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[REDACTED]  
MA  
[REDACTED]

March 1, 2010

Office for Civil Rights/ Boston  
U.S. Department of Education  
8<sup>th</sup> Floor  
5 Post Office Square  
Boston, MA 02109-3921

Dear Office of Civil Rights Enforcement,

I am writing to register my second complaint against the Amherst-Pelham Regional Schools because of discriminatory violations of my daughter's [REDACTED] Section 504 Accommodation Plan. I submitted a complaint in July 2008 that was closed in September 2008 after the school district and I agreed to mediation. Since that time, the school has continued to be in non-compliance with my daughter's plan and with the agreements reached in that mediation. There has been a systematic pattern of bullying/harassment by teachers, failure to provide accommodations, failure to communicate with me regarding assignments, and ignoring agreed-upon supports.

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In October 2009, I met with officials of the Amherst Regional High School to renew [REDACTED]'s 504 Plan. A written 504 Plan was mailed to me over a month after the Meeting. It contained substantive omissions from the Plan that were agreed to in the October Meeting. In particular, it contained no notice of a qualifying diagnoses, Migraine Disorder, and it omitted an agreed-upon provision for frequent teacher-initiated check-ins for projects and missing work. I notified the school district of these omissions on 12/8/09 and the Plan was revised in December 2009.

[REDACTED] has been diagnosed with multiple health difficulties and disabilities. She has Celiac Disease, an inherited autoimmune disease. In addition, she has been diagnosed with Migraine Disorder, Attention-Deficit/Hyperactivity Disorder, and Anxiety Disorder Not Otherwise Specified. [REDACTED] receives psychiatric care and is taking medication for some of her conditions. She must be maintained on a strict, gluten-free diet for her health. [REDACTED] has also been assessed to be intellectually gifted. She has been highly successful in

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Honors-levels courses with appropriate accommodations for her disabilities. She is, however, a very vulnerable youth who is struggling with many challenges.

on Responsive [REDACTED] s most recent 504 Plan calls for the following accommodations and supports: access assistive technology to support reading difficulties, frequent teacher check-ins and notification by teacher if she is behind on assignments, breaking-down of long-term assignments, extended time on tests and examinations, 100% extended time on homework assignments with additional time available upon request by parent or student, and other accommodatins. In addition, [REDACTED] 's Plan indicates [REDACTED] will access after-school support from her teachers and her parent will initiate email communication with her teachers to monitor her progress.

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on Responsive Since the 2008 mediation, [REDACTED] and I have worked hard so that she can be academically successful. She routinely accesses after school supports and advocates for herself with her teachers regarding her needs. I have maintained frequent email communication with teachers and with her guidance counselor/504 Plan liaison in order to coordinate her educational needs.

on Responsive In [REDACTED] 's October 504 Plan Meeting, the school made promises to make assistive technology available to [REDACTED]. Following that Meeting, they failed to do so. I made repeated email requests and was continually told that assistive technology would be available "soon". In the final draft of [REDACTED] 's 504 Plan, the school added the wording "when available" to its requirement to provide this resource. This qualification was not discussed in the Meeting. My understanding is that the school is fully enabled to provide assistive technology, but has failed to create "scanned" versions of [REDACTED] 's reading materials to be used with this technology. I have made repeated requests for these documents to no avail. I even offered to scan the documents myself at my own cost. As an unsatisfactory last resort, I was given an extra copy of one textbook so that I could read [REDACTED] 's assignments aloud to her myself!

