



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

October 14, 2016

The Honorable William Cobey, Jr.  
Chairman  
North Carolina State Board of Education  
301 North Wilmington Street, Room 212  
6302 Mail Service Center  
Raleigh, NC 27699-6302

Re: OCR Complaint No. 11-16-1453  
Letter of Findings

Dear Chairman Cobey:

This letter is to inform you of the outcome of a complaint (OCR Complaint No. 11-16-1240) filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department), on March 22, 2016, against Queens Grant High School, a public charter school (the School). Although the Complainant did not specifically name the North Carolina State Board of Education (the State Board) as a party, OCR determined that the State Board is a necessary party to resolve the allegations in the complaint. Therefore, OCR opened a separate complaint (OCR Complaint No. 11-16-1453) against the State Board. The Complainant filed the complaint on behalf of her son (the Student), alleging that the School discriminated against the Student on the basis of disability, race, and retaliated against the Student. Specifically, the complaint alleges the following:

1. From March through April 20, 2016, the School retaliated against the Student by issuing the Student disciplinary referrals because the Complainant filed a state disability-related complaint in March 2016;
2. On or about March 3, 2016, the School discriminated against the Student on the basis of race when it denied the Complainant's request to volunteer in the Student's classroom while allowing white parents to volunteer;
3. On April 19, 2016, the School retaliated against the Student by accusing him of writing and talking about an AK-47 gun when the Complainant declined to resolve her state complaint through mediation; and,
4. On or about February 25, 2016, the Student's former Special Education Coordinator and teacher harassed the Student on the basis of disability by saying to the Student statements such as, "I can't help it if you can't keep up."

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Additionally, OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Also, OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department.

Further, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II, Title VI, and Title IX.

During the course of its investigation, OCR reviewed documentation received from the Complainant and the School, including information obtained during interviews with School personnel. After carefully reviewing all of the available evidence, OCR finds that there is insufficient evidence to support a finding with regard to the allegations above. However, OCR did identify compliance concerns with regard to the School's Title IX grievance procedures, and discovered that the School has not adopted or published Section 504 compliant grievance procedure.

## **Background**

### **Allegation 1 and 3: Retaliation**

OCR reviewed documentation provided by the Complainant and interviewed the Complainant on April 11, 2016. The Complainant alleges that after she filed a disability discrimination complaint with the North Carolina Department of Public Instruction (NCDPI) (on March 10, 2016) and declined (on April 19, 2016) to mediate the complaint, the School retaliated against the Student. In particular, she alleges that the School increased disciplinary referrals against the Student and reported to her that the Student had been overheard in School saying something about a gun (an "AK-47").

## **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, or participates in an OCR proceeding.

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the School took a materially adverse action against the Complainant (or someone

closely associated); and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the School has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the School's reason for its action is a pretext, or excuse, for unlawful retaliation.

An individual engages in a protected activity if he/she opposes an act or policy that he/she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an OCR investigation, proceeding, or hearing. An adverse action is something that could deter a reasonable person from engaging in further protected activity.

### **Analysis**

OCR reviewed the Student's disciplinary file, and interviewed administrators and teachers involved in writing referrals and issuing sanctions for disciplinary actions against the Student. According to the School, it was emailed notice of the NCDPI complaint on the same date it was opened (March 10, 2016). After the School received notice of the NCDPI complaint, the Student received five referrals, only one of which resulted in a disciplinary sanction. OCR reviewed documentation submitted by the School, including copies of the Student Discipline Forms (referrals) issued to the Student and summaries of the Student's discipline record provided by the School, and found the following:

#### **March 21, 2016 Referral**

A report was made by the substitute teacher that the Student was sleeping in class and refused to do any work. OCR spoke to the Principal who addressed this incident. He told OCR that he does not assign any sanctions for sleeping in class, but rather allows a student to rest in the office. In this case, the Principal went to the classroom and escorted the Student to his office, where he remained until the next period.

