

5. The District failed to ensure that decisions regarding the Student's IEPs that were in place during the xxxxx school year were made by a group of persons knowledgeable about his disabilities.
6. The District retaliated against the Student when, after the Student's parent lodged internal complaints about the incident that occurred on or around xxxxxxxxxxx xxx xxxxx it notified the Student's xxxxxxxxxxx xxxxxxxx that the Student was truant.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Section 504 and Title II prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by public entities, respectively. Both Section 504 and Title II prohibit retaliation against those who assert rights or oppose discrimination under these statutes. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation into the following legal issues:

- Whether the District failed to provide a qualified student with a disability a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.
- Whether the District failed to conduct a reevaluation of a student prior to suspending him in a manner that constituted a significant change in placement in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(a).
- Whether the District, on the basis of disability, excluded a qualified person with a disability from participation in, denied him the benefits of, or otherwise subjected him to discrimination under any of its programs or activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.
- Whether the District, on the basis of disability, subjected a student to a hostile environment that was sufficiently severe, pervasive, or persistent so as to interfere with or limit the students from participation in, deny the students the benefit of, or otherwise subject the students to discrimination under any program or service of the District, in violation of Section 504 implementing regulation at 34 C.F.R. § 104.4.

- Whether the District failed ensure that placement decisions were made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options, as required by Section 504's implementing regulation at 34 C.F.R. § 104.35(c).
- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured under Section 504 or Title II, in violation of the regulations implementing Section 504 and Title II at 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134.

In investigating the complaint allegations, OCR interviewed the Complainant, the Student's xxxxxxxxx xxxxxxxx and District personnel. OCR also reviewed documentation submitted by the Complainant and the District. After a careful review of the information obtained during the investigation, OCR has concluded that the evidence is insufficient to support a finding that the District discriminated or retaliated against the Student based on disability with respect to allegations 1, 2, 4, 5, and 6 in violation of Section 504 and Title II, as alleged. With respect to allegation 3, prior to conclusion of OCR's investigation the District requested to resolve that allegation pursuant to Section 302 of OCR's Case Processing Manual. As such, the District entered into an agreement with OCR resolving allegation 3. We set forth below the reasons for this determination.

- **Background**

The Student was a high school xxxxxxxxx and attending Southfield-Lathrup High School at the time OCR received the complaint. The Student was at Southfield-Lathrup from the start of the xxxxxxxxx school year through xxxxxxxxx xxxxxx at which time he transferred to another District high school. While at Southfield-Lathrup, the Student was on two xxxxxxxxxxxxxxxxxxx xxxxxxxxxxx xxxxxxxxx xxxxxxxxx both identifying his disability as other health impairment. The Student's xxxxxx xxx was drafted when he was at the middle school and remained in effect when he started high school. The Student's xxxxxxx xxx was created on xxxxxxxxx xxx xxxxxx and remained in effect throughout the time period relevant to the complaint. The Student's xxxxxxxxx x xxx notes that he was diagnosed with xxxxxxxxxxx xxxxxxxxx xxxxxxxxxxxxxxxxxxx xxxxxxxxx xxx xxxxxxxxxxxxxxxxxxx xxxxxxxxx xxxxxxxxx

- **Allegations #1 and #2 – Alleged Failure to Implement the Student's xxxx**

The complaint alleged that the District failed to implement the Student's xxx when it failed to provide the xxxxxxxxx xxxxxxx xxxxxx xxxxxxxxx xxxxxxxxxxx xxx xxxxxxxxx xxxxxxxxxxx xxxxxxxxxxxxxxxxxxx xxxxxxxxx xxx xxxxxxxxx during the first half of the xxxxxxxxx school year, and, on or around xxxxxxxxx xxx xxxxxx when it did not allow him to xxx x xxxxxx on a computerized test as a xxxxxxxxx xxxxxxxxxxxxxxxxxxx

OCR reviewed both of the xxxx that were in place for the Student during the relevant portions of the xxxxxxxxxxx school year. The Student's xxx that was in place at the start of the school year provided that the Student was to be given xxxxxxxxxxxxxxxxxxx xxx

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was to be given XXXXXXXX XXXX XX XXXXXXXXXXXXX XXX XXXXXXXX XXXX XX XXXXXXXXXXXXX

