



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 12, 2018

Mr. Neal Vincent
Superintendent
Florence School District Two
2121 South Pamplico Highway
Pamplico, SC 29583

Re: OCR Complaint No. 11-16-1182
Resolution Letter

Dear Mr. Vincent:

This is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on February 19, 2016 against Florence School District Two (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges that the District denied the Student a free and appropriate education (FAPE), when:

1. The District failed to implement the Student's Individualized Education Program (IEP), by not: providing a scheduled dose of medication; maintaining a daily agenda; sending home the Student's grades; signing off on a homework log; simplifying instructions; providing academic support for areas of difficulty; presenting exemplars; or reducing assignments to one representative example.
2. The District failed to implement the Student's Behavior Intervention Plan (BIP), by not notifying the Student's parents whether the Student calmed down after a XXXXX incident in the XXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) 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.

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 pursuant to Section 302 of OCR's *Case Processing Manual*. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Background

At the time the complaint was filed, the Student was enrolled in Grade XXXXX at the School. At the beginning of the 2015-2016 school year, the Student had two general education teachers. One of his general education teachers taught mathematics and science, while the other taught social studies and English language arts (ELA). The Student also had an IEP, dated XXXXX, to address academic and behavioral needs resulting from his disability. The Student's IEP granted him an academic support period in which his resource teacher helped him complete class assignments and assessments from his core classes. The Student's IEP also included several accommodations¹ and modifications, some of which are discussed in greater detail below. Specifically, the Student's IEP required maintenance of a daily agenda to be initialed by the Student, his teacher, and a parent.² The IEP also provided that, "directions will be broken down into smaller sections to complete with short desk breaks." Finally, the IEP required staff to provide an exemplar to the Student for independent academic assignments and to reduce assignments to a few representative examples.

At an IEP Amendment meeting held XXXXX, the IEP team amended the Student's IEP to require that teachers write the Student's homework assignments in a homework agenda log. Also around this time, a change in staffing occurred and the Student's ELA/social studies teacher was replaced with a new teacher. A second staffing change occurred in January 2016 when the Student's mathematics/science teacher was replaced with a new teacher. The Student's mother expressed concerns that the new teachers may not be fully implementing the accommodations in the Student's IEP. As a result, the School held IEP meetings on XXXXX and XXXXX. In an attempt to further address the family's implementation concerns, the School asked the Student's resource teacher to review the IEP with the new teachers as they transitioned into their roles.

In addition to the IEP, the Student also had a BIP, dated XXXXX, with two requirements for notifying the Student's family if the Student becomes upset. Under the BIP, if the Student became upset and had not calmed down within thirty minutes, School staff were required to notify the Student's mother immediately. Alternatively, if the Student became upset but calmed down within thirty minutes, the School was required to notify the Student's mother at the end of the day.

On XXXXX, the Student became upset after one of the School's staff confiscated XXXXX. After talking to the assistant principal and his mathematics/science teacher, the Student calmed down and returned to class. The Student's mathematics/science teacher notified the Student's mother of this incident via email on XXXXX.

¹ The term "accommodations" refers to related aids and services designed to meet the individual educational needs of a student with a disability as adequately as the needs of students without disabilities are met.

² According to the Prior Written Notice for a XXXXX IEP meeting, the IEP team and the Student's mother agreed to discontinue the requirement that the Student's daily agenda be maintained.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is 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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

When analyzing a claim for denial of FAPE, OCR will consider the following three elements to determine if a violation has occurred: 1) whether the service or accommodation at issue is required by the IEP or BIP; 2) whether the District staff failed to implement the accommodation consistent with the IEP or BIP; and 3) whether a failure to implement the accommodation or modification resulted in an educational impact on the Student. If all three of these elements are present then OCR determines that the District has failed to provide the student with FAPE in violation of the Section 504 and Title II regulations.

Analysis and Conclusion

Allegation 1

With respect to Allegation 1, the Complainant alleged that the District failed to implement the Student's IEP, by not: (a) providing a scheduled dose of medication; (b) maintaining a daily agenda; (c) sending home the Student's grades; (d) signing off on a homework log; (e) simplifying instructions; (f) providing academic support for areas of difficulty; (g) presenting exemplars; or (h) reducing assignments to one representative example, thereby denying the Student a FAPE.

(a) Administering Medication

OCR considered whether the Student's IEP or BIP required the School to administer the Student's medication daily, which the Complainant asserted to OCR was required pursuant to a doctor's order. Neither the Complainant nor the District provided any evidence to suggest that administration of the Student's medication is required by the Student's IEP or the Student's BIP. Additionally, the School's nurse said that this alleged accommodation was addressed through the doctor's order but was not addressed in any other school document. OCR's review of the Student's IEP, dated XXXXX, and BIP, dated XXXXX, corroborated the nurse's statement and confirmed that neither the IEP nor the BIP includes this provision. Therefore, OCR determined that there was insufficient evidence to substantiate that the District discriminated against the Student on the basis of his disability, as alleged.

