



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

XXXX

Via email at [eric.williams@lcps.org](mailto:eric.williams@lcps.org)

Dr. Eric Williams  
Superintendent  
Loudoun County Public Schools  
21000 Education Court  
Ashburn, Virginia 20148

RE: OCR Complaint No. 11-16-1420  
Resolution Letter

Dear Dr. Williams:

This letter 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 XXXX, against Loudoun County Public Schools (the Division). The Complainant alleged that the Division failed to provide the Student with disability-related academic adjustments and auxiliary aids and services during the GED program.

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 Division 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 Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

### **Background**

The Program is an adult education program for individuals 18 years or older and seeks to provide students with the skills necessary to pass the GED High School Equivalency exam, though the Program does not administer the exam. Students must pay an enrollment fee and are given placement tests prior to registration and throughout the program to assess their needs and

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progress. Students choose which classes to register for and may retake classes as many times as they choose, though they must pay a fee for each class. Upon completion of the Program, students receive a Certificate of Attendance which indicates that they are prepared to take the GED exam, though the Program does not guarantee that students who complete the Program will pass the exam. Program classes are provided at eight Division schools and training centers.

The Student began the Program in XXXX when she was XXXX years old and attended classes at XXXX. She was previously XXXX not a student at the Division at any time prior to entering the Program. The Student is XXXX and uses a XXXX.

When the Student began the Program she did not notify Program staff members of her disability or request accommodations. During her XXXX semester at the Program, the Complainant accompanied the Student to her classes to assist with XXXX. The Complainant and the Student did not notify the Program that the Complainant would be attending classes with the Student. On XXXX, Program teachers informed the On-Site Administrator (the Administrator) of the Complainant's presence in the Student's classes and asked if he was allowed to attend class. The teachers also informed the Administrator that the Complainant was XXXX and they believed the Complainant was a distraction. As a result, the Administrator informed the Complainant that he could no longer attend classes with the Student. The Complainant notified Program staff members in writing on XXXX, that he was attending classes with the Student because the Student was XXXX and required accommodations. The Complainant provided the Adult Education Coordinator (the Coordinator) with a letter from the Student's doctor on XXXX, which noted that the Student was XXXX and had a XXXX. The letter also suggested that the Student be given a seat at the front of the room and an assistant to help with "XXXX." On XXXX, after consulting with the Division's Transition Specialist and the Division's Director of Instructional Programs (the Director), the Coordinator informed the Complainant that he could no longer attend classes with the Student. However, on XXXX, the Director informed the Complainant that a staff member could be provided to XXXX for the Student.

The Program's lead teacher (the Lead Teacher) accompanied the Student to XXXX of her class sessions as a XXXX. However, on XXXX, the Coordinator instructed the Lead Teacher to stop attending classes with the Student and instead provided the Student with a seat at the front of the room and "XXXX" for each lesson.<sup>1</sup> A XXXX was not provided after this time. However, on XXXX, the Complainant emailed the Coordinator and requested that she ensure that someone was sitting with the Student in her classes to assist with the lessons per the Coordinator's "promise" to the Complainant. On XXXX, the Complainant emailed the Coordinator again and included a more detailed note from the Student's doctor.

The Coordinator met with the Student on at least XXXX occasions to inquire about the Student's needs and accommodations. The Complainant requested to be present during any meetings with the Student, but because the Student is an adult, the Program required written consent from the Student.

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<sup>1</sup> While the Student agrees that she was given a seat at the front of her classes, the Student and the Complainant informed OCR that the Student was not provided with XXXX for all of her classes. They also allege that the XXXX provided were limited to information presented to the class through PowerPoint presentations or overhead projections and no XXXX summarizing XXXX content were provided.

**Allegation:** The complaint alleges that the Division failed to provide the Student with disability-related academic adjustments and auxiliary aids and services during the GED program.

### Legal Standard

Although the Program is organized by and held at the Division, which is not a postsecondary institution, the Program is an Adult Education Program and is offered only to adults 18 years of age or older. Because the Program is an Adult Education Program, it is obligated to comply with the Section 504 and Title II regulations described below.

Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iii), school districts may not deny a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is as effective as or equal to that afforded to others. Similarly, under 34 C.F.R. §104.38, a recipient that provides adult education may not exclude individuals on the basis of disability and must take into account the needs of disabled persons in determining the aids, benefits, or services to be provided.

In addition, the Title II regulations, at 28 C.F.R. §35.130(b)(7), require public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to a disabled individual would result in additional cost does not of itself constitute an undue burden on the program.<sup>2</sup>

### Analysis

According to the Coordinator and the Director, the Program had never received a request for accommodations from any student prior to the Student in this case. After discovering that the Student was a student with a disability and required accommodations, staff members attempted to determine how to proceed. However, the Program does not currently have any policies or procedures in place to address requests for disability accommodations.

