



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

December 19, 2016

Via email to: [rspain@warrenk12nc.org](mailto:rspain@warrenk12nc.org)

Dr. Ray Spain  
Superintendent  
Warren County Schools  
PO Box 110  
Warrenton, North Carolina 27589

Re: OCR Complaint No. 11-16-1383  
Letter of Findings

Dear Dr. Spain:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on June 8, 2016 against Warren County Schools (the District) that was filed on behalf of a student (the Student) currently attending Warren County High School (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the District subjected the Student to different treatment on the basis of his disability when, on May 25, 2016, it refused to assign him to XXXX School for the 2016-2017 school year and instead assigned him to the School.

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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District faculty/staff.

After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern. The District agreed to resolve the concern through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

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

## **Background**

During the 2015-2016 school year, the Student attended the eighth grade at XXXX (the Charter School). At the Charter School, the Student received special education related aids and services under an Individual Education Plan (IEP), which was effective between October 25, 2015, and August 11, 2016.<sup>1</sup> The IEP states, in part, that the Student “requires specially designed instruction throughout the day aligned with the NC Extended Standards.” In other portions of the IEP, this is referred to as “NC EXTEND1” (the Extend 1 curriculum).<sup>2</sup>

Although the Student attended the Charter School for 8<sup>th</sup> grade, the Complainant decided to enroll him in the District for the 2016-2017 school year. On February 1, 2016, the District sent a registration packet to parents of children who will be entering the District as XXXX. This packet included information on “three high school” options, and told parents that they can fill out and submit a “High School Selection Form” to let the District know their child’s preferences in placement. OCR determined that the Complainant selected XXXX as the Student’s first choice.

On March 11, 2016, District staff called the Complainant to request additional information about the Student, and learned that the Student had an IEP while attending the Charter School. On April 14, 2016, the District asked the Complainant to provide copies of the Student’s most current IEP or 504 Plan and the Complainant provided a release form the next day so that the District could request those records from the Charter School.

On May 25, 2016, the District sent a letter to the Complainant indicating that the District had assigned the Student to the School, which was the Complainant’s second choice, rather than XXXX. The letter noted that “[b]ased on a review of [the Student’s] current IEP and the Course of Student selected, [the Student] will not be able to enroll in college courses and meet the graduation requirements of” XXXX. Ultimately, the District’s letter says that “[a]ll input was considered and recommendations were made to ensure that your child [was] placed in a setting that will provide academic success during their high school years.”

On August 26, 2016, the Student’s IEP team conducted a reevaluation meeting to discuss the needs of the Student at the School. OCR determined that the IEP team chose to continue to provide the Student with self-contained Extend 1 services for his math, English, history, and biology courses totaling 55 minutes each per day. OCR notes that neither the IEP nor the meeting notes mention XXXX or the Complainant’s request to place the Student there for high school.

## **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

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<sup>1</sup> The Student is diagnosed with XXXX and XXXX.

<sup>2</sup> The District informed OCR that the Extend 1 curriculum is specifically designed for students with significant cognitive disabilities by combining oral guidance and visual cues to teach students and assess their progress.

disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

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. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP or placement are necessary.

### **Analysis**

According to the Complainant, the District discriminated against the Student based on his disability when it failed to place him at XXXX during the 2016-2017 school year, instead placing him at the School. Moreover, the Complainant asserted that to her knowledge, the Student's IEP team played no role in the decision to deny the Student preference to attend XXXX.

The District acknowledges that it assigned the Student to the Complainant's second choice, but denies that this decision violated his rights under Section 504 or Title II. The District argues that they appropriately assigned the Student to the School because the Student's IEP requires him to receive the specialized Extend 1 curriculum, and that its specialty high schools, including XXXX, do not offer this curriculum. Rather, they noted that the School was the only high school option that offers instruction using that curriculum.<sup>3</sup> Moreover, the District contends that "[p]roviding the curriculum in a small classroom at [the School] permits the district to concentrate qualified school staff in one classroom, thus improving the level of services provided to students and providing for efficient operation of the program."

According to the District's Superintendent (the Superintendent), a parent's first choice in placement is generally granted unless there are other considerations, such as when the student has an IEP. When asked whether he had reviewed the Student's IEP, the Superintendent said that he had not, and that he relied on the staff in the Exceptional Children's program to best determine the resources that students with disabilities may need in their respective high school. The Director of the Exceptional Children's Program (the EC Director) explained to OCR that she received a list of all students with disabilities who applied for one of the three high schools in the District, and then reviewed their special education files to determine which school is most appropriately able to accommodate their needs. The EC Director stated that with respect to the Student, the Student's request for placement at XXXX was not discussed among a group of knowledgeable persons, including during the August 26, 2016 IEP meeting.

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<sup>3</sup> The District's staff told OCR, and documentation confirms, that the School is a more traditional high school where students attend lecture based classes and instruction focuses on one core subject at a time. XXXX, however, differs from the School in that instruction focuses on project based learning instead of traditional lectures, which is designed to help students develop critical thinking skills and learn how to work collaboratively with others.

Based on the above, OCR determined that the District’s decision to place the Student at the School, rather than at XXXX, constituted a significant change in placement that should have triggered consideration by a group of knowledgeable persons of whether revisions to the student’s IEP or placement were necessary. This is particularly true given that the District admits that it did not allow the Student to go into the XXXX program because that school did not offer the Extend 1 program required by the Student’s IEP. OCR determined that in this instance, the EC Director, without any input from a group of knowledgeable persons, determined that it was not appropriate for the Student to attend XXXX because he “will not be able to enroll in college courses and meet the graduation requirements of” XXXX. OCR finds that the IEP team should have convened to consider whether the Student’s IEP, including the Extend 1 program, could be appropriately implemented at XXXX, or whether it could provide alternative related aids and services while allowing the Student to attend XXXX. OCR reminds the District that when convening, the group of knowledgeable persons must make its determination consistent with 34 C.F.R. § 104.4(b), which states that a school district may not deny or provide different aids, benefits, or services to a qualified student with a disability unless such action is necessary to provide that student with aids, benefits, or services that are as effective<sup>4</sup> as those provided to others.

Additionally, during the course of the investigation, OCR determined that as a general practice, the EC Director reviews the files of all students with disabilities to determine whether their choice for a specialized high school will be able to suit their individualized needs. OCR finds that this practice, which does not involve the convening of a group of knowledgeable persons but could nonetheless result in a student with a disabilities’ exclusion from his/her preferred program, could potentially violate Section 504 for the same reasons described above.

### **Conclusion**

On December 5, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR’s *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on December 5, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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<sup>4</sup> OCR notes that to be equally effective, an aid, benefit, or service need not produce equal results; however, it must afford a student with a disability an equal opportunity to achieve equal results.

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 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Eugene Sowa, the OCR attorney assigned to this complaint, at 202-453-6869 or [eugene.sowa@ed.gov](mailto:eugene.sowa@ed.gov).

Sincerely,  
/S/  
David Hensel  
Supervisory Attorney, Team III  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXX