

November 7, 2014

XXXXX X XXXXX
XXXXX XXXXX XXXXX LLC
XXX XXXXX XXXXX XXXXX, XXXXX XXX
XXXXX XXXXX, XXXXX XXXXX

Re: OCR Docket # 07141106

Dear XXXXX XXXXX:

On March 11, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint alleging discrimination on the basis of disability by your client, the Fort Zumwalt R-II School District (District), O'Fallon, Missouri. For the reasons set for below, we have determined there is insufficient evidence to conclude the District discriminated against the Complainant's daughter on the basis of disability as alleged in allegation 1. The District has voluntarily submitted a Resolution Agreement (Agreement) to resolve allegation 2.

The Complainant specifically alleged the District discriminated against her daughter, a student with a disability, on the basis of disability by:

1. denying her a free appropriate public education (FAPE) by failing to evaluate her and provide her regular or special education and related aids and services designed to meet her individual educational needs in a timely manner; and
2. providing significant assistance to the XXXXX program housed in the XXXXX XXXXX School, a unit of the District, which expelled the Complainant's daughter based on her disability.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA) and
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the remainder of this letter, the Complainant's daughter is referred to as "the Student." To protect individuals' privacy, the names of employees, students, and other parties also were not used in the letter.

OCR applies a preponderance-of-the-evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In reaching a determination in this complaint, OCR considered information the Complainant and the District submitted, including, but not limited to, portions of the Student's education records, including special education, attendance and academic records; documentation reflecting communication between the Complainant and District staff members; and District policies, procedures and handbooks regarding the evaluation of students with disabilities to determine eligibility for special education. OCR interviewed District employees identified by OCR as having relevant information regarding the complaint allegations opened for investigation. OCR also conducted an interview with the Complainant. The legal and factual bases for OCR's determination are set forth below.

Allegation 1

The Complainant alleged the District discriminated against the Student on the basis of disability by denying her a FAPE by failing to evaluate her and provide her regular or special education and related aids and services designed to meet her individual educational needs in a timely manner.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) requires recipients of FFA that operate a public elementary or secondary education program, such as the District, to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation implementing Section 504 at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as regular or special education and related aides and services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). As stated in the Section 504 regulation at 34 C.F.R. § 104.33(b)(2), a school district may satisfy its obligation to provide an appropriate

education to a student with a disability by implementing an IEP developed for the student in accordance with the Individuals with Disabilities Education Act (IDEA).

The Section 504 regulation at 34 C.F.R. § 104.35(b) requires recipients to establish standards and procedures for the evaluation and placement of individuals who, because of disability, need or are believed to need special education or related services. The regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions for students with disabilities, a recipient must: 1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; 2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; 3) ensure that the placement decision is made by a group of persons knowledgeable about the individual, the meaning of evaluation data, and placement options; and 4) ensure that the placement decision is made in conformance with the education setting requirements at 34 C.F.R. § 104.35(d). Through this process, recipients must determine whether the individual is disabled and, if so, determine the individual's appropriate regular or special education placement and related service needs.

Except in extraordinary circumstances, OCR does not review the results of individual placement and other educational decisions as long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. *See*, Appendix A to 34 C.F.R. Part 104. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an IEP; rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable. The Section 504 regulation at 34 C.F.R. § 104.36 outlines a school district's obligation to provide due process procedural safeguards.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires that recipients establish and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of individuals who, because of disability, need or are believed to need special instruction or related services. Pursuant to 34 C.F.R. § 104.36 recipients are required to provide the parents or guardians of students with disabilities a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

The regulation implementing Title II at 28 C.F.R. § 35.130(a) states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity. The Title II regulation at 28 C.F.R. § 35.130(b)(1)(i) similarly states that a public entity, in providing any aid, benefit, or service, may not deny a qualified individual with a disability the opportunity to participate in or

benefit from the aide, benefit, or service on the basis of the individual's disability. OCR interprets the Title II regulation to require school districts to provide a FAPE to qualified individuals with a disability to the same extent required by the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(b) (v) states that recipients may not, directly or through contractual or other arrangements, aid or perpetuate discrimination against a qualified person with a disability by providing significant financial assistance to any agency, organization, or person that discriminates on the basis of disability in providing an aid, benefit or service to beneficiaries of the recipient's program or activity.