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on Responsive After informing the school that they were in non-compliance over this issue, the school responded by email and asserted that [REDACTED] already had access to Kurzweil. I believe this assertion to be fraudulent since I received multiple contradictory emails from the 504 Plan Liaison and [REDACTED] still does not have access to Kurzweil documents. When asked for evidence that this technology is available, the school did not respond. As a result of this lapse on the school's part, [REDACTED] has not been able to access this resource for an entire past trimester. [REDACTED] is a slow reader and has not been able to keep up with reading assignments, falling continually behind in all of her classes.

on Responsive During her 9<sup>th</sup> grade year and the fall of 2009, [REDACTED] experienced highly inappropriate and humiliating experiences in her French classes. In early 2009, she was compelled to stand in front of her entire class and explain, while speaking in French, what Celiac Disease is and why she cannot eat wheat. This was in the midst of a presentation on how to bake croissants! This past fall, when [REDACTED] approachd her French teacher to request a time extension, she was compelled to explain to the teacher, in French, why she needed an extension and what was the nature of her disability. [REDACTED] was highly distressed and

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humiliated by this exercise. She did not possess the French proficiency for this level of conversation and she felt she was being asked to “beg” for an accommodation. This type of interaction has been common in many of [REDACTED]’s classes.

In December 2009, [REDACTED] was denied extended time on an examination in Algebra II despite the provision for this accommodation in her 504 Plan. She was told she could only access this accommodation if she requested it “in advance” of the examination. Although she requested extended time on this examination while she was taking it, she was actually given less time than the rest of the students in her class because of teacher error (e.g., not being allowed to leave her study hall to go to her math teacher’s room).

Amherst Regional High School has been continually inconsistent in the manner in which they apply [REDACTED]’s accommodation for extended time on examinations. These conditions are unreasonable. [REDACTED] cannot determine, in advance, how much time she needs to complete an examination. Her teachers should always prepare to offer this accommodation as need arises.

Most concerning, however, has been Amherst Regional High School’s policy of not allowing [REDACTED] access to her entire test or “chunking” as they have called it. In some instances, [REDACTED] must take examinations in two separate sessions in order to access extended time. Amherst Regional High School has repeatedly expressed the concern that it would be “unfair to other students” if [REDACTED] has access to the entire test but is able to take the test in two sessions. The concern is presumably that [REDACTED] will cheat on the test. There has been absolutely no evidence that cheating has ever been an issue with [REDACTED].

[REDACTED] She is an ethical, hard-working student with a 3.9 grade point average. However, this “chunking” policy means she is taking the examination under very different conditions than other students. She cannot scan an examination and tackle items out of order based upon their ease or difficulty. This a standard and recommended test-taking strategy that is being denied [REDACTED]. Not being able to review the entire examination while she is taking it is causing [REDACTED] more test-taking anxiety. “Chunking” her examinations is preventing [REDACTED] from taking examinations under equitable conditions. While preventing cheating is a worthy pursuit of Amherst Regional High School, it should not used to deny [REDACTED] her rights to take examinations in an equitable manner. This continual concern about “fairness” to other students is inappropriate when providing [REDACTED] accommodations.

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[REDACTED]’s Algebra II and Biology teachers have refused to provide [REDACTED] with clarification of assignments and appropriate extensions upon request. As agreed upon in her 504 Plan Meeting, her teachers are not initiating check-ins nor are they providing “frequent” check-ins. As a result, [REDACTED] has been confused and unable to complete her work. Some teacher interactions with [REDACTED] have been intimidating and hostile. Her Biology teacher, Ms. [REDACTED] stated to me in an email that extensions are “unfair” to her other students and that extensions may not be granted upon parent/student request as specified in [REDACTED]’s Plan. Further, this teacher informed [REDACTED] and me that she gives all students generous deadlines for assignments. Because of this, she has determined that [REDACTED] has no need for further time extensions. This issue has arisen in other classes as well.