OCR interviewed District personnel regarding whether the allegation that the Student's
xxx required District staff provide with the Student's parent with xxxxxxxx xx xxx
xxxxxxx xx xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxx xxxxxx xxxxxxxx District witnesses denied
that the either of the Student's xxxx required such things. Additionally, District
witnesses noted that attendance and academic information is available at all times to all
District parents through Parent Connect, an online portal that allows parents to keep track
of their children's academic progress.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to
provide a FAPE to each qualified individual with a disability who is in the recipient's
jurisdiction, regardless of the nature or the severity of the person's disability. An
appropriate education for purposes of FAPE is defined as the provision of regular or
special education and related aids and services that are designed to meet the individual
educational needs of students with disabilities as adequately as the needs of nondisabled
students are met, and that are developed in accordance with the procedural requirements
of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and
placement, and procedural safeguards. Implementation of an IEP developed in
accordance with the Individuals with Disabilities Education Act (IDEA) is one means of
meeting these requirements.

Here, OCR has found that the facts were not as alleged, as neither xxx in place for the
Student during the relevant portions of the xxxxxxxxx school year required the District to
provide the Student's parents with xxxxxxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxx
xxxxxxxxxxxxxxxx xxxxxxxxxxx xx xxxxxxxxxxxx Additionally, the xxxx did not provide for
the Student to xxx xxxxxxxx for computerized assessments or any other tests. Therefore,
OCR concludes that the evidence is insufficient to support a finding that the District
denied the Student a FAPE by failing to implement his xxxx during the xxxxxxxxx
school year.

- **Allegation #3 – Alleged Failure to Conduct a Manifestation Determination Review**

The complaint also alleged that the District xxxxxxxxx the Student for more than xx xxxx
during the xxxxxxxxx school year for behavior that was a manifestation of his disability
and failed to conduct a manifestation determination review.

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district
shall conduct an evaluation of any person who, because of a disability, needs or is
believed to need special education or related services before taking any action regarding
the person's initial placement or any subsequent significant change in placement. A
series of suspensions may qualify as a significant change in placement, so that a

manifestation determination is required. A manifestation determination is a re-evaluation triggered by a disciplinary exclusion of more than ten days. The student's educational team should re-evaluate the student to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the misconduct was caused by the student's disability. If the team determines that the student's misconduct is a manifestation of the student's disabling condition, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary. If, on the other hand, the group determines that the conduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded. The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the eleventh day of the suspension or removal.

OCR reviewed the Student's disciplinary record, which showed that he was xxxxxxxx for xx xxxx during the xxxxxxxx school year, and contained no indication that the District conducted a manifestation determination for the Student, although District administrators told OCR that they held weekly meetings to discuss the Student's xxxxxxxx and whether the Student's behavior that led to the discipline was a manifestation of his disability.. The meetings were, in part, to keep administrators and special education staff apprised of disciplinary concerns related to students receiving special education services. Specifically, the Student was suspended for three days on xxxxxxxx xxx xxxxx xxxx xxxx on xxxxxxxx xxx xxxxx one day each on xxxxxxx xx and xxxxxxx xxx xxxxx and xxxx xxxx on xxxxxxx xxx xxxxx

As noted above, prior to the conclusion of OCR's investigation into this allegation, the District requested to resolve this issue with an agreement pursuant to Section 302 of OCR's Case Processing Manual. As such, the District signed the enclosed agreement on August 4, 2014, wherein it committed to, by September 2, 2014, convene a Section 504 or IEP team to conduct a manifestation determination review to determine whether the Student's xxxxxxxx xxx xxxxx and xxxxxxx xxx xxxxx conduct that resulted in the District taking disciplinary actions was a manifestation of the his disability. If the District determines that the conduct was a manifestation of the Student's disability, within seven days of the manifestation determination review the District will convene the appropriate team to determine whether compensatory education or other remedial services are necessary for the period of time the Student was suspended for the xxxxxxxx xx xxx xxxxxxx xx conduct. The Student's parent(s) will be invited to participate in the manifestation determination review and meeting and, if they are unable to attend, they will be given a meaningful opportunity to provide input before any final decision is made. Should the team determine that compensatory education or other remedial services are necessary, the District will draft a written plan for the provision of the compensatory education services and provide the Student's parent(s) with notice of the decisions and their right to challenge them through an impartial due process hearing should they disagree. The District will then provide the compensatory education services to the Student at no cost to the Complainant.

The District also agreed to provide training, by October 1, 2014, for Southfield-Lathrup High School special education staff on the general requirements of Section 504 and Title II concerning the identification, evaluation, discipline, and placement of students with disabilities.

Based on this information, OCR has determined that the District's has resolved this complaint allegation through the August 4 agreement, which OCR will monitor for compliance.