Departmental interpretations of 34 C.F.R. § 104.4(b) (1)(v) indicate that the following considerations should be examined to determine whether a recipient is providing significant assistance to a private group:

- (1) direct financial support;
- (2) indirect financial support;
- (3) provision of tangible resources such as staff and materials;
- (4) intangible benefits such as the lending of recognition and approval;
- (5) the selectivity of the recipient's provision of privileges and resources; and
- (6) whether the relationship is occasional and temporary or permanent and long-term.

Findings of Fact

- The Student was XXXXX years old and in XXXXX at the District's XXXXX XXXXX XXXXX School during the 2013 – 14 school year.
- Prior to the Student's XXXXX year, on November 16, 2012, the Complainant requested the District consider the Student, who was in XXXXX at that time, for an initial special education evaluation based on concerns about the Student's XXXXX XXXXX and XXXXX. On the same day, the District gave the Student a screening test called the DIAL-3 (Developmental Indicators for the Assessment of Learning – Third Edition). According to the District's documentation, the District determined that an evaluation in the areas of XXXXX/XXXXX, XXXXX/XXXXX and XXXXX/XXXXX/XXXXX was warranted and provided the Complainant with notice of her procedural safeguards.
- On February 5, 2013, the District convened an individual educational program (IEP) meeting for the Student to review the Student's evaluation report. The multidisciplinary

team (MDT) determined the Student met the criteria for a student with impairment in the area of XXXXX XXXXX and developed an IEP on the same day. The IEP goals included three XXXXX XXXXX goals and four goals related to the Student's XXXXX XXXXX XXXXX. The IEP provided the Student with 660 minutes weekly of XXXXX XXXXX and 60 minutes weekly of XXXXX XXXXX. The Complainant consented to the IEP services. The notes of the MDT indicated the Complainant was offered a copy of her procedural rights.

- The Student's regular education teacher stated she first became aware the Student had an IEP on August 7, 2013, which was a teacher work day prior to the start of classes for the 2013 – 14 school year. She stated she received a copy of the Student's IEP from the Student's educational diagnostician and was given an opportunity to review it and ask any questions she may have had. She also stated she began working with the Student once classes started.
- The Student's regular education teacher stated the Student began the first couple of days of the school year in her classroom. However, she soon recognized the Student found the transition from morning XXXXX¹ to the classroom was a little overwhelming and rearranged the Student's schedule so that the Student would begin her school day with the special education teacher and then transition to the regular education classroom.
- The Student's regular education teacher described some of the Student's behavior challenges. She stated the Student could become easily frustrated and XXXXX XXXXX and XXXXX XXXXX XXXXX. She stated she and other school staff attempted to manage the Student's behaviors by trying to speak with her to find out what she wanted or what she felt was wrong. The Student's regular education teacher stated once school staff were able to figure out the Student's needs, the Student calmed down quickly.
- According to the Student's regular education teacher, both she and the Student's special education teacher at that time were responsible for completing daily home notes to the Complainant.
- According to District documentation, the District began tracking the Student's behavior on August 22, 2013, and provided daily home notes for the Complainant. The daily home notes broke down the Student's day into 16 activities and provided a space for school staff to indicate how the Student did during each particular activity. OCR

¹ XXXXX is a XXXXX before and after school program housed at XXXXX XXXXX XXXXX School for XXXXX XXXXX XXXXX School students.

reviewed the daily home notes for the Student during the time period from the beginning of the 2013 – 14 school year until October 30, 2013. The notes reflect the Student generally had successful days with some notations for behaviors such as XXXXX, XXXXX or XXXXX XXXXX XXXXX. In addition to the notes, the District separately documented the frequency of some of the Student’s behaviors when she transitioned into her new placement after the February 2014 IEP meeting.