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on Responsive	In early January, [REDACTED] met with her Biology teacher, Ms. [REDACTED] and with her 504 Plan Liaison, to discuss her need for accommodations. In that Meeting, [REDACTED] was informed she needed to meet standard class deadlines. [REDACTED] felt unsupported and harassed in this meeting. She returned home after this meeting in tears and has come to feel her 504 Plan Liaison is unwilling to support her.	Non Responsiv Non Responsiv
on Responsive	After repeated email exchanges, [REDACTED]'s Biology teacher has persisted in accusing [REDACTED] of having control over her disability. She has communicated to both [REDACTED] and me that she believes [REDACTED]'s organizational issues are just due to "poor planning" and do not merit accommodations. This teacher's presumption is inappropriate and discriminatory.	Non Responsiv Non Responsiv
on Responsive	[REDACTED]'s organizational problems, which are specified in her 504 Plan, have been assessed by two psychologists and one psychiatrist.	
on Responsive	[REDACTED] has received two grade penalties on written assignments in Biology in the past month in which she accessed teacher support and the teacher provided incomplete information or feedback on her progress. Errors were made due to faulty understanding of the requirements for the assignment, a frequent symptom of [REDACTED]'s ADHD. In both instances, the quality of [REDACTED]'s work would have earned an A, but she was given a lower grade because of penalties. In one instance, [REDACTED] specifically requested a review of an assignment before turning it in. The teacher neglected to provide feedback on missing calculations and [REDACTED] was not permitted an opportunity to revise her work upon clarification. This issue caused [REDACTED]'s grade to drop from an A to a B. In the other instance, the Biology teacher met with [REDACTED] to provide clarification of the assignment, but neglected to review one requirement (that [REDACTED] attach her preparatory notes to the final written report). For this omission, [REDACTED] was penalized 20%, causing her grade to drop from an A to a B. For a minor error caused by [REDACTED]'s disability, this was a heavy penalty. When [REDACTED] attempted to advocate for herself around this issue, her teacher informed her that she had been penalized in order "to teach her a lesson". [REDACTED] perceived this teacher's behavior as targeted, hostile, and willfully discriminatory. I contacted Amherst Regional High School regarding my concerns over these two assignments and received no response.	Non Responsiv Non Responsiv Non Responsiv Non Responsiv Non Responsiv Non Responsiv
on Responsive	After attempting to address these issues in Biology with the 504 Plan Liaison, [REDACTED] and I were informed by Amherst Regional High School in an email that, rather than receiving extensions, the school now expects [REDACTED] to complete her assignments in less time than nondisabled students so that she can meet standard deadlines. This requirement is discriminatory, sets up a higher standard for [REDACTED] to meet than her peers, and nullifies her 504 Plan. This policy has dramatically increased [REDACTED]'s anxiety.	Non Responsiv
on Responsive	[REDACTED]'s US History course has also been a source of concern. In an email from [REDACTED]'s US History teacher on February 25, I was informed that [REDACTED] would receive grade penalties for time extensions even when they were negotiated in advance. This assertion completely ignores the fact that 504 Plan Accommodations are intended to <u>protect</u> a student from adverse effects caused by his/her disability. After receiving this email, I informed the teacher that his interpretation of [REDACTED]'s accommodations was incorrect and he retracted his statement. He had already, however, communicated this penalty to [REDACTED]	Non Responsiv Non Responsiv Non Responsiv Non Responsiv

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causing her extreme distress and anxiety. [REDACTED]'s 504 Accommodations are intended to protect her against grade penalties that are based upon her disability and are discriminatory. We should not have to be continually reminding Amherst Regional High School that [REDACTED] has a 504 Plan.

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In early February, [REDACTED] stayed after school to meet with her Algebra II teacher, Mr.

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[REDACTED] to get clarification of an assignment. Mr. [REDACTED] refused to provide

clarification, told [REDACTED] it was not his job to provide this assistance, and told her she was being a "baby". [REDACTED] came home in tears over this issue. This experience was quite traumatic for her.

In interactions with her French teacher, Biology teacher, and Algebra II teacher, [REDACTED] has felt harassed and humiliated because of her disability. Consequently, [REDACTED] has become highly anxious about approaching teachers and guidance counselor to discuss her 504 Plan. She has perceived a hostile and unsupportive response when she attempted to advocate for herself. As a consequence, her Anxiety Disorder has worsened and she has developed panic attacks. On February 26, she was reevaluated by her psychiatrist and placed on a higher dose of medication to address the distress and anxiety being triggered by the school's actions.

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Since these issues have emerged, I have contacted Amherst Regional High School and requested an emergency 504 Plan Meeting to review [REDACTED]'s needs and how her Plan is being implemented. On February 13, I requested a new Meeting. I received a response on February 25 indicating the school would not schedule a Meeting with me. This violated my right to participate in decision-making regarding [REDACTED]'s FAPE.