- **Allegation #4 – Alleged Hostile Environment**

The complaint also alleged that during the first half of the xxxxxxxx school year, the Student's teacher and building administrators subjected him to a hostile environment, based on his disability resulting in the Student switching schools. The Complainant later clarified to OCR that the one teacher who was creating the hostile environment for the Student was the teacher consultant who the Student xxxxxxxx on xxxxxxxx xxx xxxxx

The Complainant stated that this allegation arose from events that occurred on xxxxxxxx xx xxxxx when the Student was taking a District-wide math test.
X---PARAGRAPH REDACTED---X

District personnel denied subjecting the Student to any conduct that could be considered hostile on the basis of his disability. The teacher consultant told OCR that the Student was disciplined with a xxxxxxxx suspension for the xxxxxxxx xx xxxxxxxx incident because, when he exited the room, he xxxxxxxx xxxx xxx xxx xxx xxx xxx xxx xx xxxxxxxx xxx xxx xxxxxxxx The teacher consultant told OCR that after the Student returned from his xxxxxxxx xx suspension, she saw the Student on a daily basis and would occasionally say hello, but had very limited interaction with him.

In an effort to address the Complainant's concerns following the xxxxxxxx xx suspension, which resulted in tension between District staff and the Complainant, in xxxxxxxx xxxxx a group including the District's director of special education, associate superintendent, and the Complainant agreed to have the Student transferred to a different District high school. As part of the agreement to allow the Student to switch school, the District provided transportation for the Student.

When OCR provided the Complainant with an opportunity to respond to the information obtained from the District, the Complainant stated that she believed the District “had it out” for the Student, but did not identify any activities that were harassing to the Student on the basis of his disability.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Disability-based harassment under Section 504 or Title II is intimidating or abusive behavior toward a student because of disability that is so severe, pervasive, and/or persistent as to create a hostile environment that interferes with or denies a student’s participation in a district’s education program or activities. When disability harassment limits or denies a student’s ability to participate in or benefit from a recipient’s programs, the recipient must respond by promptly investigating the incident and responding appropriately. Disability harassment that adversely affects an elementary or secondary student’s education may also be a denial of a free appropriate public education under Section 504 and Title II.

Here, OCR has found no evidence to support the Complainant’s assertion that the Student was subjected to harassment at the District based on his disability. OCR did not obtain any evidence that the teacher consultant or anyone else treated the Student in any intimidatory or abusive way as a result of his disability. Indeed, after clarifying the complaint allegation with the Complainant, OCR found that there was no evidence showing how the Student’s status as a student with a disability played any role in the alleged mistreatment of the Student. Therefore, OCR finds insufficient evidence to support a finding that the District created a hostile environment for the Student based on his disability.

- **Allegation #5 – Alleged Failure to Include Knowledgeable People when Making the Student’s Placement Decisions**

The complaint also alleged the District failed to ensure that decisions regarding the Student’s xxxx that were in place during the xxxxxxxxx school year were made by a group of persons knowledgeable about his disabilities. OCR reviewed both of the Student’s xxxx that were in place during the time period relevant to this complaint and found that both were signed by a group of knowledgeable people including the Complainant. The Student’s initial xxx for the xxxxxxxxx school year was signed by the Complainant, the Student, the school social worker, a District representative, one of the Student’s regular education teachers, and one of the Student’s special education teachers. The Student’s xxxxxxxxx x xxx was signed by the Complainant, the Student, the District’s director of special education, a representative from the Intermediate School District, a school social worker, one of the Student’s regular education teachers, and one of the Student’s special education teachers, as well as a representative from Easter Seals. The Complainant did not dispute that the above-identified people were present for the respective xxx meetings and were also knowledgeable about the Student and his disabilities.

The Section 504 regulation at 34 C.F.R. § 104.35 (c) provides that in making placement decisions, the recipient shall draw upon information from a variety of sources, including aptitude and achievement tests and teacher recommendations. Additionally, a recipient must ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Based on the information obtained, OCR finds insufficient evidence to support a finding that the District failed to include the relevant group of knowledgeable people when making the Student's placement decisions.

- **Allegation #6 – Alleged Retaliation**

Finally, the complaint alleged that the District retaliated against the Student when, after the Complainant lodged internal complaints about the xxxxxxxx incident that occurred on September 27, it notified the Student's xxxxxxxx xxxxxxxx that the Student was truant.

The Complainant stated that a District administrator told the Student's xxxxxxxx xxxxxxxx that he was truant, after she filed her internal complaints with the District. The Complainant stated that in addition the concerns she raised about the xxxxxxxx incident not being addressed properly, she contemporaneously complained to the District about its failure to implement the Student's xxx during the xxxxxxxx testing. Specifically, she stated that the student should have been allowed to xxx x xxxxxx and scrap paper during the math testing.