(b) Maintaining a Daily Agenda

Unlike the alleged administration of medicine requirement above, the Student's operative IEP, for at least a portion of the 2015-2016 school year, did require School staff to maintain a daily agenda for the Student. OCR located a provision in the Student's IEP, dated XXXXX, requiring the School to maintain a daily agenda in which the Student must write his assignments; and the Student, his teachers, and a parent must initial. However, the District submitted a Prior Written

Notice for an IEP Amendment meeting on XXXXX, during which the IEP team and the Complainant agreed to remove the daily agenda requirement. The Principal explained that the requirement was replaced with a requirement to keep a homework log checklist because the agenda had not been effective. Because this accommodation was removed from the Student's IEP on XXXXX, OCR limited its review of the implementation of this IEP provision prior to that date.

Prior the conclusion of OCR's investigation, the District expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*.

(c) Sending Home Grades

OCR considered whether the Student's IEP or BIP required the School to send the Student's grades home daily. The Student's teacher told OCR that, as part of an effort to keep parents informed, the Student's teachers sent home a flyer about important upcoming school dates to parents (including the Complainant) in September 2015. According to the Complainant, the flyer mentioned that the Student's grades would be sent home in order to check his progress. To support this claim the Complainant provided OCR with a copy of the flyer with the relevant language underlined: "[p]apers will be going home every other Wednesday. Please be sure to sign the folder and leave any comments for us as well as initial the papers." The Complainant stated that she received grades "maybe twice."

As with the administration of medication, neither party provided evidence to suggest that sending home the Student's grades is required by the Student's IEP or the Student's BIP, rather than an informal practice that teachers may follow for students. In fact, this accommodation was not included in the IEP or BIP reviewed by OCR. Therefore, OCR determined that there was insufficient evidence to substantiate that the District discriminated against the Student on the basis of his disability, as alleged.

(d) Signing the Homework Log

OCR first considered whether the Student's IEP or BIP required the School to maintain a daily homework log for the Student. The District provided a Prior Written Notice for an IEP Amendment meeting on XXXXX during which the IEP team amended the Student's IEP to require staff to write the Student's homework assignments in a homework agenda log. OCR's review of the Prior Written Notice confirmed this amendment to the Student's IEP. The Complainant and the District submitted a Prior Written Notice for an IEP Amendment meeting on XXXXX, which reflected an agreement to require teachers to sign off on the homework log daily.

Prior the conclusion of OCR's investigation, the District expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*.

(e) Simplifying Instructions

OCR first considered whether the Student's IEP required school staff to simplify instructions for the Student. The District and the Complainant provided the Student's IEP, dated XXXXX, which OCR reviewed. The IEP states that "directions will be broken into smaller sections to complete with short desk breaks." The fact that the IEP team, with the Complainant's consent,

included this accommodation in the Student's IEP supports a finding that the accommodation, in essence, was required by the Student's IEP.

OCR next considered whether the District failed to implement this accommodation consistent with the Student's IEP. Both the mathematics/science teacher and the social studies/ELA teachers stated that they would explain instructions to the class and then reiterate the instructions to the Student to ensure that he understood what he was supposed to do. They also discussed attempting to provide clarifying directions without singling-out the Student. The resource teacher stated that she would always rephrase instructions and simplify them to terms the Student understood. These statements lend support to the District's position that School staff implemented this accommodation consistent with the Student's IEP. After considering this testimony and weighing the lack of corroborating documentation in light of the verbal delivery of this accommodation (which makes documentation less likely), together with the lack of evidence refuting these assertions, OCR determined that there is insufficient evidence to support a finding that the District failed to implement this accommodation. As such, there is insufficient evidence to support a finding that the District failed to provide the Student with FAPE as it relates to the simplified instructions accommodation.

(f) Providing Academic Support

OCR first considered whether the Student's IEP or BIP required the School to provide academic support to the Student. OCR reviewed the Student's IEP and noted that it includes the following academic support accommodation: "classwork assignments and assessments not completed in class or areas of difficulties will be referred to Academic Support for additional assistance."

OCR next considered whether the District failed to implement this accommodation consistent with the Student's IEP. Consistent with the academic support provision, the mathematics/science teacher stated that she would walk the Student down to the academic support teacher's room after her class so that he could finish any incomplete work for his mathematics and science classes. Additionally, the ELA/social studies teacher indicated that the Student had difficulty with writing and that she allowed him to write as much as he wanted or show his comprehension orally. She also referenced permitting the resource teacher to use the Student's social studies period to assist him with any unfinished ELA assignments. The resource teacher added that she also helped the Student complete assignments he did not complete during his first academic support period. These statements support a finding that the District implemented this accommodation consistent with the Student's IEP. Because of the corroborated testimony describing the provision of academic support and the lack of any evidence to the contrary, OCR found that there is insufficient evidence to support a finding that the District failed to implement this accommodation, or that the District otherwise failed to provide the Student with FAPE in this regard.