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On February 26, after I informed the school they were in non-compliance with Federal law, they agreed to meet. However, they have refused to accommodate my reasonable request that a Meeting be scheduled quickly and to include times that would permit [REDACTED]'s psychiatric providers and teachers to attend. Two out of three offered times were during the school day when no one, including [REDACTED] could attend besides school officials and myself. [REDACTED] wishes to attend this Meeting and has the right to do so. [REDACTED] would like an afterschool Meeting when her teachers can attend. In addition, both [REDACTED] and I feel it would be both disruptive and stressful for [REDACTED] to be removed from her school day for such a stressful Meeting. The school has continued to be inflexible in its scheduling. I have offered the school two reasonable after school times and they have refused to accommodate my request. In my view, the Amherst Regional High School has no desire to support [REDACTED]'s and my ability to participate in decision-making regarding [REDACTED]'s Free Appropriate Education.

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Amherst Regional High School's handling of [REDACTED]'s 504 Plan has reflected a continual disregard for the specifics and spirit of her Plan and an effort to reduce the supports [REDACTED] needs. Whenever possible, teachers have interpreted the Plan in the narrowest of possible ways with little flexibility or compassion. [REDACTED] has been repeatedly subjected to hostile, humiliating, and demeaning interactions with her teachers. Repeatedly, over the past two years, she has been required to describe her disability in a humiliating manner to her

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on Responsive teachers before they have been willing to grant her accommodations. Often, her privacy is violated by these interactions. Although the present complaint only covers recent events, similar episodes of teacher harassment and humiliation have been taking place since [REDACTED] began 9<sup>th</sup> grade in the fall of [REDACTED]. We have made efforts to support [REDACTED] advocate for her, and provide appropriate treatment for her conditions.

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(b)(7)(C) If and when we finally arrange a Meeting with the school to discuss all of the above, we have every reason to believe the meeting will be unproductive and Amherst Regional High School will eliminate or reduce [REDACTED]'s accommodations. [REDACTED]'s medical providers do not support any change in her 504 Plan. In fact, her doctor has recently provided a letter to the school indicating she needs more accommodations. I have had copious email exchanges with the school district and there has been no acknowledgement on the school's part that [REDACTED] is being harassed or discouraged from accessing needed accommodations. In situations where accommodations were granted, it was typically after both [REDACTED] and I accessed administrative intervention with the teachers. Without administrative support, Leah's 504 Plan is dysfunctional. [REDACTED] should not have to continually beg in order to access these accommodations.

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on Responsive This situation is harming her. [REDACTED]'s treating medical provider has determined that any reduction in supports would jeopardize her health and I have provided this documentation to the school district. The school's continued non-compliance with her 504 Plan is placing [REDACTED] at both medical and academic risk. Despite all efforts, [REDACTED] has developed a severe anxiety disorder which is specifically tied to the manner in which she has been treated in the public schools. School-related stress has dramatically increased her Migraine Disorder.

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on Responsive [REDACTED] is an exceptionally talented young person, capable of high academic achievement, who struggles with painful and frustrating disabilities. She is hard-working, diligent, and sets high standards for herself. Even with a disability, a student like her deserves the opportunity to excel and succeed. Moreover, [REDACTED]'s continued health requires a supportive and appropriately accommodating response from her school. We are asking for an investigation into the school's non-compliance with [REDACTED]'s Section 504 civil rights. If necessary, we seek corrective action to address past discrimination and to protect [REDACTED]'s rights in the coming two years.

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on Responsive Respectfully submitted,

[REDACTED]



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

AUG 27 2010

Ms. Maria Geryk  
Interim Superintendent  
Amherst-Pelham Regional School District  
170 Chestnut Street  
Amherst, Massachusetts 01002

Re: Complaint No. 01-10-1098  
Amherst-Pelham RSD

Dear Superintendent Geryk:

We are writing to inform you that the Office for Civil Rights (OCR) is closing the investigation of the above-referenced complaint filed on March 1, 2010, against the Amherst-Pelham Regional School District (District).