- The Student’s regular education teacher stated she noticed the Student’s behaviors escalating as time progressed. She described the escalation as the same behaviors, just longer lasting. She stated the Student would also use more XXXXX XXXXX.
- On September 23, 2013, the District convened a meeting to review the Student’s progress since the beginning of the year. The meeting participants included the Complainant and the following District staff who worked with the Student: regular education teacher, special education teacher, principal, speech-language pathologist, educational diagnostician and behavior specialist. The behavior specialist shared information regarding the Assessment of Lagging Skills and Unsolved Problems (ALSUP), which is intended for use as a discussion guide to identify the Student’s specific lagging skills and unsolved problems. The team identified both the Student’s lagging skills and unsolved problems, and the behavior specialist guided the team through a sample conversation with the Student using common and predictable language if she was having a problem. The Student’s regular education teacher stated that she and the Student’s special education teacher frequently talked about the Student’s ALSUP with one another.
- On October 15, 2013, the Complainant wrote, “I am happy with her (the Student’s) progress” in response to an update provided by one of the Student’s special education teachers.
- On the same day, the Student’s regular education teacher emailed the Complainant writing, in part, “I do have some concerns regarding where [Student] is at in her academic progress.” The Student’s regular education teacher stated she spoke with the Complainant about those concerns, which were that the Student was behind in her letter recognition, sight word recognition, and counting beyond 10. Additionally, the Student struggled with writing her name. The Student’s regular education teacher stated she was planning on discussing those concerns with the Complainant at the scheduled parent-teacher conference set for October 16, 2013, but the Complainant was not able to attend.

She stated she was not able to discuss the Student's academic goals with the Complainant outside of the MDT meetings.

- On October 30, 2013, the Complainant emailed the principal to request the Student be reevaluated due to her concerns about the Student's progress towards her IEP goals. The principal responded on October 31, 2013, and informed the Complainant that the educational diagnostician would be contacting her to schedule a review of existing data meeting with the Student's MDT.
- On November 4, 2013, the Complainant completed a parent interview form for the Student's re-evaluation. On November 18, 2013, the District convened an MDT meeting for the Student to conduct a review of existing data and determine whether to re-evaluate the Student. The meeting participants included the Complainant, the Student's grandparents, and the following District staff who worked with the Student: regular education teacher, principal, speech-language pathologist, educational diagnostician, school counselor and psychological; examiner. After the MDT completed a review of the Student's existing data, the team agreed to re-evaluate the Student in the areas of language, sensory processing, adaptive behavior, behavior and academics.
- On January 17, 2014, the District convened an MDT meeting to review the results of the Student's new evaluation. The MDT proposed changing the Student's IEP classification from XXXXX XXXXX to XXXXX XXXXX. The notes of the MDT indicated the Complainant was given a copy of the District's notice of procedural rights.
- On February 3, 2014, the District began to monitor the Student's behavior differently by tracking the time and the number of times the Student engaged in various behaviors such as XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX, XXXXX XXXXX, XXXXX, XXXXX, and XXXXX XXXXX.
- On February 6, 2014, the District convened a MDT meeting for the Student to discuss her progress as well as to review and revise her IEP. The Student's updated IEP provided her with 1015 minutes of special education/weekly in social skills, 500 minutes of special education/weekly in pre-academics, and 90 minutes of language therapy/weekly. Additional supports included 1975 minutes of adult support/weekly. The MDT also decided to change the Student's IDEA disability categorization from XXXXX to XXXXX XXXXX XXXXX XXXXX. The notes of the MDT indicate that the Complainant was offered a copy of her notice of procedural rights.