#### **March 24, 2016 Referrals**

Two staff members wrote referrals resulting from conduct which reportedly occurred at lunch. One referral was written by staff in the lunchroom who reported the Student was disruptive, listening to loud music, singing loudly, and waving his arms "all over the place." No disciplinary consequence was given as a result of this referral. Shortly after leaving the serving area, the Student was observed by another staff member on lunch duty. The female staff member observed the Student was out of compliance with the dress code (his pant leg was rolled up), singing loudly and dancing in what the staff member described as a sexually suggestive manner. Reportedly, he became disrespectful to the referring staff member when she addressed his behavior. The Principal was asked to intervene. The Principal told OCR that, after responding to the request for intervention, he walked the Student to his office, verbally counseled him about complying with staff requests, and then walked him to his next class. No other disciplinary consequence was given.

April 19, 2016 - AK-47 Comment

The Complainant reported to OCR that on the day she cancelled the NCDPI mediation (April 19, 2016), the School contacted her and informed her that the Student was overheard stating something about an “AK-47.” The Complainant did acknowledge, and OCR did find, that no disciplinary sanction was issued or threatened related to this incident, although a disciplinary referral was written regarding this incident. OCR interviewed the teacher who issued the referral. The teacher stated that he was in the Student’s classroom to make a copy. The teacher stated that he observed the Student listening to music and rapping something about an “AK-47.” He told OCR that he wrote a note on the referral form to notify the parents about the incident.<sup>1</sup> On top of the form was written, in quotes, “NOTE.” The teacher told OCR that he did not intend for the form to serve as a disciplinary referral, but rather, just to “note” the incident and to notify the parents. Furthermore, the teacher stated, and OCR confirmed, that the Student did not receive a sanction as a result of the note.

April 20, 2016 Referral

On April 20, 2016, the Student’s Math teacher wrote a referral for the Student because he was tardy for the second time in a quarter. The Student was issued a one day after school detention (ASD). OCR interviewed the Math teacher and the Principal regarding this incident. Both individuals told OCR that the sanction was consistent with the School’s tardy policy, found in the Student Code of Conduct (Code). According to the Complainant, this was the last day the Student attended the School. She told OCR she removed the Student and requested he be served through homebound instruction. The Principal confirmed that the Student received homebound instruction for the remainder of the school year.

As discussed above, when analyzing a claim of retaliation, OCR will investigate: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the School took a materially adverse action against the Complainant (or someone closely associated); and 3) whether there is some evidence that the School took the adverse action as a result of the Complainant’s protected activity. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. If the evidence establishes a prima facie case, OCR then determines whether the School has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the School’s reason for its action is a pretext, or excuse, for unlawful retaliation.

OCR did find that the Complainant engaged in a protected activity when she filed a complaint against the School with NCDPI. However, in regards to referrals written after the Complainant filed a NCDPI complaint, but which did not result in any disciplinary consequence, OCR did not find that these instances rose to the level of a materially adverse action. Additionally, OCR did not find the School’s action of informing the Complainant regarding the Student rapping about

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<sup>1</sup> A copy of the referral was provided by the School and it notes the time of the incident as 2:20 PM. Additionally, OCR confirmed the time with the teacher in his interview.

an “AK-47” to be materially adverse; merely contacting the Complainant to notify her of the behavior is not a materially adverse action. Because OCR was not able to establish a *prima facie* case for retaliation regarding these incidents, OCR found insufficient evidence of retaliation regarding these allegations. Despite this, OCR also investigated the allegations above and found that the School was able to articulate legitimate, non-retaliatory reasons for the actions taken above. OCR also found insufficient evidence that the reasons provided were a pretext for unlawful retaliation.

In regards to the referral written on April 20, 2016 for being tardy to Math class and the resulting disciplinary sanction (an ASD), OCR did find that the discipline was a materially adverse action. Having already established an initial or *prima facie* case, OCR then focused its analysis on the School’s stated legitimate, non-retaliatory basis for the discipline. The School denied that the Student was retaliated against as alleged and stated that the Student was assigned an ASD because, in this Math class, he had accrued excessive tardies in the same quarter. The School provided OCR a copy of the School’s Code of Conduct (the Code), which states in relevant part, that an ASD will be assigned to a student who is tardy twice to the same class during a quarter. OCR was provided a copy of the Student’s attendance record. OCR found that the Student had been tardy to this Math class a total of nine times (9) in the quarter, with two tardy instances occurring the week he received the April 20<sup>th</sup> referral and an additional three occurrences in the previous two weeks. OCR finds that the School established a legitimate, non-retaliatory reason for its actions. Next, OCR considers whether the stated reason is merely a pretext for unlawful retaliation.