OCR interviewed relevant District administrators, all of whom denied making such a statement to xxxxxxxx xxxxxxxx prior to a xxxxxxxx xxx meeting that included the administrators, the Complainant, and the Student's xxxxxxxx xxxxxxxx. When given the opportunity to respond to the District's position, the Complainant told OCR that the Student's xxxxxxxx xxxxxxxx would confirm that the District contacted him about the Student's tardies prior to the xxxxxxxx meeting.

OCR contacted the Student's xxxxxxxx xxxxxxxx who told OCR that a District administrator did in fact notify him about the Student being truant before he attended the xxxxxxxx meeting. When OCR followed up on the xxxxxxxx xxxxxxxx statement with the District, the District administrator who the xxxxxxxx xxxxxxxx stated that he spoke with prior to the meeting stated that she had informed the xxxxxxxx xxxxxxxx about the Student's tardies prior to the meeting, but that she did so in response to the xxxxxxxx xxxxxxxx specific inquiry. The District administrator's statement was in conflict with the probation officer's position to OCR that the District administrator reached out to him. To support her position, the District administrator referred OCR to a recording of a xxxxxxxx xxx meeting, in which the xxxxxxxx xxxxxxxx states that his involvement with the Student's

tardies originated with a truancy officer who had access to the District's attendance data. The recorded meeting was consistent with the District's position that the xxxxxxxx xxxxxxxx sought information from the District, not that the District proactively contacted the probation officer attempting to cause problems for the Student.

The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose or interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation.

OCR has established the following general framework for analyzing retaliation claims. To establish a *prima facie* case of retaliation, i.e., one capable of creating an inference that retaliation occurred, OCR determines: 1) whether the individual engaged in an activity protected under one of the laws that we enforce; 2) whether the recipient had notice of the individual's protected activity; 3) whether the recipient took an adverse action at the same time as or after the protected activity; and 4) whether there was a causal connection between the protected activity and the adverse action. In order to determine whether an action is adverse, OCR must determine whether the District's action significantly disadvantaged the individual in their ability to gain the benefits of the recipient's program. Even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's educational opportunities, the action could be considered to be retaliatory if the alleged action could reasonably be considered to have acted as a deterrent to further the protected activity or if the individual was, because of the alleged action, precluded from pursuing discrimination claims. If one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If all of these elements establish a *prima facie* case, OCR next considers whether the recipient has articulated a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for prohibited retaliation.

While OCR would need to address all of the above elements in order to find a violation, OCR need not address all of these elements to establish that there has been no violation where the evidence otherwise demonstrates that retaliation cannot be established.

While it is clear from the data submitted by the District that the Complainant engaged in a protected activity when she complained about the District's alleged failure to implement the Student's xxxx and that the District was aware of such complaint, there is no evidence to support that the District engaged in an adverse action contemporaneous to or subsequent to the Complainant's protected activity. Although the evidence shows that the District did speak with the Student's xxxxxxxxxx xxxxxxxx regarding the Student's truancy after the Complainant's xxxxxxxxxx xx complaint, the evidence also shows that it was the xxxxxxxxxx xxxxxxxx who initiated this specific inquiry, and not the District. Accordingly, OCR finds that the District did not take any adverse action against the Student with respect to reporting him to his xxxxxxxxxx xxxxxxxx therefore, the evidence is insufficient evidence to support a finding that the District retaliated against the Student.

- **Conclusion**

In light of the foregoing, OCR finds insufficient evidence to support that the District discriminated or retaliated against the Student with respect to allegations 1, 2, 4, 5, and 6 in violation of Section 504 or Title II. Based on the enclosed August 4 agreement, OCR finds that allegation 3 is resolved, and OCR is closing its investigation of this complaint effective the date of this letter. OCR will monitor the District's implementation of the agreement. Should the District fail to fully implement the agreement, OCR will reopen the case and resume its investigation

There may be state and local laws relevant to the complaint. You may wish to consult with a private attorney, local legal aid organization, and/or state or local bar association, which may be able to assist you further.

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

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment.

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

The Complainants may file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates the courtesy and cooperation we received from District staff during our investigation of this complaint. We look forward to receiving the District's monitoring report by September 30, 2014. Please forward the District's monitoring reports to OCRCleMonitoringReports@ed.gov. If you have any questions, please contact me at (216) 522-2678 or at Lisa.M.Lane@ed.gov.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure