



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

June 24, 2016

Antwan Wilson
Superintendent
Oakland Unified School District
1000 Broadway
Oakland, California 94607

(In reply, please refer to case no. 09-14-1465.)

Dear Superintendent Wilson:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Oakland Unified School District. The complaint alleged that the District discriminated against the Student¹ on the basis of disability by placing the Student in a non-public school (NPS) at which NPS staff repeatedly subjected the Student to inappropriate prone restraint over an 11-month period. With regard to this allegation, OCR investigated the following issues:

1. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by: a) failing to implement the Student's Individualized Education Program (IEP); and b) failing to appropriately evaluate/re-evaluate the Student's individual educational needs.
2. Whether the District discriminated against the Student on the basis of disability by allowing the NPS to: a) deny the Student an opportunity to participate in, or benefit from an aid, benefit or service when the Student was excessively restrained and secluded from class; b) subject the Student to different discipline than non-disabled students; and c) subject the Student to a hostile environment.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, as amended. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR gathered and reviewed documents from the Complainant and the District and interviewed the Complainant, the Student's mother, District staff, NPS staff, and staff at an alternative program utilized by the District at District school sites. Additionally, OCR conducted onsite visits of the NPS and the alternative program. OCR found sufficient evidence to support a conclusion that the District failed to provide the Student with a FAPE and discriminated against the Student on the basis of disability.

¹ OCR previously provided the Recipient with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

The applicable legal standards, the facts gathered, and the basis for OCR's determination are summarized below.

Legal Standards

FAPE

The regulations implementing Section 504, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

Discrimination under 34 C.F.R. §104.4(a) and (b)

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled individual with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others; or limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, opportunity enjoyed by others receiving an aid, benefit, or service; or aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that

discriminates on the basis of disability in providing any aid, benefit or service to beneficiaries of the recipient's program or activity. If a school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the district must take steps to obtain compliance from the organization or terminate its assistance.

Hostile Environment

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of the student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II and the regulations, once a school district has notice of possible harassment of a student by a third party based on disability that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the third party, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II, and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action that is within its authority.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring. The type of action needed for an appropriate response will vary depending upon the degree of control the district has over the harasser.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

In determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the circumstances, including: the type of harassment (e.g. whether it was verbal or physical); the frequency and severity of the conduct; the nature of the student's disability; the age and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors.

Department Guidance on Restraint Use

OCR and the Office of Special Education and Rehabilitative Services ("OSERS") in the U.S. Department of Education have issued a Dear Colleague Letter (DCL) defining disability harassment under Section 504

and Title II, as intimidating 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 institution's program.² The DCL provides examples of types of harassment that could create an unlawful hostile environment, including when "[a] teacher subjects a student to inappropriate physical restraint because of conduct related to his disability."

In May 2012, the Department published, Restraint and Seclusion: Resource Document which provides guidance to schools on the use of restraints.³ The Resource Document emphasizes that schools should make every effort to structure environments and provide supports so that restraint and seclusion are unnecessary.

The Resource Document states that there is no evidence that using restraints is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. It provides that restraints should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child's behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience).

The Resource Document further provides that repeated restraint use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them. Finally, the Resource Document states that prone (i.e., lying face down) restraints should never be used because they can cause serious injury or death.⁴ Breathing can also be restricted if loose clothing becomes inadvertently entangled or tightened or if the child's face is covered by a staff member's body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest.

Findings

District Policies and Procedures on Behavior Interventions

- At the time the Student's IEP team agreed to a functional analysis assessment (FAA) on May XX, 2013, the District's special education policies and procedures distinguished between an FAA, which was conducted to address serious behavior not yet responsive to previous plans and a functional behavior assessment (FBA), which was conducted as part of the disciplinary process.
- District policies and procedures required that an FAA be conducted by, or be under the supervision of a person trained in behavior analysis with an emphasis on positive behavioral interventions. An FAA was required to include all of the following:
 1. systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;

² For more information, see U.S. Department of Education, Prohibited Disability Harassment (July 25, 2000), available at <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>.

³ For more information, see <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

⁴ For more information, see Resource Document at p. 16.

2. systematic observation of the immediate antecedent event associated with each instance of the display of the targeted inappropriate behavior;
 3. systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual;
 4. an analysis of the settings in which the behavior occurs most frequently;
 5. review of records for health and medical factors which may influence behaviors; and,
 6. review of the history of the behavior to include the effectiveness of previously used behavioral interventions.
- FAA reports were required to have a description of the targeted behavior(s) in objective and measurable terms, including baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, a functional analysis of the behavior across all appropriate settings in which it occurs, and recommendations.
 - District policies and procedures required that an IEP Team meeting be convened to review the FAA and if necessary, develop a behavioral intervention plan (BIP) which would be part of the student's IEP.
 - Current District procedures require that positive behavioral supports and strategies be used with all students, including students whose behavior impedes their learning, or the learning of others. An IEP team may consider more restrictive choices only when lesser ones are unsuccessful in addressing the challenging behavior.
 - District policy and procedures now allow for FBAs to be conducted outside of the discipline context if a student continues to exhibit serious behavioral challenges despite the use of multiple strategies. The goal of an FBA under current District policy and procedures is to determine why a behavior is occurring (function of the behavior) and to develop appropriate replacement behaviors through explicit strategies in a behavior intervention plan (BIP). A BIP is a proactive action plan to assist in modifying behavior which impedes the learning of the student or others. If developed for a student with an IEP or 504 Plan, the FBA results and BIP become part of the IEP or 504 Plan.
 - Current district policies and procedures state that emergency interventions, including physical interventions, may only be used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.
 - District policy and procedures allow for contracted non-public schools to use alternate behavior intervention strategies which include physical interventions if staff are trained and certified in their use. However, District policy states that emergency interventions may not be used in lieu of planned, systematic behavioral interventions.
 - District policy and procedures require that a behavioral emergency report (BER) be completed if an emergency intervention has been used. If the student does not have a BIP, an IEP must be scheduled within two days to review the BER and determine the necessity of an FBA and an interim plan. If the student has a BIP and the incident involves a previously-unseen serious behavior problem or the existing BIP is ineffective, the IEP team must convene to determine if there is a need to modify the plan.

