



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

February 12, 2021

Barbara Malkas  
Superintendent  
By email: BMALKAS@NAPSK12.org

Re: Complaint No. 01-20-1025  
North Adams Public School District

Dear Superintendent Malkas:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the North Adams Public School District (District). The complaint alleges that the District discriminated against a student (Student) on the basis of disability by failing to implement his Section 504 Plan, including provisions around movement breaks, exams in quiet spaces, and meetings with an adjustment counselor.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, 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. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Because OCR determined that it had jurisdiction and that the complaint was timely filed, OCR opened the following legal issue for investigation:

- Whether the District failed to implement provisions of the Student's Section 504 Plan (including not allowing him to XXXX XXXXXXXXXX XXXXXX during class or XXXX XXXXX in a XXXXX XXXXX, and not providing XXXXXXXXXX with XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX), and whether doing so denied the Student a free appropriate public education (FAPE), in violation of 34 C.F.R. Sections 104.33(a) and (b), and 28 C.F.R. Section 35.130.

As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

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

## **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is the 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 students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require that school districts provide a FAPE to the same extent required under the Section 504 regulation.

For all students who may have disabilities as defined by Section 504/Title II<sup>1</sup>, FAPE requires that the District provide identification, evaluation, placement, and procedural safeguards that are consistent with the requirements of Section 504/Title II. The standard for evaluating a student, as provided in the Section 504 regulation at 34 C.F.R. § 104.35(a), requires a school district to evaluate<sup>2</sup> any student who needs or is believed to need special education or related services due to a disability. This evaluation must occur before initially placing the student in regular or special education, as well as before any subsequent significant change in placement - including changing a student’s education and services to a more restrictive environment. Thus, when a district has information suggesting that a student’s educational program is not meeting the student’s individual needs, such as a significant decline in the student’s grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student’s Section 504 Plan or placement are necessary.

## **Summary of Preliminary Investigation**

During the 2019-2020 school year, the Student attended the District’s XXXXXX XXXXXX. Data provided by both parties confirmed that, due to XXXXXXXXXXX XXXXXXXX XXXXXXXXXXX (XXX), the Student had a 504 Plan which required XXXXXXXXXXX XXXXXXX, XXXX XX XXX XXXXXXXXXXX XXXXXXX XXXXXX (XXX), XXXXXXXXXXX XXXX XXXXXX, AND XXXXX XX XXXXXX XXXXXXX. Although the Complainant asserted that the XXX XXX also required XXXXXXXXXXX XXXXXXX XXXX XXX XXXXXXXXXXXXXX XXXXXXXXXXX, OCR did not find evidence to support this assertion.

The Complainant alleged that the Student’s XXX XXXX was not implemented, for instance, that he was not XXXXXXXX to XXXXX XX and XXXX XXXXXXX XXXX XXXXXXXX, and that when he XXXX XXXX that XXXX XXXXXXXXXXX XXXXXXX were XXXXXXXXXXX XXXXX XXX XXXX, he was XXXX XX XXX XXXXXXX “XXX XXXXX XXXXXXXXXXX.” OCR reviewed the Student’s XXXXXXXXXXXXXX and XXX records, which reflect that he was XXXXX XXXX

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<sup>1</sup> A physical or mental impairment which substantially limits one or more major life activities. 34 C.F.R. § 104.3(j)(1)(i), 28 C.F.R. § 35.108(a)(1)(i).

<sup>2</sup> In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

XXX XX XXXXX XX XXX XXXXXXXXXXXXXXXXXXXX; had accrued several XX-XXXXXX and XXX -XX-XXXXXX XXXXXXXXXXXXXXXX by October XXXX (when this complaint was filed); and often XXXX XXXX to XXXXXXXX XXX XXX XX XXXXXXXX XXXXXXXXXXXXXXXX.

The District described to OCR several XXXXXXXXXXXXXXXX XXXXXXXX that it put in place for the XXXXXXX of the Student, his peers, and staff, for instance requiring that the Student be XXXXXXXXXXX XXXXXXXXXXX XX XXXX XXXXXX, and XXXXXXXXXXX XXXXXXXXXXX XX XXXX XXXXXX, and XXXX XX XXXXXX XXXX XXX XXX XXX XXXX XXXXXXXXXXXXXXXX. Additionally, it is undisputed that the Student XXX X XXXXXX XXXXXX XXXX XXX XX XXX XXX XXX XXXXXXXXXXXXXXXX XXX XXX XXXXXXXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXX X XXXXXX XXXXXX XXXX XXX XX XXX XXX XXXXXXXXXXXXXXXX<sup>3</sup> and that XX XXX XXXXXXXXXXX XX XXXXXX XX XXXX XXXXXX XXXX XX XXXXXXXXXXX. In its investigation to date, OCR was unable to determine whether these supports and XXXXXXXXXXX XXXXXXXXXXXXXXXX were the result of a team process.

As part of its investigation regarding implementation and evaluation, OCR reviewed the District’s policies and procedures regarding Section 504/Title II. The District’s Notice of 504 Meetings form states:

Section 504 ... prohibits discrimination on the basis of disability ... Students who are covered by 504 are those who have a physical or mental impairment, where the impairment substantially limits one or more major life activities, and where the impairment results in a need for *reasonable accommodations and/or services* to access a free appropriate public education (emphasis added).

The District’s Nondiscrimination on the Basis of Disability policy, available on the District’s website,<sup>4</sup> similarly provides:

The District shall make *reasonable modification* in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, *unless* the District can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity (emphasis added)

OCR has not yet determined whether, or how, these policies may be used when evaluating and placing students pursuant to FAPE.

## **Conclusion**

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and

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<sup>3</sup> The Complainant explained XXXX XXX XXXXX XXX XXXXXXXXXXX XXX XXXXXXXXXXXXXXX XXXXX XX XXX XXXXXXXXXXX XXXXXXX XXXXXXX, XXX XXXX XX XXXXXX XXXX XXXX XXX XX XX XXXX XXX XXXX..

<sup>4</sup> [https://z2policy.ctspublish.com/masc/browse/northadamset/northadams/ACE/z2Code\\_ACE](https://z2policy.ctspublish.com/masc/browse/northadamset/northadams/ACE/z2Code_ACE)

the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. Complainants may have the right to 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, 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, assists, or participates in a proceeding under a law enforced by OCR. 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. In the event that OCR receives such a request, it 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.

Sincerely,

Meighan A. F. McCrea  
Supervisory Civil Rights Attorney

Enclosure