



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

October 22, 2014

Dr. Todd Martin
Superintendent
Yadkin County Public Schools
121 Washington Street
Yadkinville, North Carolina 27055

Re: OCR Complaint No. 11-14-1133
Letter of Findings

Dear Dr. Martin:

This letter is to inform you of the disposition of the complaint that was filed with the U.S. Department of Education (the Department), District of Columbia Office for Civil Rights (OCR) on February 26, 2014, against Yadkin County Public Schools (the District), in particular, XXXX School (the School). The Complainant alleged that the School discriminated against the Student on the basis of disability (learning disability) and retaliated against the Student. Specifically, the Complainant alleged that, during the 2013-14 school year:

Allegation 1: The School failed to re-evaluate the Student after a significant drop in the Student's academic performance was accompanied by testing results indicating a possible learning disability; and

Allegation 2: The School retaliated against the Student in response to the Complainant's requesting a re-evaluation of the Student by reducing the related aids and services that were being provided to Student.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation, which prohibit discrimination on the basis of disability in programs and activities that receive or benefit from Federal financial assistance from the Department. OCR also has authority to enforce Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems, regardless of whether they receive Federal financial assistance from the Department. Also, 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. The District is a recipient of Federal financial assistance and a public entity; therefore, OCR has jurisdiction over it and the District is subject to these laws.

OCR reviewed data submitted by the District and the Complainant and conducted interviews with the Complainant and with District and School personnel. While OCR found insufficient

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evidence to substantiate Allegation 2 (retaliation), OCR found a violation with regard to Allegation 1 (failure to timely re-evaluate). Specifically, OCR determined that the Student was not timely evaluated after the School received sufficient information to believe that the Student needed special education or related aids and services. OCR's analysis and proposed resolution are discussed below.

Background:

The Student is currently a XXXX grade student at the School. The Student attended XXXX School (the Elementary School) in the District during the 2012-2013 school year, and started at the School at the beginning of the 2013-2014 school year. In October of 2012, the Student's mother wrote a letter to the Elementary School asking that the Student be evaluated for special education. The Complainant, the Student's doctor (the Doctor), sent a letter to the Elementary School a few days later identifying the student as having attention deficit hyperactive disorder (ADHD), indicating her belief that the Student was also likely to have a learning disability, and requesting that the Elementary School conduct a full psycho-educational evaluation of the Student. The Elementary School conducted an evaluation of the Student and decided not to place the Student in the Special Education program. The School's decision was based on several factors: the Student's performance on achievement testing, the Student's IQ testing, and the team's belief that the Student did "not need additional supports to gain access to the curriculum." The Student did not receive any special education-related aids and services during her time at the Elementary School, and the Elementary School staff did not discuss her eligibility for a 504 Plan.

The Student transferred to the School before the start of 2013-14 school year. After an appointment with the Student, the Doctor sent a letter to the School dated November 25, 2013, stating that the Student's mother had informed her that the Student was in the lowest level of math and reading classes and was in danger of being held back in the XXXX. The Doctor stated in her letter that she did not believe these outcomes were aligned with the Student's strong intelligence testing results, and reiterated her belief that the Student's reported academic struggles were likely the result of a learning disability and not her ADHD symptoms, which were controlled by medication. The Doctor requested a copy of the full psycho-educational testing that had been completed by the Elementary School a year earlier and made some specific recommendations; first, that the School consider a decreased homework load for the Student as the Student was spending four hours per night on her homework assignments and increased time for tests and assignments; second, that the School consider a separate testing environment for the Student, including for end of year tests; and third, that the Student would spend time with an Exceptional Children Specialist one-on-one or in a small group setting until "her performance is matching her potential." In December, the Student's end-of-semester grades showed "A"s, "B"s, or "Satisfactory" ("S"s), with the exception of Language Arts, which was a "C."

Legal Standard and Analysis:

Allegation 1: The School failed to re-evaluate the Student

In January 2014, the School's Principal discussed the Doctor's letter with the Student's teacher and concluded that the recommendations made by the Doctor were unnecessary and that no

further formal action on the part of the School was warranted. In statements to OCR, the Principal explained she made her decision based on her belief, in consultation with the Student's teacher, that the Doctor's recommendations for accommodations were superfluous, her knowledge that the Student had a very high IQ, that the Student's ADHD seemed to be under control when she took her medication, that she had not received a request from the Student's parent for a re-evaluation that year, and that, for the most part, the Student was doing well academically. For example, because there were no timed assessments in XXXX grade, the Principal and the Student's teacher concluded there was no need to provide the Student extra time on tests. Additionally, because all students were afforded the opportunity to request to test in a location other than the classroom or the computer lab and the Student had never made such a request, it was an unnecessary accommodation for the Student. Also, in their discussions, the Principal learned the Student's teacher believed the Student's low grade in language arts was the result of a failure to submit homework assignments. The Principal did acknowledge that she and the Student's teacher did not specifically address the Doctor's statement that the Student was spending four hours a night on homework. According to the Principal, District guidelines establish that homework for XXXX graders should only take students XXXX minutes to complete each evening. Consequently, despite the diagnostic information that the Doctor provided to School personnel and the Student's academic performance in language arts, the School did not evaluate the Student for possible eligibility as a student with a disability during the 2013-2014 school year.