- District staff members interviewed by OCR indicated a lack of uniform understanding with respect to the District's policy on prone restraint use. Some staff members stated that prone restraint may be used in an emergency situation; others indicated that prone restraint was prohibited. All District staff members interviewed by OCR stated that prone restraint is never used on students in its schools, but may be applied to students with disabilities whom the District has placed in an NPS. All District staff members also stated that prone restraint is not an effective behavior intervention and is not an instructional tool. District staff was also unaware of the District's policies in regards to responding to reports of restraint at an NPS.

District School Wide Positive Behavioral Interventions and Supports (SWPBIS)

- As part of the resolution agreement with OCR in 09-12-5001, the District began implementing SWPBIS in its schools in an effort to reduce the disproportionate discipline of African American students. Consequently, by creating a systematic, evidence-based approach to responding to behavior that is consistent with the District's behavioral expectations for students, SWPBIS has become an integral part of the District's approach to student discipline. Rather than responding to inappropriate student behavior by referring the student for a suspension, the District promotes pre-referral interventions.
- The District defines interventions as, "interactions between students and adults that correct student behavior by meeting a need or teaching a replacement behavior."⁵ District interventions are developed based on the function of the behavior and include environment changes, teaching/reinforcing student skills, checking in with the student at the beginning and end of each day, arranging for social skill groups, and academic supports, etc. They do not include prone restraint.
- District staff stated that prone restraint does not correct behavior or teach replacement behavior. The District does not use prone restraint as an SWPBIS intervention in its schools.

District Utilized Alternatives to Restraint

- OCR investigated alternative practices to the use of prone restraint which included an onsite visit to the Lincoln Childcare Center (LCC) and a District school classroom which houses one of LCC's programs.
- LCC provides onsite wrap-around services in intensive, self-contained classes for students who meet the emotional disability (ED) or autism eligibility criteria for special education services. These classrooms are located on public school campuses, including some District school sites.
- LCC had previously used prone-restraints and restraint in the form of physical escorts using the ProAct protocol. After LCC stopped using prone restraints and physical escorts, they found that staff injury decreased by 75%.
- LCC utilizes an approach known as Safe Environments which includes a hold for crisis situations that is performed by two adults holding the student in one place to contain the student until he is safe.

⁵ See, District website at, http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/85/APPD%20Culture_Climate_Universal_System_s.pdf

One adult is on either side of the student and each uses a gentle under arm hold of the student. Additionally, one adult will place his/her leg in front of one student's legs; the other adult will place his/her leg behind the other leg of the student. The adults are close enough to the student so that their hips touch the student's hips. The adults will follow, rather than resist, the student's movements. For example, if the student drops to the floor, the adults will go down to the floor as well.

- LCC staff indicated that one of the least safe things for staff is to forcibly move a student. Under the protocol applied by LCC, once a decision is made that there is a crisis situation, the first act is to clear the environment; i.e. staff move the students who are willing to move, not the student who is exhibiting a crisis behavior. If a Safe Environments hold is necessary to keep the student safe, it will not last longer than a few minutes. LCC staff does not wait for the student to be calm or deescalated as a condition for release because those two things are not possible for a student who is held in a restraint position. LCC staff explained that the higher the student's state of crisis is, the lower the student's cognitive function will be at that time
- LCC stated that when a student is upset and starts engaging in an activity such as tearing paper, even though this behavior is not unsafe and does not warrant a restraint, it may trigger a response from the adult to restrain the student. LCC spends more time on teaching staff de-escalation techniques for themselves so that they are not triggered by a student's non-crisis behavior than on teaching the Safe Environments hold.
- LCC staff stated that restraint use demonstrates a failure of intervention; it does not eliminate the problem behavior. LCC stated that based on their experience, restraint teaches a student nothing except how to seek restraint. The students learn that they cannot control themselves and they must do something in order to be controlled. So, typically, what LCC saw was students intentionally engaging in behavior to get the adult to behave in a predictable way because that was the only thing the students had learned to control.

A District administrator present at the LCC onsite stated that the culture shift that took place within LCC as it moved away from the use of prone restraint was aligned with the District's shift away from suspensions to implementing SWPBIS in response to student misconduct.