The Complainant alleged that the District failed to implement certain provisions of the Student's Section 504 Plan calling for: 1) assistive technology; 2) extended time on homework; and 3) frequent teacher check-ins. The Complainant also alleged that the District failed to respond when she told District administrators that the Student was being harassed by her teachers, based on her disability. Lastly, the Complainant alleged that a District teacher retaliated against her and the Student when the teacher informed the Student's coach by email that the Student was having academic difficulties and told the Student she should not participate in sports, in response to the Complainant's advocacy on behalf of the Student. During the course of the investigation, District counsel, on behalf of the District, indicated an interest in resolving two allegations of the complaint, and the District signed a voluntary resolution agreement (Agreement). In its investigation of the third allegation of the complaint, OCR determined there was insufficient evidence to establish a violation of the laws enforced by OCR.

OCR initiated an investigation of the Complainant's allegations pursuant to our authority under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II). Section 504 and Title II prohibit discrimination on the basis of disability. The District is subject to Section 504 because it receives Federal financial assistance from the

U.S. Department of Education, and it is subject to Title II because it is a public entity that operates an educational system.

Based on the allegations presented in the complaint, OCR accepted the following issues for investigation:

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement the provisions in her Section 504 Plan calling for: 1) assistive technology; 2) extended time on homework (biology); and 3) frequent teacher check-ins, contrary to the requirements set forth at 34 C.F.R. Section 104.33 and 28 C.F.R. Section 35.130(a) and (b);
2. Whether the District failed to provide a prompt and equitable response to the Complainant's reported concern regarding treatment of the Student by her science and math teachers, contrary to the requirements set forth at 34 C.F.R. Section 104.7(b), and 28 C.F.R. Section 35.107(b); and
3. Whether a District teacher retaliated against the Complainant and the Student when the teacher informed the Student's coach by email that the Student was having academic difficulties, and told the Student she should not participate in sports after the Complainant advocated on behalf of the Student, contrary to the requirements set forth at 34 C.F.R. Section 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, incorporated into the regulation implementing Section 504 at 34 C.F.R. Section 104.61; and Title II at 28 C.F.R. Section 35.134.

Issues 1 and 2: Implementation of the Student's 504 Plan; Prompt and Equitable Response to Allegations of Disability Harassment

During the investigation, and before OCR had reached any conclusions regarding the legal issues presented, District counsel, on behalf of the District, expressed interest in resolving the first two issues in the complaint and the District subsequently signed an Agreement to resolve the Complainant's allegations regarding implementation of the Student's Section 504 Plan and the District's response to the Complainant's concerns of harassment on the basis of disability. A copy of that Agreement is enclosed with this letter.

OCR determined that the provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation. Additionally, the provisions are consistent with the applicable regulations and the Complainant has been

made aware of this resolution. Accordingly, we are closing this complaint investigation with regards to the above-mentioned allegations as of the date of this letter. Consistent with OCR's monitoring provisions, the District agrees to provide OCR the first monitoring report on the status of completion of the steps of the Agreement on or before September 17, 2010.

Issue 3: Retaliation

Legal Standard

The implementing regulation for Section 504, at 34 C.F.R. Section 104.61, which incorporates 34 C.F.R. Section 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits a covered entity, such as the District, from coercing, intimidating, threatening, or interfering with an individual because the individual exercised any right granted or protected by Section 504. A similar prohibition under the implementing regulation for Title II is found at 28 C.F.R. Section 35.134(b).

In investigating a retaliation complaint, OCR examines whether there is sufficient evidence to establish that: (1) the complainant engaged in a protected activity; (2) the district was aware of the protected activity; (3) the district took adverse action against the complainant; and 4) an inference of a causal connection exists between the protected activity and the adverse action.

If one of the above elements cannot be established, then OCR ends its analysis and finds insufficient evidence of a violation. If, however, all of these elements are established, then OCR will determine: (5) whether the covered entity has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR carefully scrutinizes any such reason provided by the covered entity in order to determine: (6) whether the reason is supported by the evidence, or whether it appears to be a pretext for retaliation (that is, a reason designed to conceal a retaliatory motive).