OCR notes that, as discussed previously, the Student had been tardy to the Math class a number of times prior to the week of April 20<sup>th</sup> and had not received a disciplinary consequence.<sup>2</sup> This provided some support for the Complainant’s allegation that the discipline was issued in retaliation for her April 20<sup>th</sup> action regarding her state disability complaint. OCR then requested and obtained attendance records of other students who were written up for excessive tardies. OCR found that those who had been tardy twice to the same class, in the same quarter, had also been assigned ASD, which was consistent with the School’s policy. Additionally, OCR reviewed the records and determined that the same or similar (more harsh) discipline had been assigned to students who had been tardy, similar to the Student, including those who had not filed or participated in any civil rights complaints. OCR determined that the School assigned the Student discipline in this matter in a manner consistent with how other similarly situated students had been treated, including those students who had not asserted rights or privileges under the OCR-enforced civil rights laws. Additionally, OCR found that the discipline issued for this tardy was consistent with the sanctions described in the School’s Code. Based on all the above, OCR finds insufficient evidence that the School retaliated against the Complainant or the Student, as alleged. Therefore, in regards to allegations 1 and 3, OCR found insufficient evidence to substantiate the allegations of retaliation.

### **Allegation 2: Volunteer**

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<sup>2</sup> The Student had been referred by different teachers (not the Math teacher) for excessive ASDs to the Principal, prior to this incident. The Student served ASDs for tardy referrals on September 10, 2015; September 30, 2015; October 8, 2015; October 27, 2015; January 19, 2016; and March 3, 2016.

In emails forwarded by the Complainant to OCR, the Complainant (who is African American) initially alleged that she was denied the opportunity to “observe” the Student at School, while White parents were allowed to observe.

On April 11, 2016, during a phone conference with OCR staff, the Complainant clarified her allegation, stating that the School had denied her request to volunteer at the School, without any justification. In support of her allegation, the Complainant sent OCR copies of emails regarding volunteering to proctor an exam in January 2016. She also emailed OCR a photo of a White woman, in what appears to be an empty classroom, and wrote just before sending the photo: “This is the email where I was told j [sic] couldn’t come observe him at school but clearly “White” parents can and do. I will follow picture to support this.”

### **Legal Standards**

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the School’s programs or activities on the basis of race, color, or national origin.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the School treated the Complainant less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the School had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the School is a pretext, or excuse, for unlawful discrimination.

### **Analysis**

OCR first considered whether the information establishes a *prima facie*, or initial, case of different treatment on the basis of race. As stated above, the Complainant alleges the School denied her the ability to volunteer in the classroom while allowing White parents to volunteer.

OCR interviewed the Principal, the Assistant Principal (AP), and the Math teacher, all of whom confirmed that the School does not permit parents to observe students in the classroom. These same witnesses confirmed the School does allow parents to volunteer when additional exam proctors are needed (such as when state-required exams are administered). During an interview with OCR staff, the AP, who is also in charge of coordinating the administration of state-required exams, told OCR that if there are not enough staff members available to proctor exams, she will send out an email to all parents (who provided emails and agreed to be contacted) seeking volunteers. She confirmed the information contained in an email dated January 13, 2016, in which she sent out a mass email requesting volunteers to proctor exams which were going to be administered Wednesday, January 20, 2016, Thursday, January 21, 2016, and Friday, January 22, 2016. According to the AP (and emails obtained by OCR), the Complainant initially volunteered to proctor exams Thursday, January 21st. Subsequently, on Thursday, January 14<sup>th</sup>, the Complainant emailed the AP asking if she could instead switch to Friday, January 22nd. On January 15<sup>th</sup>, the AP sent the Complainant an email informing her that Friday was already covered, but that the AP needed a replacement for Thursday, January 21st. That same evening

(4:32), the Complainant emailed the AP informing her she could still proctor exams on Thursday, January 21<sup>st</sup>. The AP emailed the Complainant that same night, informing her that she had just been notified she would be attending a meeting off-campus next Thursday, and, therefore, would not be able to administer exams and would not need proctors. In an interview with OCR, the AP reported being called to attend a required NCDPI meeting on Thursday, January 21<sup>st</sup>. Further, the AP told OCR that as the test coordinator, she must be present when exams are administered; therefore, she was forced to cancel that exam session. Finally, OCR considered that while the School cancelled the testing session scheduled for January 21<sup>st</sup>, the Complainant did not request to volunteer for any other exams. OCR obtained copies of emails to and from the Complainant and the AP that corroborated all the above.

Additionally, the School provided OCR with a log of all the parents who had volunteered, indicating the parent's race, including the date and the exam the parent proctored. The log indicates that during the period in question (January 2016-June 8, 2016) eleven other African American parents proctored exams. OCR found that the other African American parents were allowed to volunteer and proctored exams

Based on all the above, OCR found insufficient evidence to substantiate the allegation of different treatment on the basis of race.

#### **Allegation 4: Disability Harassment**

The Complainant reported that the Student's former case manager/teacher harassed the Student on the basis of his disability. In April 2016, during her initial interview with OCR, the Complainant stated that the former case manager harassed the Student on the basis of his disability when she told the Student, "I can't help it if the student can't keep up," and "This is your life; you can choose to waste it." The Complainant did not clarify in what context or when the statements were allegedly made and it was unclear whether the first statement was said in the presence of the Student.

#### **Legal Standards**

A School's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A School may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the School had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the School's programs, activities, or services. When such harassment is based disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a School must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a School must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

### **Analysis**

In speaking with the Complainant, she was not able to provide detailed examples of instances of disability-based conduct. She reported that the former case manager/teacher told the Student, “I can’t help it if you can’t keep up.” However, the Complainant was not able to describe in what context it was said. Additionally, she alleged the former case manager stated to the Student, “This is your life; you can choose to waste it.” The Complainant also reported that the case manager/teacher “threatens to send him out of her class if he doesn’t pay attention.” Finally, she reported that during the last IEP meeting, “his case manager ridiculed him in our meeting by questioning my faith in God.” Again, she was not able to provide details as to why or when many of these statements were allegedly made.

OCR also reviewed correspondence the Complainant provided, between the Complainant and School staff. OCR reviewed an email the Complainant sent to the Coordinator on Thursday, February 25, 2016, in which the Complainant wrote:

There seems to be constant personality conflict with [the Student] and [the case manager/teacher] . . . It has been expressed he has disabilities & handicaps and for him to be triggered to the point to explode to defend himself from this one particular person who never gives him the opportunity to explain himself is unreal to me. I would really like his case manager to be changed.

The Coordinator responded on Monday, February 29, 2016, writing, “I will make the necessary change in reference to the case manager.”

In an attempt to gather additional information about this allegation, OCR requested to speak with the former case manager/teacher who allegedly made the comments; however, she is no longer employed by the School and declined to participate in this investigation. The Complainant provided OCR with a witness; a staff member who had also worked with the Student during the last academic year. The witness told OCR that the witness observed the former case manager in the classroom tell the Student, “I can’t help it if you can’t keep up.” The witness told OCR the



former case manager made this or similar comments frequently, however, the witness was not able to identify or provide additional details about specific instances. The witness also reported the former case manager, in a separate instance, told the Student, “You are going to do what I ask you to do.” The witness told OCR this occurred when the former case manager asked the Student to comply with her directives, such as when the Student would rap out loud.<sup>3</sup> Because there is no additional information about these comments to provide the necessary context, including the content of the statements, to determine whether or not they were disability based, OCR is unable to conclude that the purported comments were disability based or otherwise part of a hostile environment based on disability. The Complainant did not provide and OCR did not find any additional specific details related to the alleged harassing conduct.