Student Background

- At the time the District placed the Student at the NPS; he was X years old, small for his age and had low-muscle tone. He is intellectually gifted with a verbal IQ of 142 and a perceptual reasoning IQ of 135.
- The Student exhibited a number of challenging behaviors from the time he first enrolled in a general education kindergarten class in a District elementary school in August XXXX.
- The Student's mother requested that the Student be evaluated for special education services in September 2009. Based upon a medical diagnosis of ADHD, the District determined that the Student was eligible for special education and related services under the IDEA eligibility category of Other Health Impaired (OHI) on September XX, 2010 when the Student was in XXXXX grade. The IEP called for push-in RSP for 20 minutes, three times a week.

- The Student continued to engage in challenging behaviors particularly with respect to transitions including impulsivity, biting, kicking, and screaming.
- In March 2011, the Student's parents filed for due process with the California State Office of Administrative Hearings (OAH) regarding the services the District was providing the Student. Pursuant to the settlement agreement, the Student was re-evaluated by an Independent Education Evaluator (IEE) who issued a report on May XX, 2011.
- The IEE report stated that the Student's behavioral outbursts, negative peer relationships, and an inability to interpret social situations were biological in nature. The report noted that the Student's condition caused cognitive fluctuations, including deficits in his ability to pay attention and employ problem solving skills. In addition, the Student's Anxiety Disorder caused the Student to be impulsive, talkative, distractible, withdrawn, or difficult to engage due to a heightened emotional state.
- The IEE determined that the Student qualified for mental health services under the IDEA category, Emotional Disturbance, and recommended that the Student have one-on-one adult supervision by a behaviorally trained aide, especially during all times outside of the classroom. The IEE indicated that the Student's challenging behaviors need to be interpreted for their communicative value and that the Student's misbehavior would likely be due to a state of heightened anxiety and/or sensory overwhelm. The IEE recommended against negative adult responses to the Student's behavior because they would cause the Student to "spin out of control."
- The District placed the Student in the Children's Learning Center (CLC), a non-public school, in December 2011. At CLC, the Student's behaviors became progressively more challenging; the Student engaged in throwing objects, kicking, punching, and slapping adults as well as elopements and other disruptive behavior.
- The Student had two District-developed Behavior Support Plans (BSPs) dated May XX, 2012 and February XX, 2013 to address throwing, hitting/kicking, spitting, threatening gestures, cursing, eloping, invading personal space, yelling, and singing.
- The BSP indicated that there were multiple functions of these behaviors and gave the following functions as examples: escape/avoidance, attention seeking, tangible access to preferred items/activities and seeking control of a situation. The BSP called for the use of the Second Step curriculum and other activities to teach the Student flexible thinking, problem solving and the concepts of accidental versus on-purpose. The plan listed direct instruction on replacement behavior as a teaching strategy and indicated staff should provide verbal reinforcement of appropriate replacement behavior as well as a menu of available classroom rewards based on the Student's preferences.
- The BSP stated that when dangerous behaviors occur, the Student is to be directed to a quiet area or other students should be removed from the area where the Student is engaging in the unwanted behavior. The BSP also stated that physical confrontation was to be avoided as a response to the Student's behavior.
- With the consent of the Student's parents in an IEP amendment dated April X, 2013 the District placed the Student at one of the San Francisco Bay Area campuses of Anova, a non-public school. The Student attended Anova from April X, 2013 until February XX, 2014.

- From March XX, 2014 to the present, the Student has attended a different NPS which prohibits the use of prone restraint.

Anova

- Anova holds itself out as serving students with high functioning autism with related social, emotional, behavioral challenges. Anova operates three campuses in the Bay Area. There are no District students currently placed at the campus in which the Student was placed. A few District students currently are placed at a different Anova campus.
- The District's master contract with Anova for the 2013-2014 school year contained a provision on positive behavior interventions. Under this provision, Anova was responsible for the completion of functional analysis assessments; the development, implementation, monitoring, supervision, modification, and evaluation of behavior intervention plans; and emergency interventions.
- Under the contract, Anova was prohibited from authorizing, ordering, consenting to or paying for a number of prohibited interventions, including those that are designed to, or likely to, cause physical pain, deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities, those that are designed to subject, used to subject, or likely to subject the District student to verbal abuse, ridicule, or humiliation, or which can be expected to cause excessive emotional trauma, and restrictive interventions which employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used as a short term emergency intervention by Anova's trained and qualified personnel as allowable by applicable law and regulations. Although Anova's informational material indicates that Anova utilizes physical escorts and containment methods to protect the safety of everyone concerned, it does not state that staff hold students face-down on the floor.
- Under the master contract with Anova, the District had the right to institute a program audit with or without cause and that such audits included, but were not limited to, a review of core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance.

The Student's Experience at Anova

- When the Student entered Anova, the District-developed BSP was still part of his IEP. At the onsite, Anova staff reported that they did not implement the Student's BSP; rather, they utilized Anova's own methods of behavior modification which Anova used on all of its students.
- Within two hours of the Student's first day at Anova on April X, 2013, staff placed him in a prone restraint. Anova's incident report indicates that on that day the Student was held in prone restraint twice for eight and six minutes, respectively.
- Based on Anova's documentation of its use of prone restraint, Anova staff held the Student face down 92 times over a period of 11 months, for a total duration of over 2200 minutes. The longest duration of a single face-down restraint was 93 minutes and on one day Anova staff prone restrained the Student multiple times for a total duration of 117 minutes due to the Student's failure to follow directions during the recovery period in the resource room. The average duration in which Anova staff held the Student face down was 29 minutes.