If OCR finds that the covered entity has not offered a legitimate, non-retaliatory reason, or if that reason is found to be a pretext for retaliation, then OCR will make a finding of retaliation. Alternatively, if OCR concludes that the covered entity has offered a legitimate, non-retaliatory reason for its action, and OCR does not establish that the reasons provided are a pretext for retaliation, OCR will find insufficient evidence to prove retaliation.

### Investigative Approach

To investigate this issue, OCR reviewed information and documentation obtained from the Complainant and the District, and conducted telephone interviews with the Complainant, the Student, and District staff, including the Student's guidance counselor, mathematics teacher, biology teacher, and assistant principal. A summary of our investigation and the basis for our conclusion that we have insufficient evidence to support the Complainant's allegation are provided below.

### Relevant Facts and Analysis

First, OCR examined whether the Complainant engaged in a protected activity under Section 504. After examining numerous emails between the Complainant and several District staff, OCR determined that the Complainant consistently advocated on behalf of the Student in person and by email regarding implementation of the Student's Section 504 Plan. Since the Complainant exercised rights covered under the provisions of Section 504 and Title II in these communications with the District, OCR also found that her advocacy on behalf of the Student also constituted protected activities.

Next, OCR examined whether the District was aware that the Complainant engaged in this protected activity. OCR determined that the District was put on notice of the Complainant's advocacy regarding the Student's Section 504 plan through email correspondence with the Complainant throughout the 2009-2010 school year. Consequently, OCR found that the District was aware of the Complainant's protected activities.

OCR found, therefore, that the first two steps of the retaliation analysis were satisfied. OCR then considered the third step of the retaliation analysis, whether the District took adverse action against the Student and/or the Complainant. To be adverse, an action must cause tangible or lasting harm, or be likely to have a deterrent effect on a reasonable person's future protected activity. A transitory or merely unpleasant incident is not sufficiently serious to constitute an adverse action under a retaliation analysis.

The Complainant alleged that as a result of her protected activity, the Student's biology teacher sent an email to the School Athletic Director and head of the Student's sports team informing them that the Student was having academic difficulties. OCR learned that the biology teacher sent an email to the School Athletic Director and the Boys' Team Coach (Boys' Coach) on April 27, 2010, informing them that the Student was "struggling a bit to keep up with her outside of class work" and asking for "any help

and support" from the Student's athletic team staff, such as encouraging the Student to stay after school to complete assignments. The biology teacher told OCR that she contacted the Boys' Coach at the suggestion of the School Interim Assistant Principal (Assistant Principal), since the Boys' Coach was the Student's English teacher and coached the same sport that the Student was participating in [REDACTED] Email correspondence on April 6, 2010 from the Assistant Principal to the biology teacher and on April 27, 2010 from the Assistant Principal to the Complainant corroborated this explanation. (b)(7)(C)

The Boys' Coach forwarded the biology teacher's email to the Student's coach (Girls' Coach), to whom it had not been sent originally. That same day, the Girls' Coach forwarded that email to the Complainant, writing, "Let me know if/how I can help [the Student] catch up – if she needs to be late to practice to meet with [the biology teacher], I would be fine with that (and the [Athletic Director] suggested that it would be OK if necessary)."

In emails on April 27, 2010, and April 28, 2010, the Complainant referred to the biology teacher's email to the Boys' Coach and Athletic Director as retaliatory, asserting that the email "has given [the Girls' Coach] the impression that [the Student] is in danger of failing." When interviewed by OCR, the Girls' Coach said that he understood the email in question as a request to allow the Student to stay after school, if needed, and not to dock her playing time during competitive events if she had to miss part of practice for schoolwork. He stated that the request did not affect the Student's playing time or other competitive opportunities on the team, and did not have an effect on his relationship with or attitude towards the Student. Additionally, he stated that to his knowledge the Student did not miss any practice or competitive events due to staying after school for biology or any other classes.