(g) Presenting Exemplars

OCR first considered whether the Student's IEP or BIP required the School to present the Student with exemplars for his assignments. OCR reviewed the Student's IEP and noted that it requires the Student's teachers to provide a model or completed example for independent academic assignments.

OCR next considered whether the District failed to implement this accommodation consistent with the Student's IEP. When asked about the implementation of this exemplar accommodation, the mathematics/science teacher indicated that she always provided examples on the board, and described helping the Student work through an example similar to the assigned problem. The ELA/social studies teacher said that she would model different strategies as an exemplar for finding answers in the text. She added that she talked to all of her students about strong answers in comparison to answers that would confuse a reader. The resource teacher indicated that if the student had to write a story, she would give him a concrete example from his life. In light of the teachers' consistent testimony and the lack of any documented evidence to the contrary, OCR found that the overall evidence supported finding insufficient evidence that the District failed to implement this accommodation, or that the District otherwise failed to provide the Student with FAPE in this regard.

(h) Reducing Assignments

OCR confirmed that the Student's IEP requires the Student's teachers to reduce assignments to representative examples of a concept. OCR then assessed whether the School implemented the accommodation as prescribed by the Student's IEP. The IEP outlines how teachers should implement this accommodation: if an assignment contains multiple examples of the same concept, the Student's teachers should reduce the assignment so it contains only one example of that concept. The District provided several sample assignments but none of these assignments showed that the Student's teachers marked out any problems that would be repetitive of a concept covered by another problem in the assignment.

The mathematics/science teacher indicated that she regularly took the student to his academic support teacher's room and broke up his assignments. She added that she allowed the Student to work on a third of the assignments in her room, a third during his academic support period, and sometimes the last third with the resource teacher. Similarly, the ELA/social studies teacher stated that she regularly made a mark a third of the way through her assignments to indicate the problems the Student was expected to complete. The resource teacher corroborated the general education teachers' assertions regarding the assignment reduction, stating that all of the assignments on which she assisted the Student had been modified by the general education teachers consistent with the Student's IEP. In addition, the principal indicated that in his informal visits to the Student's classes he noticed that the student received modified assignments. The sample assignments provided to OCR, however, do not reflect the described modifications. While the District's offered documentation does not corroborate the testimony of the Student's teachers, OCR found, based on its preponderance of the evidence standard, that the consistent testimony of the three teachers was enough support to find that the District did implement this accommodation as required by the Student's IEP. Therefore, OCR finds insufficient evidence to support this allegation.

Allegation 2

Regarding Allegation 2, the Complainant alleged that the District failed to implement the Student's BIP, by not notifying the Student's parents whether the Student calmed down after a XXXXX incident in the XXXXX, thereby denying the Student a FAPE.

OCR applied the same legal standard for determining if a denial of FAPE occurred as discussed and applied to Allegation 1 above.

OCR first considered whether this accommodation was required by the Student's IEP or BIP. Upon reviewing the BIP, OCR determined that the School staff must notify the Student's mother immediately if the Student becomes upset and has not calmed down within thirty minutes. Alternatively, if the Student calms down within the allotted time, the School must notify the Student's mother at the end of the day.

OCR then considered whether the School staff failed to implement the BIP's notification requirement. However, prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*.³

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on September 10, 2018 which, when fully implemented, will resolve the identified allegations in this complaint. Namely, that the District failed to implement the Student's IEP with respect to maintaining a homework agenda and signing a homework log; and to implement the Student's BIP, by not notifying the Student's parents whether the Student calmed down after a XXXXX incident in the XXXXX, thereby denying the Student a FAPE.

The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and 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 statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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.

Please be advised that the District must 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, or participates in an OCR proceeding. 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. If OCR receives such a request, we will seek to

³ OCR notes that, since the XXXXX incident, the District has taken measures to clarify the notification responsibilities of school officials. In an IEP team meeting held on XXXXX, the team amended the language of the XXXXX to indicate that the Student's mother will be contacted immediately if he becomes upset or is referred to the office. The Prior Written Notice also reflects that the IEP team agreed with the Student's mother that the School staff should notify the Student's mother immediately if the Student becomes upset for any length of time.

protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

OCR appreciates the cooperation of District staff and XXXXX, XXXXX, in the resolution of this complaint. If you have any questions regarding this letter, please contact the OCR attorney assigned to this complaint: Betsy Trice at (202) 453-5931 or betsy.trice@ed.gov.

Sincerely,

Letisha Morgan
Team Leader, Team II
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXXX (via email)