- Based on OCR's onsite inspection, the resource room is approximately 12 feet by 10 feet. There is no furniture in the room. There is a mat on the floor against the far wall of the room that is approximately 6 feet by 2 ½ feet by 1 inch thick. There are no windows that let in natural light and only one small window in the door to the room. When a student is in the room being held in a prone restraint the door is shut; two staff members are inside restraining the student and one other staff member sits outside the room timing the restraint.
- During the onsite, Anova staff provided some examples of reasons why the Student would be removed from the classroom and restrained: disruptive behavior, not following directions, pushing desks, and ripping up assignments. Staff explained that the Student wanted to be disciplined and understood prone restraint to be disciplinary. Anova staff explained that because the Student knew or expected to end up in the resource room, he often just went straight there on his own.
- Rather than following the BSP that was part of the Student's IEP, Anova staff created three behavior flow charts for the Student to follow which visually demonstrated the consequence of his misconduct, which was restraint and time in the resource room. Each chart contained a web of color coded arrows connecting vague descriptions of disruptive or defiant behaviors (e.g. "too much silly", "non-compliance" and "unexpected.") to the resource room where he would be restrained. Unlike a BSP, the charts did not identify the Student's triggers for problematic behaviors and referenced no positive behavior interventions.
- Based on the charts and what Anova staff described, after the Student was restrained, he would remain out of the classroom for two periods or more, either in the resource room or front office. The charts indicated and Anova staff confirmed that if the Student ended his day in the resource room or the front office, he would need to start the following school day there.
- During the onsite, Anova staff described how they typically initiated use of a prone restraint on the Student. If the Student began disrupting the class by throwing a paper, disagreeing with staff members, shouting, pinching, or any other disruptive or defiant conduct, Anova staff would firmly place their hands on the Student and physically remove him from the classroom. If the Student was unable to maintain a quiet voice and calm body after the hands-on removal from the classroom, he would be escorted to the resource room by one or two staff members. The staff member would place one of the Student's hands behind the Student's back and hold the Student's upper arm in place. When two staff members escorted the Student, they would each hold one of the Student's arms and almost carry the Student to the resource room if he struggled to free himself.
- Removal of the Student from the classroom often resulted in the Student's behaviors escalating to hitting, biting, wrapping his legs around staff or other similar behaviors.
- Once they reached the resource room, staff initially would release the Student, but if he did not demonstrate a calm body and quiet voice staff would respond by placing the Student into a prone restraint by holding the Student face down and pressing the Student's arms and legs down into a mat on the floor of the resource room. Usually two alternating staff members at a time would cup their hands over the long bones of the Student, pressing their fingertips into the mat to maintain the hold.
- Staff would then require the Student to achieve and maintain a quiet voice and calm body as a condition of release from the face down hold.

- Staff at Anova explained that during the restraints, the Student would not be permitted to use the restroom if he could not present with a calm body and quiet voice; the Student urinated on himself on at least one occasion. Staff explained it would be dangerous to allow a student out of a prone restraint for any reason even if the student needed to use the restroom if the student's voice and body had not yet reached their requisite level of quiet and calm.
- Similarly, Anova staff also denied the Student any break from the restraint for food or water even during long periods of restraint in the middle of the school day. In contrast, after 10 minutes of restraining the Student, staff members would rotate in order to take a break.
- Staff described the Student's behavior and their response as "a crisis cycle" that begins with a trigger of the Student's behavior which escalates to a crisis where the Student is not responsive to any prompting and engages in unsafe behavior. The cycle ends in a "recovery phase" where the Student's muscles are relaxed, he has stopped struggling to get out of the restraint, is no longer resisting verbally or physically and has responded affirmatively to staff's inquiry about whether he is ready to be released. Although multiple staff might be involved in restraining the Student only one staff person would talk to the Student and would do so in a calm and direct manner.
- The incident reports maintained by Anova for each prone restraint do not document the total amount of time the Student spent in the resource room "recovering" or in the office after the incident. However, Anova staff acknowledged that the Student would spend most of the school day in the resource room and that the Student was out of the classroom more often than in the classroom.
- Anova notified the District of the use of prone restraints against the Student by providing the District with written incident reports and verbal reports at IEP meetings. However, according to the District, Anova only provided half of the 92 prone restraint incident reports during the period in which the Student was in attendance at Anova and would often send several incident reports at a time, not necessarily near or at the time of the incidents. According to the District, it did not receive all of the incident reports until October 2014, following the District's receipt of OCR's data request. The District did not respond to the incident reports it received from Anova by calling IEP meetings or developing a BIP. As reported by Anova staff, the District did not request to observe the Student at Anova during his enrollment.
- According to the Student's mother, neither Anova nor the District told her that the Student had been prone restrained. She was first informed about Anova's use of prone restraint by the Student who described to her how staff had been holding him down and informed her that it caused him to experience pain. When the Student's mother raised concern, Anova staff informed her that prone restraint was necessary and convinced her that it would help the Student's behavior to improve.
- On May XX, 2013, the District convened an IEP team meeting to conduct a 30-day review of the Student's placement at Anova. The notes of the meeting, written by a District administrator, state that the Student's parents expressed concern about the use of restraints against the Student. Anova staff explained that "physical restraints and escorts have been necessary on occasion." The notes of the meeting document that the IEP team agreed that an FAA should be conducted for the Student so the team could develop a behavior intervention plan. The Student's mother signed the assessment plan that day.