- The educational diagnostician described the MDT’s general discussion for the change in the Student’s IDEA disability categorization. She stated the MDT discussed that the Student’s XXXXX XXXXX were negatively impacting her beyond what the MDT would see in a student with a XXXXX XXXXX. She also stated it was her understanding that there was a significant increase in the frequency, duration and intensity of the Student’s inappropriate behavior since winter break.
- OCR asked why the MDT had not completed a behavior intervention plan (BIP) for the Student given her escalating inappropriate behaviors. The educational diagnostician stated the MDT determined that new data needed to be collected in the Student’s new placement because quite a few changes were made to the Student’s IEP at the February 6, 2014, meeting. Specifically, the MDT placed the Student in a full-time, out-of-general education setting with full-time adult support to assist the Student in managing her behavior outbursts.
- On February 6, 2014, the Student began working with a new special education teacher in a new classroom called the social emotional learning foundation, which was staffed by the special education teacher and several paraprofessionals. The Student’s special education teacher stated a paraprofessional would assist the Student with academic work, help her through any difficult times, and read books a lot with her. The student’s special education teacher described the Student as very loving, sweet and compliant with a great personality. She stated the Student liked to play, pretend and draw.
- The Student’s special education teacher stated the Student would have certain times of the day that were difficult for her, such as the beginning of the day or mid-afternoon. She stated she tried to manage the Student’s behavior by using common and predictable language or giving her something to help her calm down. She stated sometimes the Student was tired and would be provided with a blanket and a soft place to lay down or calm down. She stated she had meetings scheduled every other week with the District’s psychologist and behavior specialist to assist her in managing the students in her class. She stated the Complainant never raised any concerns to her about the Student.
- On February 13, 2014, the XXXXX program emailed the Complainant to request to schedule a meeting with her concerning the Student. The email further stated, in part, “At this point, we do ask that [Student] not return to the XXXXX before we are able to meet.”

- On February 15, 2014, the Complainant emailed XXXXX XXXXX XXXXX XXXXX School's principal informing him the Student was not allowed to return to the XXXXX program. In her email, she wrote, "Would this be an ADA violation or civil rights and who can I talk to about this at Fort Zumwalt?"
- On February 15, 2014, XXXXX XXXXX XXXXX XXXXX School's principal replied by email to the Complainant stating "the XXXXX is NOT sponsored by XXXXX XXXXX XXXXX or the Ft. Zumwalt School District. The XXXXX is a complete separate entity. They hire and manage their own employees and programs."
- On February 24, 2014, the Complainant requested a Positive Behavior Support Plan for the Student.
- On February 25, 2014, the District's Educational Diagnostician agreed with the Complainant's request and proposed an IEP meeting on March 7, 2014. She also drafted a proposed BIP as a starting point for the MDT discussion.
- On March 6, 2014, the Complainant called the District's Educational Diagnostician to inform her she would not be able to attend the IEP meeting scheduled for March 7, 2014.
- On March 17, 2014, the Complainant wrote to the District's Educational Diagnostician to inform her that the Student would be enrolling in a different school district and her last day with the District would be March 28, 2014. The Complainant also stated she did not want to meet again with the District's staff concerning the Student.
- On March 18, 2014, the District convened a meeting of the school-based members of the Student's IEP meeting; the team agreed to share the Student's behavior information with the new school to ease the Student's transition.
- On March 27, 2014, the Complainant informed the Student's teacher in writing that the Student had been officially diagnosed with XXXXX XXXXX XXXXX and XXXXX by one of her physicians.
- The Student was withdrawn from the District on March 28, 2014.

