



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**June 27, 2023**

**IN RESPONSE, PLEASE REFER TO: 03-23-1147**

**Via email only [swotring@k12.wv.us](mailto:swotring@k12.wv.us)**

Steve Wotring  
Acting Superintendent  
Upshur County Schools  
102 Smithfield Street  
Buckhannon, West Virginia 26201

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved this complaint against the Upshur County Schools (the District). The Complainant alleges that the District discriminated against the Student on the basis of disability at the XXXXXXXXXX School (the School) by:

- (1) Failing to implement the Student's XXXXXX Section 504 Plan by not providing a copy of the Student's Section 504 Plan to each of his teachers at the beginning of the XXXXXXXX school year in XXXXXXXX; and,
- (2) In XXXXXXXX, the District failed to conduct a manifestation determination hearing before removing the Student from the School.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and public entity, the District is subject to these laws.

Before the completion of OCR's investigation, the District requested on March 7, 2023, to resolve Allegation 1 under Section 302 of OCR's Case Processing Manual. On June 22, 2023, the District signed the enclosed Resolution Agreement, which when fully implemented will resolve the Allegation 1. With regard to Allegation 2, OCR reviewed documents provided by the District and interviewed the Complainant. OCR finds insufficient evidence that the District violated Section 504 or Title II as alleged in Allegation 2.

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

## **FACTUAL SUMMARY**

During the XXXXXX school year, the Student was in XX grade at the School. The Complainant  
XX  
XX.

According to the Complainant, the Student was diagnosed with XXXXXXXXXXXXXXXXXXXX  
XX and a Section 504 plan was developed for the  
Student on XXXXXXXX. On XXXXXXXX, the Student was diagnosed with XXXXXXXXXXXX  
XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX. On XXXXXXXXXXXX, the Student's 504 plan was reviewed and  
updated to reflect his diagnoses. The Complainant asserts that there has not been a 504 meeting  
for the Student since XXXXXXXX.

According to the Complainant, the Student struggled academically during the XXXXXX school  
year, XXXXXXXXXXXX. The Complainant asserted that the Student's parents met with the  
Director of Special Education and the 504 Coordinator (Coordinator) to discuss these challenges  
in the XXXXXXXXXXXX. The Coordinator assured them that the Student's 504 plan had  
been updated to reflect required academic accommodations.

The XXXXXX school year started on XXXXXXXX. The Complainant alleges that the  
Student's teachers were not provided with his 504 plan for the XXXXXX school year. The  
District provided OCR with nine sheets, each of which was addressed to a different one of the  
Student's teachers and which identify the Student as having a 504 plan. The sheets asked each  
teacher to initial and date the page "to show receipt of these modifications." Some of the sheets  
are initialed and dated XXXXXXXXXXXX; others are undated. The District also provided OCR  
with internal email correspondence about the Student. These emails include one dated XXXX  
XXXXX, in which the School Principal wrote to the Coordinator: "I am not sure [the 504 plans]  
have been provided to the teachers. We are working to fix this and make sure the teachers have a  
copy of the accommodations."

The Complainant asserts that, on XXXXXXXX, the Student got into trouble XXXXXXXXXXXX  
XXXXXX, resulting in a three-day suspension. According to the Complainant, the parents were  
told by the Assistant Principal in charge of 504 plans that the teachers never received the  
Student's 504 plan and upon further questioning, the parents discovered that the teachers for the  
XXXXXXXXXXXXXXXX academic years did not receive or sign off on the Student's 504 plan.  
On XXXXXXXXXXXX, the parents withdrew the Student from school XXXXXXXXXXXXXXXXXXXX  
XXXXXXX.

The District reported that on either XXXXXXXXXXXXXXXXXXXX, the Student XXXXX  
XXXXXXXX. According to the District, this conduct would have led to a suspension, but the  
Student's mother picked him up that day and XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He  
did not return to school after that incident.

## **LEGAL STANDARD**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a  
disability shall be excluded from participation in, be denied the benefits of, or otherwise be

subjected to discrimination in a school district's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a).

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons, including persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. The group must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

## **LEGAL ANALYSIS**

### **Allegation 1**

OCR has preliminary concerns that the District did not implement the Student's Section 504 plan at the beginning of the XXXXXXXX school year. Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 22, 2023, which, when fully implemented, will resolve Allegation 1 raised in this complaint. The provisions of the Agreement are aligned with the information discussed above that was obtained during OCR's investigation and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and regulations implementing Section 504 at 34 C.F.R. Part 104 and the Title II regulation at 28 C.F.R. Part 35 at issue in this case.

### **Allegation 2**

At issue in Allegation 2 is whether the Student experienced an expulsion, long-term suspension or other disciplinary exclusion of more than 10 school days. If so, the Student would have been subject to a significant change in placement and the District should have convened a manifestation determination.

According to the Complainant, on or about XXXXXXXXXX, the Student received a three-day suspension. The District asserts that the Student XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX, and that same day his mother took him home. The District contends that while the conduct would have led to a suspension, the Student's mother picked him up the same day, XXXXXXXXXXXXXXXXXXXXXXXX, and officially withdrew the Student on XXXXXX XXXX. Whether the Student received a three-day suspension, or the Student was not suspended but rather kept home by his parents prior to their withdrawing him, OCR cannot infer that the District was obligated to provide a manifestation determination. Further, OCR attempted to contact the Complainant to confirm the timeline as it relates to the behavioral incident and XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, but OCR was unable to reach her after repeated attempts. As such, OCR finds insufficient evidence to infer a violation of Section 504 or Title II as alleged in Allegation 2.

### **CONCLUSION**

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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 Complainant may file another complaint alleging such treatment.

Thank you for your cooperation in this matter. If you have any questions, please contact Dale Leska at [Dale.Leska@ed.gov](mailto:Dale.Leska@ed.gov) or 215-656-8562.

Sincerely,

/s/

Catherine C. Deneke  
Supervisory Attorney  
Philadelphia Office

Enclosure