OCR interviewed other School staff members, including the Principal and the Coordinator. The Principal reported that he first became aware of disability harassment allegations against the former case manager through the OCR process. The Coordinator told OCR that she knew that conflict existed between the Complainant and the former case manager. However, the Coordinator also stated that she was not made aware of any specific instances of disability harassment regarding the former case manager, including, any against the Student. She did report that on February 25, 2016, the Complainant emailed the Coordinator after an incident occurred in the former case manager classroom,<sup>4</sup> and that by February 29<sup>th</sup>, the case manager would be removed. However, she remained the Student’s teacher, as no other staff members were available to serve in that capacity in the classroom.

OCR also considered the Complainant’s email to the Coordinator, describing that the Student and the former case manager had a personality conflict. While the email suggests that the working relationship between the two was dysfunctional, and possibly exacerbated by the Student’s disabilities, it does not suggest that the former case manager was engaging in disability-based harassing behavior. Finally, OCR considered that within two working days of being notified of the request that the case manager be changed, the School agreed to make the change.

OCR acknowledges that the former case manager may have engaged in unprofessional conduct, which led to considerable conflict between her and the Student. However, even assuming for the purpose of analysis the one alleged corroborated comment was disability-related, OCR did not find this alone to be sufficiently severe, persistent, or pervasive conduct which would create a hostile environment on the basis of disability, in violation Section 504 and Title II. Therefore, in regards to this allegation, OCR found insufficient evidence to substantiate the allegation of disability harassment, as alleged.

While OCR has concluded that there is insufficient evidence to support a finding of disability discrimination, OCR cautions and reminds the School that harassing and bullying behavior by other students, in addition to teachers and school employees, can trigger a school’s obligations to address disability-based harassment. In addition, such behavior in the context of students with

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<sup>3</sup> The witness claimed the *rapping* out loud was therapeutic. The Student’s IEP does not contain a provision about *rapping* out loud as a therapeutic measure.

<sup>4</sup> Reportedly, the Student reached into another student’s bag of *Goldfish* crackers without permission. The Coordinator told OCR that the Student told her that the other student had offered the crackers.

disabilities can also trigger a school's obligation to address and remedy the potential denial of a free appropriate public education under Section 504.

### **Section 504 and Title IX Grievance Procedures**

In the course of investigating the Complainant's allegations, OCR discovered that the School has not adopted and published a Section 504 compliant grievance procedure. Additionally, OCR discovered that the grievance procedure listed in the School's Student Handbook is not compliant with Title IX.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires Schools that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public Schools that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires the School to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. Title IX does not require a School to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A School may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

### **Analysis**

OCR examines a number of factors in evaluating whether a School's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

In OCR's interview with School staff, including the Coordinator and the Math teacher, staff reported that they were not aware if the School had a written Section 504 or disability related procedure. When OCR asked staff how a disability-related complaint would be handled, two staff members, including the Coordinator, reported that they would notify the Principal. The Principal told OCR that if such concerns arise, a parent generally discusses those issues with the Coordinator, although in certain instances, as in this case, a parent may decide to file a complaint

externally. While the Coordinator reported receiving training regarding disability-related matters through the state department of education, staff members reported the School does not conduct trainings on the School's disability-related policies and procedures.

The Student Handbook (Handbook) is posted online and addresses some disability related concerns. The Handbook describes a procedure to address exceptional children's parents concerns (EC Procedure). Specifically, parents are instructed to write their concerns on a form and provide it to the Principal, who will give copies to the Coordinator and EC Case Manager. The EC Procedure sets out that the parent and the case manager will attempt to resolve the matter. If it is not resolved, it is then sent to the Coordinator, and, if, the parent is not satisfied with the outcome, the parent may then take the matter to the Principal. However, the EC procedure does not specifically address how it is implemented if there is a potential conflict between those receiving or investigating the concern and the accused; such as, if one of those designated to address the complaint is also the individual against whom the complaint is made. It also does not provide notice or examples of what specific types of concerns may be grieved through the process.<sup>5</sup> The EC Procedure also does not provide a statement explicitly prohibiting retaliation.