The Section 504 regulation, at 34 C.F.R. §104.35(c) states that an evaluation of a student believed to need special education or related services must use established standards and procedures, including (1) drawing upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establishing procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensuring that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensuring that the placement is in the least restrictive environment.

OCR considered the information that the Doctor provided to School personnel along with District and School personnel's perception of the Student's academic performance and behavior and determined that there was sufficient evidence for School personnel to re-evaluate the Student during the 2013-2014 school year. While OCR acknowledges that the Student was evaluated in 2012, the School did not properly consider whether to re-evaluate the Student during the 2013-2014 school year after receiving new information about the Student. OCR finds that the School had sufficient information to believe that the Student may need special education or related aids and services because of the Doctor's 2013 letter, which indicated that the Student may have a learning disability and requested the Student receive specific accommodations. Based on this information, the School should have assembled a group of knowledgeable individuals to timely evaluate the Student's eligibility for disability-related services and the Student's parents should have been provided with notice of their due process rights in accordance with Section 504. To resolve these concerns, the District entered into the enclosed Resolution Agreement.

Allegation 2: The School retaliated against the Student by reducing the related aids and services that were being provided to Student

In her written complaint and initial interview, the Doctor reported that the Student's parent believed her daughter was retaliated against after the School received the Doctor's letter indicating the Student had a learning disability and requesting specific accommodations in the fall of 2013.¹ The Doctor alleged that the parent believed that after the School received the request, the Student's allotted time for math tests was decreased (down to eight extra minutes from ten extra minutes) while her homework level was increased.²

When analyzing a claim of retaliation, OCR will look at the following three elements to determine if the Complainant has stated an initial case: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) whether the District took a materially adverse action against the Complainant; and 3) whether there is some evidence that the District 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. OCR then determines whether the District has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the District's reason for its action is a pretext or excuse for unlawful retaliation.

Time for math tests decreased

There is insufficient evidence to support a *prima facie* case of retaliation regarding the time allotted for the Student to take math tests. Although the first element is satisfied by the Doctor's request for a re-evaluation of the Student, the information presented did not establish the second element; that is, OCR did not find sufficient evidence that the District took a materially adverse action against the Student. In interviews and with documentary evidence, the School explained that the only timed math assignment the Student participated in during the fall of 2013 and the spring of 2014 was a weekly XXXX. <XXXX FOUR SENTENCES REDACTED XXXX>

Nonetheless, even if a School-wide decrease in the time allotted for multiplication tables is sufficient to show a materially adverse action, the School's reason for the decrease in test time – to further challenge the students' knowledge base by making the award harder to achieve during the third quarter of school – is a legitimate non-retaliatory reason for this action. XXXX, the evidence indicates this rationale is not simply a pretext, or excuse, to single out, punish or retaliate against the Student in response for the Doctor's request that she be re-evaluated.

Increase in homework load

The Doctor alleged that there had been increase in the Student's homework load, but did not provide OCR with any specifics of how the Student's homework load increased. The Student's parent did not respond to OCR's request for additional information regarding what homework, in particular, may have been increased. The District informed OCR that the Student was not treated

¹ There was a factual dispute regarding when the School received the Doctor's letter. The Doctor initially sent it in November 2013, but the School stated it did not receive the letter until the Doctor sent it by certified mail in December 2013.

² In her statements to OCR, the Doctor acknowledged that she was unsure if these were required services pursuant to a Section 504 Plan. During the investigation, OCR learned the Student did not have a Section 504 Plan.

differently from other students in her class, and that there was no increase to the Student's homework load.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence, that is, evidence that it is more likely than not that discrimination occurred. When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. In this case, OCR has concluded that the preponderance of the evidence does not support that the Student's homework load was increased as alleged.

As a result, OCR found insufficient evidence to substantiate Allegation 2.

Conclusion:

As a result of the signed Resolution Agreement resolving OCR's concerns regarding Allegation 1, OCR is closing its investigation of this complaint effective the date of this letter. OCR will, however, monitor implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against an individual because the individual filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. Also, 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, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation during the resolution of this complaint, and particularly the assistance of the District's attorney, Mr. Fredrick Johnson. If you have any questions, feel free to contact Christa Cothrel at 202-453-5926 or via e-mail at Christa.Cothrel@ed.gov.

Sincerely,

Kay Bhagat
Team Leader
District of Columbia Office

Office for Civil Rights

Enclosure

cc: Mr. Fredrick Johnson (by email)