Documentation provided by the School indicate that on at least two occasions, Student A received disciplinary referrals when he moved around or left the classroom, and at least one of those referrals resulted in a one day ISS. Further, emails and other documentation indicate that School teachers on at least five occasions sent Student A to the School’s learning center for behavioral and not educational purposes. The Complainant and Student A both assert that this occurred far more than the School’s documentation indicates. Finally, emails between the Complainant and School teachers indicate that the Complainant requested progress reports and missing assignments from the School, and the School did not provide any documentation that it had regularly documented Student A’s progress utilizing an assignment notebook.

Although the School provided the IEPs in place for Student A after January 14, 2016, it did not provide OCR the IEP in place between the beginning of the school year and January 14, 2016. Moreover, OCR would need to conduct interviews with School staff to determine the scope of the academic adjustments contained in Student A’s IEPs and BIPs as well as the context of each incident in which Student A received a disciplinary referral for leaving the classroom or was sent to the learning center. Without additional documentation and interviews to provide this context, OCR is unable to determine whether the School discriminated against Student A by failing to implement his IEP. The information gathered thus far therefore supports a resolution under Section 302 of the *CPM*.

Discipline

The Section 504 regulation at 34 C.F.R. §104.35(a) requires a recipient to conduct an evaluation in accordance with the requirements of 34 C.F.R. §104.35(b) of any person who, because of disability, needs or is believed to need special education or related services, before taking any action with respect to initial placement of the person in regular or special education, and any subsequent significant change in placement. Therefore, in order to implement discipline that constitutes a “significant change in placement,” a recipient must first conduct a reevaluation of the student in accordance with the provisions of 34 C.F.R. §104.35.

OCR considers the expulsion or suspension of a student with disabilities for more than ten consecutive days a significant change in placement under the Section 504 regulation at 34 C.F.R. 104.35(a). A series of suspensions that are each ten days or fewer may also constitute a significant change in placement.

The evidence gathered thus far establishes that the School suspended Student A for a total of 29 days during the 2015-16 school year. The School's documentation establishes that it held two manifestation hearings (each after a 10-day suspension), and, in both instances, the documentation indicates that the team determined that Student A's conduct was a manifestation of his disability. After each manifestation hearing, the School modified Student A's IEP and BIP. OCR identified a significant concern that the School disciplined Student A for misconduct on the basis of his disability, in violation of Section 504, when it suspended Student A for behavior that a group of persons determined was a manifestation of his disability. In order to determine whether the School violated Section 104.35 when it disciplined Student A multiple times during the 2015-16 school year, OCR would need to conduct interviews with School staff. In particular, OCR would need to interview School staff about the discussions held during the manifestation hearing and subsequent IEP meetings to determine whether the School, in fact, altered Student A's placement and, if it did, whether it acted in accordance with the Section 504 regulation in doing so.

Without additional documentation and interviews to provide additional information about the manifestation hearings and subsequent IEP meetings, OCR is unable to determine whether the School discriminated against Student A by altering his placement when it issued a series of suspensions during the 2015-16 school year. The information gathered thus far therefore supports a resolution under Section 302 of the *CPM*.

Harassment

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.

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 harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights.

The Complainant and Student A describe, generally, incidents of harassment that occurred, primarily in precipitating disciplinary incidents or in connection with teachers who sent Student A to the learning center. In order to complete the investigation, OCR would need to interview School staff to determine whether School teachers witnessed the generalized harassment described by the Complainant and Student A and, if so, how they responded to it. Without this additional information, OCR is unable to determine whether the School discriminated against Student A when it failed to respond to the harassment of other students. The information gathered thus far therefore supports a resolution under Section 302 of the *CPM*.

Retaliation

The evidence obtained thus far in the investigation establishes that the Complainant frequently interacted with School staff, asserting that it was not sufficiently implementing Student A's IEP and therefore establishes that she engaged in protected activity of which the School was aware. Further, the School's frequent discipline of Student A establishes that he suffered an adverse action. Finally, the proximity between the Complainant's frequent communications with the School and the adverse action supports an inferable causal connection between the protected activity and the adverse actions.

However, in order to complete the investigation, OCR would need to interview School staff, particularly the principal and the teachers who issued disciplinary referrals, to determine whether the School had a legitimate, non-retaliatory reason for the discipline. The information gathered thus far therefore supports a resolution under Section 302 of the *CPM*.

The School agreed to enter into a resolution agreement (the Agreement) with OCR on November 2 2016, which, when fully implemented, will resolve the alleged discrimination with respect to 34 C.F.R. §§ 104.4(a), 104.33, 104.34, 104.35 and 104.61, which were at issue in the complaint. The provisions of the resolution agreement are aligned with the complaint allegation, the issues investigated, and are consistent with applicable law and regulations.

OCR will monitor the School's implementation of the Agreement until the School is in compliance with the statutes and regulations at issue in this case. The full and effective implementation of the Agreement will address the alleged discrimination with respect to Section 504. OCR looks forward to receiving the School's first monitoring report, which is due by December 15, 2016.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School'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 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 happens, the individual may file a complaint alleging such treatment. The Complainant may also file a private suit in federal court whether or not OCR finds a violation.

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.

We wish to thank you for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Patrick Alexander by phone at 303-844-3473, or by e-mail at Patrick.Alexander@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Mike Swallow, Counsel