- At the May XX, 2013 IEP meeting, Anova staff reported that they were not implementing the Student's BSP because it was not appropriate for Anova; Anova instead used a protocol it used to address the behavior of all of its students.
- By the time of the May XX, 2013 IEP meeting, Anova staff had placed the Student in a prone restraint 27 times for a total of 339 minutes. Examples of the use of prone restraint during this period include the following:
 - Anova staff prone-restrained the Student for 35 minutes on May X, 2013 because he was upset about walking into dog droppings and ran into the classroom screaming.
 - On May X, 2013 Anova staff held the Student in a continuous prone restraint for 45 minutes for throwing a chair. Additionally, on May X, 2013, Anova staff prone restrained the Student two other times, each time for 15 minutes, due to the Student's expression of frustration regarding a game of Uno.
 - On May XX, 2013, Anova staff placed the Student in a prone restraint for bouncing a ball inappropriately in the occupational therapy room. The first restraint was for three minutes and the second one was for 15 minutes. Later that day, staff placed him in a prone restraint for 35 minutes and then again for 15 minutes because he had an emotional breakdown in his mother's car.
- The speech and language therapist and the occupational therapist both reported at the May XX, 2013 IEP that the Student's behavior was preventing him from being available to participate in their classes.
- Based on the incident reports, on two occasions in which he was prone-restrained during his first six weeks at Anova, the Student expressed suicidal ideation. The IEP team did not address this during the 30-day review.
- A week after the interim IEP meeting, Anova staff placed the Student in prone restraints six separate times in a single day, May XX, 2013, for a total duration of 103 minutes. The Student had been having difficulty transitioning that day. He eloped from his classroom in the morning and in response, Anova staff placed him in a prone restraint three times. In the afternoon, Anova staff prone restrained the Student an additional three times. The Student had run into the OT classroom and attempted to hide under a desk and proceeded to kick and scream. Anova staff responded by physically escorting the Student out of the OT room. By the time they entered the resource room, the Student's behavior escalated to hitting and kicking staff.
- The 93 minute-prone restraint occurred on October X, 2013. The incident report indicates that the initial behavior that lead to the staff placing the Student in a prone restraint was cursing; the Student's behavior escalated following staff interventions which culminated with them placing the Student in a prone restraint. The incident report states that in response to the Student's cursing, staff told the Student to take a break in which they attempted to restrict his movement with proximity control. This lead to the Student eloping from the building. Staff captured and escorted the Student to the resource room where he was initially released, but then was placed in a prone restraint to which the Student responded by trying to bite and scratch staff's hands. There were multiple staff changes throughout this restraint.

- Also on October X, 2013, the District held the Student's triennial IEP meeting. During the period from the Student's first day of school to the date of the triennial IEP, Anova staff had held the Student face down 48 times for a total of 1250 minutes. At the October X, 2013 IEP meeting, the team noted that the Student's behavior had still not been evaluated to appropriately develop a behavior intervention plan, despite the parent-signed assessment plan from the May XX, 2013 IEP. A September XX, 2013 note to the school nurses from the Student's District case manager indicates that the case manager had been unaware that the Student's parents had signed the May XX, 2013 assessment plan.
- A District psychologist conducted the Student's triennial psychological evaluation on September XX-XX, 2013. This assessment did not include an FAA or FBA. The District psychologist's report states that just prior to her conducting a classroom observation; the Student was placed in a restraint for an extended period for showing aggression towards another student in the classroom.
- The notes of the October X IEP meeting state that in lieu of a BSP, Anova instituted an emergency behavior intervention plan and discontinued the Student's existing BSP.
- On December XX, 2013 the District provided the mother with another consent form to sign to conduct a behavior assessment.
- On January X, 2014, the Student was prone restrained a combined total of 95 minutes during four back-to-back periods of restraint. An IEP meeting was convened on January XX, 2014 to discuss the increased duration of physical restraint. The notes of the meeting document that Anova explained the reason for keeping the Student in a restraint was his verbal response to the restraint. The Student's attorney stated that his family believed that Anova staff was triggering the Student's behavior.
- At the January XX, 2014 IEP meeting, the District provided the Student's mother with a plan to conduct a mental health assessment and evaluate the Student for a one-on-one aide. The District's written justification on the January XX, 2014 assessment plan was "multiple incidents since mid-December that involved restraint for at least 40 minutes." However, the District made no mention of the fact that by this time, on at least four occasions in which the Student was held in a prone restraint, he expressed suicidal ideations.
- On February XX, 2014, the Student's mother sent the District a letter that reiterated her concerns regarding the use of restraints against the Student and indicated that since the January XXXX IEP meeting, Anova staff had restrained the Student five more times. The Student's parents previously had raised concerns about the use of restraint against the Student at his May 2013, October 2013, and January 2014 IEP meetings.
- On February XX, 2014, a District-contracted behavior analyst assessed the Student to determine whether he needed a one-on-one aide. The behavior analyst recommended that the Student have a temporary adult aide.
- On February XX, 2014, the Student's mother notified the District that the Student had been injured while he was restrained at Anova.
- On February XX, 2014, in a telephone conversation with the Student's mother, the Student's case manager mentioned the possibility of changing the Student's placement, but offered only one

option, an NPS which the mother believed would not have met the Student's needs. The case manager did not discuss any other alternative placements or options for making Anova a safer environment for the Student.