- The educational diagnostician described her conversations with the Complainant as proactive and problem-solving. She stated the problems the Complainant raised to the school resulted in full MDT meetings to go through the problem-solving process. She also stated she did not recall the Complainant ever expressing disagreement as a member of the MDT concerning any of the proposed actions for the Student. OCR also asked the Student's regular education teacher and principal whether they recalled the Complainant ever disagreeing with any of the MDT's proposed actions for the Student. They replied that they were not aware of the Complainant disagreeing with the MDT decisions.
- Both the principal and assistant principal stated the Student was never disciplined, i.e., suspended, placed in isolation or sent home early, for her behavior outbursts during her enrollment at XXXXX XXXXX XXXXX XXXXX School.
- OCR reviewed numerous email communications between the Complainant and District staff who worked with the Student. The Complainant began emailing the Student's regular education teacher on August 14, 2013. District staff consistently and timely responded to the Complainant's emails and shared emails regarding the Student's needs and behaviors, the Complainant's concerns, and the District's responses.
- OCR also reviewed the Student's IEP to determine whether the District was tracking the Student's progress in meeting her IEP goals. According to documentation provided by the District, the IEP team tracked the Student's progress towards her IEP goals on May 10, October 10, and December 19, 2013, as well as on February 6, 2014.
- In his interview with OCR, the XXXXX school principal stated the District did not charge the XXXXX to operate its XXXXX at the XXXXX XXXXX XXXXX XXXXX School. The District also permits the XXXXX to advertise – along with other before and after school providers – in a handout provided by the school. The handout was described as an informational sheet provided to parents who inquire about before and after school care.

Legal Analysis and Conclusion

To be protected under Section 504, a student must be determined to: i) have a physical or mental impairment that substantially limits one or more major life activities, ii) have a record of such an impairment, or iii) be perceived as having such an impairment. The Section 504 regulations require that recipient school districts provide a FAPE to qualified students in

their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities. An impairment in and of itself is not sufficient to trigger a school district's FAPE obligation. The impairment must substantially limit one or more major life activities in order to trigger a school district's obligation to provide that student a FAPE. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or a student believed to have an impairment which substantially limits a major life activity.

OCR determined that the Student is a qualified person with a disability under Section 504 and Title II. The Section 504 and Title II regulations require a school district to provide a student with a disability an equal opportunity to participate in the district's program and activities. The preponderance of the evidence established the District's February 5, 2013 evaluation determined the Student was a student with XXXXX XXXXX XXXXX. The Student was provided with services based on her XXXXX XXXXX pursuant to an IEP. Subsequently, on February 6, 2014, the District identified the Student as a student with XXXXX XXXXX XXXXX and revised the Student's IEP on that day.

The Section 504 regulation at 34 C.F.R. § 104.33 requires that school districts provide a FAPE to students with disabilities that substantially limit one or more major life activities. The Section 504 regulation does not contain a specific requirement regarding the timeliness of an evaluation. In the absence of a specified time frame, OCR assesses the timeliness of the evaluation required by Section 504 at 34 C.F.R. § 104.35 by applying a standard of reasonableness on a case-by-case basis.²

Allegation 1

The Complainant alleged that the District denied the Student a FAPE by failing to evaluate her and provide her regular or special education and related aids and services designed to meet her individual educational needs in a timely manner. The Complainant based this allegation on her belief that the District did not appropriately address the Student's behavior difficulties. For OCR to find the District failed to promptly and appropriately evaluate, develop, and implement a program of regular or special education and related aids and services designed to meet the Student's individual educational needs in violation of Section 504 and Title II, the preponderance of the evidence must show that the District failed to promptly and appropriately evaluate the Student, develop an IEP or Section 504 plan based on her evaluation, and implement the Student's IEP or Section 504 plan.

² In making our determination, OCR looks to state law as a guide to determining what constitutes a reasonable period of time to conduct an evaluation. The Missouri State Plan for Special Education, Part B (Missouri State Plan) requires that children suspected of having a disability be evaluated under the IDEA within 60 calendar days following parent consent or notice, as the case may be. Delays beyond the 60-day timeframe may be permitted for just cause (school breaks for summer or holidays, student illness, etc.). However, unlike state law under the IDEA, in determining what constitutes a reasonable period of time to conduct an evaluation, Section 504 does not automatically allow school districts to exclude school breaks for summer or holidays, student illness, etc. The Missouri State Plan may be accessed at <http://dese.mo.gov/se/stateplan/index.html>.

The Student began attending XXXXX at the District's XXXXX XXXXX XXXXX School at the beginning of the 2013 – 14 school year. The Student's regular education teacher stated she did notice some behaviors the first couple of days of school and attempted to modify the Student's morning schedule to ease her transition into the school day. She stated she and other school staff attempted to manage the Student's behaviors by working with the Student to determine what she needed. Additionally, the Student's regular and special education teachers tracked the Student's behaviors and sent notes to the Complainant daily and communicated with her regularly by email to provide updates or discuss concerns with her.