The Complainant also alleged that as a result of her protected activity, the biology teacher told the Student in the presence of another student in her class that she should not participate in sports activities, causing the Student embarrassment and diminished self-confidence. The biology teacher also told OCR that she had a conversation with the Student after school shortly before the District's April 2010 spring break to let the Student know that she could miss part of her sports team practice to get extra help on assignments after school. The biology teacher told OCR that this conversation was prompted by late assignments for which the Student already had been granted extensions, as well as by a general concern with the Student's involvement in upcoming team tournaments which might cause the Student to miss class. Though the teacher told OCR that there might have been another student present for this conversation, she said that the other student was not within earshot of the teacher's conversation with the

Student. In an April 27, 2010 email to the biology teacher, Assistant Principal, and Guidance Counselor, the Complainant asserted that these actions caused the Student to "feel humiliated and discouraged from seeking [the biology teacher's] assistance."

Based on its investigation, OCR found insufficient evidence to establish that either the biology teacher's email or after-school conversation with the Student rose to the level of adverse actions such that they could be considered retaliatory. The Complainant was unable to articulate any tangible or significant harm, such as a formal disciplinary sanction or loss of academic or extracurricular opportunities, resulting from either of these actions. According to the Girls' Coach, neither of these actions affected the Student's ability to engage in competitive sports activity, and the Student did not miss a practice or competitive event for academic reasons during the season.

In regard to the after-school conversation, email correspondence, and interviews with District staff indicated that the Complainant and the Student continued to seek assistance from the biology teacher in the time period following this conversation. For example, in an April 30, 2010 email, the Assistant Principal told the Complainant that the biology teacher granted the Student an extension on an assignment, noting that the Student was able to communicate to the biology teacher that she needed more time. Documentation provided by the District corroborated this statement. The biology teacher provided OCR a copy of her grade book, which demonstrated that the Student had an A average in the class and was ultimately not penalized for lateness or failure to complete any assignments.

Though these events might have been unpleasant for the Student, without more evidence, OCR could not establish that either event resulted in any tangible harm to the Student's academic or athletic activities or had a deterrent effect on the Complainant or the Student's engagement in protected activities. Since OCR could not identify any significant and lasting harm suffered by the Student as a result of either incident, OCR concluded its analysis of the retaliation claim at this point. OCR did not establish sufficient evidence to demonstrate that either event rose to the level of an adverse action within the meaning of OCR's retaliation analysis.

### Conclusion

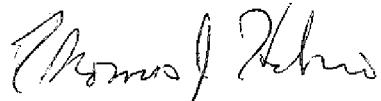
As stated above, the District has resolved Issues 1 and 2 of the complaint through the signed Agreement enclosed with this letter. Regarding Issue 3, the allegation of District retaliation, OCR found insufficient evidence to conclude that the District retaliated against the Student in violation of Section 504 and Title II.

The information contained in this letter is not intended and should not be construed to cover any other issues regarding compliance with the regulations implementing Section 504 or Title II that may exist but are not discussed therein. Please be advised that the Complainant may file a private law suit pursuant to Section 203 of the Americans with Disabilities Act of 1990, irrespective of whether OCR found a violation of Title II.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, are not formal statements 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.

OCR would like to thank you, Attorney Regina Tate, and your staff for your assistance with this matter. If you have any questions about this letter, please raise them with Mary-Anne Khoulani, Senior Investigator, at (617) 289-0036, or by electronic mail at Mary-Anne.Khoulani@ed.gov. You may also contact Michael Joyce, Civil Rights Attorney, at (617) 289-0059; Donna L. Russell, Team Leader/Civil Rights Attorney, at (617) 289-0019; or me at (617) 289-0111.