- On February XX, 2014, Anova staff placed the Student in and out of a prone restraint seven times for a total duration of 107 minutes. The Student's mother came to pick up the Student and heard his screams while she was still in the Anova parking lot. The Student's parents determined it was unsafe for the Student to return to Anova. Consequently, February XXXX was the Student's last day at Anova.
- On March X, 2014, nine months after the Student's parents signed the May XX, 2013 assessment plan and after the Student stopped attending Anova, an Anova behavior analyst pieced together a functional behavior assessment report and recommended that the Student have a behavior intervention plan.
- Also on March X, 2014, an IEP team meeting was convened to review the March X behavior assessment and February 2014 assessment for a one-on-one aide. The team agreed that the Student needed a change in placement and the District, with the consent of the Student's parents, made referrals to other NPS programs.
- From February XX until March XX, 2014 which is the date the Student began attending the NPS he currently attends, the Student stayed at home and did worksheets provided by Anova. During this period, the District did not offer or provide the Student with instructional support or services.

Impact on the Student

- During the onsite, an Anova staff member reported that the Student made no academic or behavioral progress during his enrollment at Anova. Anova staff acknowledged that they were unable to focus on academics because the Student's behaviors were not responsive to the Anova behavior management program.
- The Student's academic and functional performance declined in some areas as demonstrated by comparing his assessment scores pre- and post-Anova. For example his grade level equivalent for applied problems in April 2012 was 7.8. In April 2014, after 11 months at Anova, it dropped more than a grade level to 6.6.
- In addition to the loss of instructional time due to being held in prone restraint which totaled approximately 2200 minutes, Anova staff explained that the Student was excluded from the instructional setting following each restraint in order for the Student to "recover" and reflect on why he had been restrained. The staff reported that on many days, the Student just went to the resource room because he knew he was going to end up there.
- According to the Complainant, the Student experienced physical and emotional trauma due to the long periods and frequency of being held face down. The Student frequently reported to his parents that his arms or upper body hurt at night because of being restrained. On at least one occasion, because his face was pressed into the floor, the Student sustained an abrasion on his face.
- The Student was in constant fear of being forcibly taken to the resource room and being restrained. Even when the Student was not personally subjected to restraint, he heard the cries and screams of

other students who were similarly subjected to physical restraint. According to the Student, he heard such cries nearly every day he was at school.

- The Student experienced difficulty sleeping at night and difficulty engaging academically and socially at school because of this fear. As noted in behavior incident reports that Anova provided to the District, the Student expressed suicidal ideation. In addition, the Student's January XX, 2014 IEP indicated that the Student repeatedly expressed his wish to die to his parents and to Anova staff.

Analysis

Issue 1: Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by: a) failing to ensure implementation of the Student's Individualized Education Program (IEP); and, b) failing to appropriately evaluate/re-evaluate the Student's individual educational needs.

OCR determined that the preponderance of evidence was sufficient to support a conclusion that the District violated Section 504 and Title II by failing to ensure that the Student's IEP was implemented and by failing to appropriately evaluate and re-evaluate the Student's individual educational needs.

a. Failure to Implement the Student's IEP

The District failed to ensure that the Student's IEP was implemented at Anova with regard to the BSP and other services required by the Student's IEP. Anova staff failed to implement the Student's IEP by disregarding the Student's BSP. Instead Anova utilized a behavior management protocol it applied to all of its students which included the routine use of prone restraint. Additionally, while Anova staff were holding the Student face down to the ground and during the periods the Student was in the resource room or office "recovering" from the restraint, the Student did not receive the instructional services, speech and language services, and occupational therapy required under the Student's IEP.

Therefore, OCR concluded that in violation of Section 504 and Title II, the District denied the Student a FAPE by failing to ensure Anova implemented the Student's IEP with respect to the Student's BSP, speech and language services, occupational services and classroom instruction.

b. Failure to Evaluate the Student

Contrary to the information in the Student's IEE report and BSP which was part of his IEP that made clear the Student would "spiral out of control" if physical intervention were used to manage his behavior, Anova regularly prone restrained the Student for behaviors which were frequently not dangerous. The fact that Anova used this highly restrictive and dangerous type of aversive behavior intervention so frequently and for such long durations should have prompted the District to evaluate the Student's behavior under its own policy which prohibits the use of emergency interventions such as prone restraint in lieu of planned, systematic behavioral interventions and requires the IEP team to evaluate the effectiveness of a behavioral intervention plan and modify it if necessary when emergency interventions are used. Indeed, the Department's Resource Document provides that repeated restraint use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior.

Moreover, for each of the 92 times that the Student was prone restrained, he was removed from the classroom/instructional setting and for each time the Student was restrained, Anova reported that he spent at least an equal amount of time "recovering" in the small, windowless, unfurnished resource room. Indeed, Anova acknowledged that during the period of his attendance, the Student would spend most of

the school day in the resource room rather than receiving instruction in his classroom and the services required in his IEP. The 2200 minutes that the Student was held face down combined with the amount of time the Student was “recovering” in the resource room exceeded ten instructional days and thus, constituted a significant change in placement. Under 34 C.F.R. §104.35(a) the District is responsible for conducting an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before making a significant change in placement. After the Student was removed from the classroom setting for the equivalent of ten days, the District should have conducted an evaluation.

Although the District eventually recognized the need to evaluate the Student and provided the Student’s parents with assessment plans which they signed initially in May 2013, nearly a year passed, during which the Student was continually subjected to prone restraint, before the assessment was completed. The Student’s mother signed a behavior assessment plan at the conclusion of each IEP meeting in May, October and January and the District failed to ensure that the assessment was completed. Although the District’s contract with Anova indicates that Anova would conduct FAAs and the evidence may show that Anova failed to meet its contractual obligation in this regard, the District cannot contract away its FAPE obligation and is ultimately responsible under Section 504 and Title II for ensuring that the Student is properly and timely evaluated. Therefore, OCR concluded that in addition to denying the Student a FAPE by failing to implement the Student’s IEP, the District also denied the Student a FAPE by failing to evaluate the Student in violation of Section 504 and Title II.

Issue 2: Whether the District discriminated against the Student on the basis of disability by allowing the NPS to: a) deny the Student an opportunity to participate in, or benefit from an aid, benefit or service when the Student was excessively restrained and secluded from class; b) subject the Student to a hostile environment; and, c) subject the Student to different treatment for defiant and disruptive behavior than non-disabled students.

Under Section 504 and Title II, if a school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the district must take steps to obtain compliance from the organization or terminate its assistance. OCR determined that the preponderance of the evidence is sufficient to support a conclusion that the District provided significant assistance to Anova, that Anova discriminated against the Student on the basis of disability and the District failed to take appropriate steps to obtain compliance from Anova or terminate its contractual relationship with Anova during the period of the Student’s placement at Anova.

As it does with every NPS in which it places a District student, the District provided significant assistance to Anova by virtue of its contractual relationship with Anova to provide educational services to the Student. Just as it is impermissible for the District to contract away its responsibility to ensure that District students who are placed in an NPS receive a FAPE, the District is ultimately responsible under Section 504 and Title II for ensuring that the students it places in NPS environments are provided with an education that is free from discrimination on the basis of disability.

a. Denial of Equal Opportunity for Educational Benefit

OCR determined that Anova’s excessive use of prone restraint against the Student along with its application of physical escort and “recovery” during the entire period of his attendance at the NPS excluded the Student from the instructional setting for behavior related to the Student’s disability. The Student was excluded from the instructional setting for a significant period of time consisting not only of the 2200 minutes in which the Student was held face down, but also the undocumented amount of time the Student spent in the resource room or front office “recovering.” As acknowledged by Anova staff in

interviews and documented on the Student's disciplinary charts, the Student spent most of his time at Anova outside of the instructional setting. Indeed, Anova staff reported that the Student made no academic progress during his enrollment at Anova and his academic and functional performance declined as shown by grade level drops in pre- and post Anova assessments. Thus, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that in violation of Section 504 and Title II, the Student was denied an equal opportunity to benefit from the educational program when he was being restrained and made to stay in the recovery room or office since he was not receiving academic instruction or educational benefit during these periods.

b. Hostile Environment

As noted in the above-referenced Dear Colleague Letter, inappropriate use of physical restraint may constitute disability-based harassment. The U.S. Department of Education Resource Document makes clear that there is no circumstance under which an educational institution's use of a prone restraint against a student would be appropriate. The Resource Document unambiguously states that the reason prone restraints should never be used is because they can cause the student to either suffer serious injury or death.⁶ Thus, OCR determined that Anova's inappropriate use of prone restraints against the Student constituted disability-based harassment since Anova restrained the Student in response to his disability-related behaviors. OCR then considered the totality of the circumstances. Based upon the following, OCR determined that Anova's use of prone restraint against the Student was severe. Prone restraint is a serious, potentially lethal act. Being prone restrained caused the Student to scream and cry with physical pain, suffer physical injury, fear and anxiety about going to school, and become depressed to the point of being suicidal. The Student struggled against the restraint use; it was not welcome; he did not consent to its use. The Student was subjected to this dangerous type of restraint when he was nine years old, small for his age and experiencing weak muscle tone by adults who were more than twice his size. He was denied food and water and was denied the right to use the restroom during periods of restraint. The restraint subjected the Student to public humiliation as its use was preceded by a physical escort to the resource room which was visible to his peers who saw him with his arms being held behind him by the adult escort(s) as they took him away.

OCR considered the frequency and duration of Anova's application of prone restraints against the Student and determined that in addition to being severe, the use of prone restraint at Anova was persistent and pervasive. Anova forced the Student into a face down hold over 90 times in 11 months, an average of twice a week. The Student was held in a face down position with his arms and legs immobilized for an average of 29 minutes each time. In addition to his own experience of being restrained, the Student reported that he heard the cries of other students being restrained on a nearly daily basis.

Based upon the foregoing, OCR concluded that Anova's use of prone restraints against the Student was sufficiently serious to deny or limit the Student's ability to participate in or benefit from the educational program and created a hostile environment on the basis of the Student's disability.