The Handbook does articulate that harassment is prohibited on the basis of various legally protected statuses (including disability and sex). The Procedure referenced for addressing these complaints is entitled "Procedures for Reporting and Resolving Complaints of Harassment, Intimidation, and Bullying (Harassment Procedure)."<sup>6</sup> It is not clear whether or not a complaint alleging disability (or sex) discrimination, other than harassment, is also covered by the Harassment procedure. The Handbook describes an informal process and a formal complaint procedure. In the formal procedure, a complaint alleging harassment, intimidation, or bullying must be made in writing to the Principal or designee (Compliance Officer). Next, while OCR understands the potential limits of promising confidentiality, OCR is concerned that the School's Harassment Procedure states, "Complainants should not be promised confidentiality at the onset of the investigation." OCR's position is generally that such complaints (and, in particular, allegations of sexual harassment) must remain confidential unless legally obligated to disclose information, but, even then, information will be disclosed only on a "need to know" basis. Additionally, OCR is concerned that the statement could potentially have a chilling effect on an individual who may wish to file a complaint. Additionally, of concern, is the written admonition that a false report is a violation of the School's policy. While it is certainly appropriate for the School to address substantiated false reports, the mention of a "false report" in the grievance procedure, without further explanation, may alarm a complainant. Specifically, it may dissuade an individual from filing a complaint for fear that the allegations may be misconstrued as a "false report," and, potentially result in disciplinary actions. While the Harassment Procedure does indicate that either the Principal or designee, who is not the Compliance Officer, will respond to the complainant and accused in writing within thirty days, one of the potential responses listed is that the investigation is incomplete and will be continuing. The Harassment Procedure does not indicate for how long an investigation may be continued.<sup>7</sup> Additionally, because the Harassment

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<sup>5</sup> See the School Student Handbook at page 14.

<sup>6</sup> See the School Student Handbook at page 48.

<sup>7</sup> The procedure does state that corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty days after the principal's written response. It is not clear if in circumstances where the

Procedure is also utilized to address Title IX harassment complaints, OCR determined that the current procedure described in the Handbook is not Title IX compliant and OCR has the same and additional concerns if the Harassment Procedure is applied to investigate allegations of sexual harassment (including, as described above, how the issue of confidentiality is addressed). For example, none of the procedures provide an assurance that interim measures, when appropriate, will be put in place while investigating the concerns. Similarly, they do not provide an assurance that the School will take steps to prevent recurrence of any discrimination and to correct its discriminatory effects on the complainant and others, if appropriate. In this case it appears that more than one procedure may apply to certain disability issues, however, the School does not provide a clear written description of each procedure along with the name or title, office address, and telephone number of the individual with whom to file a complaint. OCR's concerns regarding the sufficiency of the current Harassment and EC procedures are the same for both in that they do not meet the requirements for "prompt and equitable" grievance procedures.

Because of the School's lack of compliant Section 504 and Title IX compliant grievance procedures, parents, student, staff, and invited third party individuals do not have access to prompt and equitable grievance procedures as required. The School has agreed to take action as described in the enclosed Agreement, which will address the concerns noted.

### **Conclusion**

On September 29, 2016, the School agreed to implement the enclosed Resolution Agreement (Agreement), which commits the School to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the School is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the School deemed compliant if the School enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the School's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the School has fulfilled the terms of the Agreement and is in compliance with Title VI, Title IX, Section 504, and Title II with regard to the issues raised. As stated in the Agreement entered into the by the School on September 29, 2016, if the School fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the School written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be

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investigation is not complete the procedure here is referencing the Principal's initial written response or if it is within thirty days of the Principal's final written response, upon completion of the investigation. The EC Procedure is silent on the issue of timeframes.

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 that the State Board must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions regarding this letter, please contact Ms. Josie Evola or Ms. Shana Heller, the OCR attorneys assigned to this complaint. You may contact Ms. Evola at 202-453-5908 or via email at [Josie.Evola@ed.gov](mailto:Josie.Evola@ed.gov) and Ms. Heller at 202-453-6599 or [Shana.Heller@ed.gov](mailto:Shana.Heller@ed.gov).

Sincerely,

/S/

Kristi R. Harris,  
Supervisory Attorney, Team IV  
Office for Civil Rights  
District of Columbia Office

Enclosure: Resolution Agreement