Sincerely,



Thomas J. Hibino  
Regional Director

Enclosure

cc: Regina Williams Tate, Esquire

## VOLUNTARY RESOLUTION AGREEMENT

Amherst Public Schools

Complaint No. 01-10-1098

In order to resolve the above-referenced complaint filed with OCR pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II), the Amherst-Pelham Regional School District (District) voluntarily agrees to take the actions noted below:

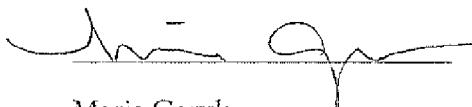
1. The District will review and revise, as necessary, its protocol for implementing Section 504 Plans. The protocol will ensure that teachers and staff are knowledgeable about the provisions of Section 504 Plans for the students in their classes. The protocol shall require notice to teachers of the accommodations and services required by each of their students' Section 504 Plans and a protocol by which a teacher can receive a sufficient explanation of the provisions so that they can be implemented consistent with the 504 team's recommendation. The District will provide training to staff responsible for implementing Section 504 Plans, including all high school teachers, on the legal obligations of the District for the implementation of Section 504 Plans and the protocol referenced in this Section Agreement. Consistent with its obligations under Section 504, the District will ensure that the provisions of the Student's Section 504 Plan are implemented for the 2010-2011 school year. Neither the fact that this Agreement was signed nor the compliance with the terms of this Agreement will be considered as an admission by the District of any failure to implement the Student's Section 504 plan prior to the date of this Agreement.
2. The District will review and revise, as necessary, its internal grievance procedures related to harassment of students with disabilities to ensure that they are consistent with the requirements of Section 504 and Title II. The District will publish its grievance procedures on the District website. The District will provide training for all staff responsible for the processing of grievances referenced in Section 4 of this Agreement, including but not limited to all Principals and Assistant Principals.
3. The District will conduct impartial investigations into the Complainant's allegations raised by email on February 26 and April 27, 2010, regarding disability-based harassment by the Student's algebra and biology teachers. The District will document its investigation and its analysis of the evidence, and notify the Complainant of the outcome of the investigation. If the District concludes that the Student was harassed based on her disability, the District will take appropriate steps to address the harassment, including disciplinary measures or counseling, and remedy any harm to the Student.

### Monitoring Requirements

- A. By Friday, September 17, 2010, the District will provide OCR with a copy of the protocols referenced in Sections 2 and 3 of this Agreement, for OCR's consultation and input.

- B. By Friday, October 15, 2010, the District will submit a report and supporting documentation reflecting its investigations of the alleged harassment of the Student, as described in Section 4 of this Agreement, above. In its report, the District will: (1) identify the person(s) responsible for conducting the investigations (2) provide a detailed record of all contacts and interviews conducted during the investigations, including the identity of witnesses interviewed and copies of the notes of the interviews that include each witness's response; (3) determine whether the harassing conduct was sufficiently severe, persistent or pervasive to create a hostile environment under Section 504 and Title II (4) documentation of written notice of the outcome of the District's investigations provided to the Complainant, and (6) a description of all steps the District took as a result of its findings.
- C. By Friday, December 17, 2010, the District will provide OCR with a report on its efforts to meet its commitments to the Complainant in Section 1 of this Agreement, including documentation that shows that the Student's Section 504 plan related to assistive technology, extended time on homework, and frequent teacher check-ins has been implemented from the start of the school year to that date.
- D. By Friday, December 17, 2010, the District will provide OCR a copy of final grievance procedures and documentation that the grievance procedures referenced above have been published on the District's website.
- E. By Friday, December 17, 2010, the District will provide OCR with copies of all documentation relating to the trainings referenced in Section 2 and 3 of this Agreement. The documentation shall include: a) copies of all training materials, including the credentials of the trainer(s), and b) sign-in sheets indicating the name and title of each participant.
- F. By Friday, July 1, 2011, the District will provide OCR with a report on its efforts to meet its commitments to the Complainant in Section 1 of this Agreement, including documentation that shows that the Student's Section 504 plan related to assistive technology, extended time on homework, and frequent teacher check-ins has been implemented from December 17, 2010 to the end of the 2010-2011 school year.

This Resolution Agreement is entered into freely by the District. It does not constitute an admission by the District of any violation of Section 504, Title II or any other law enforced by OCR.



Maria Geryk  
Interim Superintendent,  
Amherst-Pelham Regional School District

8-25-10

Date