The Student's regular education teacher stated she noticed the Student's behaviors escalating as time progressed. The District convened a MDT meeting on September 23, 2013 to review the Student's progress. At that meeting, a behavior specialist shared information regarding the ALSUP, and the team identified the Student's lagging skills and unsolved problems and discussed how to work with the Student using common and predictable language to manage her behaviors. On November 18, 2013, the MDT reconvened in response to the Complainant's October 30, 2013 request for the Student to be re-evaluated due to her concerns about the Student's progress towards her IEP goals. On that date, the MDT reviewed the Student's existing data and agreed to re-evaluate the Student in the areas of language, sensory processing, adaptive behavior, behavior and academics. The MDT reconvened on January 17, 2014 to review the evaluation results, and agreed to change the Student's IDEA disability classification from XXXXX to XXXXX XXXXX. The MDT reconvened on February 6, 2014 to develop a new IEP for the Student. The new IEP placed her into a full-time, out-of-general education classroom.

On February 24, 2014, the Complainant emailed the educational diagnostician to request a BIP for the Student. The following day, the educational diagnostician responded to the Complainant agreeing to her request and proposing an IEP meeting on March 7, 2014. However, that meeting did not occur, because the Complainant no longer wished to participate in meetings with the District concerning the Student. The educational diagnostician stated to OCR the MDT did not develop a BIP for the Student at the February 2014 IEP meeting, because the team determined more information from her new placement needed to be considered before deciding if a BIP was warranted. Multiple MDT members including the Student's educational diagnostician, regular education teacher and principal all stated they did not recall the Complainant ever disagreeing with any of the MDT's proposed actions for the Student.

The decision to address the Student's behaviors through the regular education interventions like the ALSUP process and eventual placement change were educational decisions. In making this determination, the District utilized procedures that were consistent with the procedural requirements of Section 504.³ The IEP team drew upon information from a

³ OCR examines only whether an educational decision concerning the evaluation or placement of students with disabilities was made in accordance with the regulations implementing Section 504.

variety of sources, including a review of existing data, tests and staff observations. The team documented the sources of information. The evaluation decision was made by a group of persons knowledgeable about Student and the evaluation data.⁴

The District notified the Complainant of her right to proceed to due process should she disagree with a decision regarding the identification, evaluation, or placement of Student. The Student's MDT meeting notes reflect the Complainant was offered notice of her procedural safeguards at the February 5, 2013 as well as at the January 17 and February 6, 2014 meetings.

Except in extraordinary circumstances, OCR does not review the results of individual placement and other educational decisions as long as the District complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. *See*, Appendix A to 34 C.F.R. Part 104. OCR's investigation confirmed the District complied with the Section 504 procedural requirements. Therefore, if the Complainant does not agree with the District's decision regarding the Student, the Complainant may resolve her disagreement by requesting a due process hearing from the District.

OCR has determined the preponderance of the evidence does not support a conclusion the District denied the Student a FAPE by failing to provide her with a BIP. As such it is closing Allegation 1 as of the date of this letter.

Allegation 2

The Complainant alleged the District discriminated against the Student on the basis of disability by providing significant assistance to the XXXXX program housed in the XXXXX XXXXX School, a unit of the District, which expelled her based on her disability.

Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on November 6, 2014, that, when fully implemented, will address allegation 2 of this complaint.

OCR considers allegation 2 of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may reopen the investigation.

⁴ *See*, 34 C.F.R. § 104.35(c).

Conclusion

This concludes OCR’s investigation of the complaint and should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised 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 or other affected individuals 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.

OCR is committed to prompt and effective service. If you have any questions, please contact me at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXX.

Sincerely,

Karl Menninger
Supervisory Attorney

cc: Dr. Chris Nicastro
Commissioner of Education