The District placed the Student at Anova and was responsible for knowing that the Student was experiencing a hostile environment at the NPS, stopping and remedying the harassment, and preventing such incidents in the future. The contract between the District and Anova contained a provision that gave the District the right to audit Anova with or without cause including reviewing core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance. The District did not conduct an audit of Anova during the Student's placement and did not

⁶ For more information, see Resource Document at p. 16.

take steps to obtain Anova's compliance with non-discrimination obligations; instead, it continued to provide Anova with significant assistance even as Anova continued to subject the Student to a hostile environment on the basis of the Student's disability.

In addition to having constructive notice, the preponderance of the evidence shows that the District had early actual notice that the Student was being subjected to harassment in the form of prone restraint. The District received copies of behavior incident reports which documented the use of prone restraint and stated that the Student had experienced suicidal ideation in conjunction with the restraint. Moreover, IEP notes document that the Student's parent and legal advocate raised concerns about the use of prone restraint against the Student throughout his placement at Anova. The District knew that Anova staff had prone restrained the Student by the Student's May XX, 2013 IEP meeting which was held to review the Student's initial 30 days at Anova. The only action the District took in response to the concerns raised about the use of prone restraint against the Student was to agree to have an FAA which took nine months to complete. Even if the FAA were timely conducted, by itself, it would have been an insufficient response to the hostile environment.

The District's response should have been tailored to promptly stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the Student. The District should have conducted an impartial inquiry designed to reliably determine what was occurring by taking steps such as interviewing the Student and observing him and staff at Anova, and interviewing the Student's parents and Anova staff. The District failed to conduct an investigation, did not take steps to stop the use of prone restraints against the Student, did not seek to identify and remedy the harm to the Student, and did not take effective steps to prevent future use of prone restraints against the Student. The use of prone restraint against the Student only ended when the Student's family refused to allow him to return to Anova. Therefore, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that the District allowed the Student to be subjected to a hostile environment at Anova and failed to take prompt, thorough, and effective responsive action in violation of Section 504 and Title II.

c. Different Treatment for Defiant and Disruptive Behavior

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

The District has implemented SWPBIS in its schools to address primarily defiant and disruptive student misconduct with positive behavior interventions rather than suspension or expulsion. Prone restraint is not a positive behavior intervention; prone restraint does not remove triggers or teach pro-social replacement behaviors. Anova's application of prone restraint to the Student was frequently in response to disruptive or defiant, but not dangerous behavior such as "too much silly," cursing, hiding under a desk, expressing frustration, inappropriately bouncing a ball, not following directions, pushing desks, and ripping up assignments. These behaviors are within the range of defiant and disruptive behaviors that the District addresses through SWPBIS. If a student engaged in such misconduct in a District school, under the District's disciplinary/SWPBIS protocol the District would have applied a range of positive interventions

and supports in response to the behavior, not prone restraint. Prone restraint is not used in District schools for defiant or disruptive behavior or for any other misconduct.

In contrast, the District allowed Anova to routinely use prone restraint in response to the behavior of the Student that was defiant and disruptive, but not dangerous. According to the District, prone restraint use against its students is only permissible for those it places at an NPS. Only students with disabilities are placed in NPSes. Thus, the only students the District allows to be prone restrained for non-dangerous defiant and disruptive behavior are students with disabilities. OCR determined that the District allowed the Student to be treated differently for non-dangerous, defiant and disruptive behavior on the basis of disability and that for the reasons stated above, this was adverse treatment that denied and/or limited his educational benefits and opportunities.

The District did not proffer a legitimate, non-discriminatory reason for allowing Anova to respond to the Student's defiant/disruptive, but non-dangerous behavior with prone restraint. Even if the District had asserted that the reason it allowed Anova to prone restrain the Student was safety, the preponderance of the evidence is sufficient to support a conclusion that such a justification was a pretext for different treatment on the basis of disability. Many of the behaviors that led to the Student to being prone restrained were not unsafe or dangerous. Moreover, more effective responses than prone restraint exist, such as the Safe Environments hold utilized by LCC, which do not have potentially lethal consequences.

Therefore, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that the District allowed the Student, on the basis of disability, to be subjected to different treatment for non-dangerous, defiant and disruptive behavior than his non-disabled peers in violation of Section 504 and Title II. Based upon the foregoing, OCR determined that the preponderance of the evidence was sufficient to support a conclusion that the District violated Section 504 and Title with respect to Issue 1 and Issue 2.

The enclosed resolution agreement contains individual student remedies to evaluate the Student for adverse effects caused by the repeated use of prone restraint against the Student and determine appropriate compensatory education and services for the period of time the Student was removed from the instructional setting while he was at Anova. The agreement also contains provisions to ensure that restraint use against District students with disabilities is consistent with the principles set forth in the U.S. Department of Education's Restraint and Seclusion Resource Document.

This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Recipient 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, it will seek to

protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Jessica Plitt (jessica.plitt@ed.gov) at 415-486-5525 or Gloria Guinto (gloria.guinto@ed.gov) at 415-486-5519.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure

cc: XXXXXXXXXXX XXXXX, XXXXXXX XXXXX, XXXXXXX XXX and XXXX XXXXXXX (via email)