As stated above, the Complainant notified the Program that the Student was a student with a disability on XXXX, and specifically requested that he be allowed to attend the Student's classes as her XXXX as a disability accommodation. Initially, Program staff members allowed the Complainant to attend the Student's courses and XXXX for her. However, this does not appear to have been a granted disability accommodation. On XXXX, the Administrator informed the Coordinator that the Student's teachers were concerned that the Complainant's attendance was

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<sup>2</sup> The recipient and the Complainant frequently refer to academic adjustments and auxiliary aids as "accommodations." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

disruptive and asked whether the Program was obligated to allow the Complainant to attend the classes. After receiving the Complainant's XXXX email informing the Program of the Student's status as a student with a disability, the Coordinator attempted to determine what obligations the Program had regarding disability accommodations. According to the Coordinator, she worked with the Transition Specialist to determine what action to take and was informed by the Transition Specialist that the Program did not have to provide the Student with a XXXX. The Coordinator informed OCR that the Transition Specialist instructed her to provide XXXX and a seat at the front of the classroom. The Coordinator also informed OCR that she believed the XXXX would be considered the same accommodation as providing the Student with an in-class XXXX. However, according to the Transition Specialist, she consulted with the Coordinator in a limited capacity and told the Coordinator that she could not be of much help since she worked with students ages XXXX who were still in high school, which did not include the Student. The Transition Specialist informed OCR that she recommended that the Coordinator consult with her direct supervisor (the Director). The Director informed OCR that she had very little involvement in this case and that she believed the Coordinator had addressed the situation, with help from the Transition Specialist. The Director noted that she did not advise the Coordinator and that the Coordinator did not tell the Director what action she planned to take but that the Coordinator had based her decisions on advice from the Transition Specialist. The Director also informed OCR that she was not included in any conversations about whether to provide the Student with XXXX or XXXX.

The Transition Specialist informed OCR that she directed the Coordinator to informational websites, but emphasized that the Coordinator should not apply the same standard as the Transition Specialist applied to older students who were still in high school. The Coordinator informed OCR that the Transition Specialist told her she did not need to provide XXXX, so she ceased providing this service to the Student. The Transition Specialist contradicted this statement and informed OCR that she did not at any time advise the Coordinator on which accommodations to provide or not to provide. Instead, the Transition Specialist said she repeatedly informed the Coordinator that this issue was not within her "realm" and therefore she could not advise the Coordinator.

In an email to the Complainant on XXXX, the Director noted that the Program could "provide a staff member to XXXX if this would be helpful." The Coordinator informed OCR that the Lead Teacher filled this role as a XXXX for the Student during all of the Student's classes for XXXX weeks. However, according to the Lead Teacher, she only served as the Student's XXXX for XXXX class sessions.

On XXXX, the Coordinator informed the Student's teachers that a XXXX would no longer be provided. It is unclear whether anyone informed the Student or the Complainant that this service was ending. On XXXX, the Complainant emailed the Coordinator asking who would be serving as the XXXX, since no one had shown up for the previous class, indicating that he and the Student still believed she was supposed to receive XXXX services as an accommodation. On XXXX, the Complainant provided a letter from the Student's XXXX which confirmed the Student's disability and noted that the Student needed either a XXXX or a XXXX system to access the information provided during class. It is unclear whether anyone at the Program responded to this letter.

According to documents provided by the Division, the Student was to be provided a seat at the front of each classroom as well as XXXX from each teacher. While the Student confirmed that she always sat at the front of the classroom, she informed OCR that she did not receive XXXX on a consistent basis and that, when she did receive XXXX, they were print-outs of the material displayed on the board during the class. The Student informed OCR that she did not receive any XXXX on the XXXX portion of the classes. OCR reviewed XXXX submitted by the Division and the XXXX appeared to be worksheets, print outs from textbooks, and other similar materials. There did not appear to be XXXX based on classroom lectures. The Student had access to these materials but, due to her disability, could not access the classroom lectures. In addition, there did not appear to be XXXX for every subject or every class period.

OCR notes that the Program does not have a clearly defined process for addressing disability accommodation requests and that the Coordinator does not have an internal process for handling these requests. As a result, the process for the Student took several months and staff members failed to inform the Student what accommodations she would be receiving and why she would not be receiving a XXXX. Although OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications, OCR notes that a preference should be given for the accommodations requested by an adult student with a XXXX disability. The Program should consider the accommodations requested by the Student and, if those accommodations are not provided, explain to the Student how the accommodations provided meet the Student's needs. It is not clear that this was done in this case. As stated above, as an adult education program, the Program may not exclude individuals on the basis of disability and must take into account the needs of disabled persons in determining the aids, benefits, or services to be provided, consistent with the regulation at 34 C.F.R. §104.38. OCR is also concerned about the many miscommunications and contradictions between the Coordinator, the Transition Specialist, the Director, and the Lead Teacher. Based on interviews with OCR, each witness provided a different, and contradictory, summary of this situation.

OCR notes that the Coordinator, who is responsible for handling accommodations requests, reported to OCR that she has received a small amount of training on Section 504 as it pertains to grades K-12 only and no training on providing accommodations in an adult education setting. Based on the above, OCR is concerned that the Division may not be meeting its obligations under Section 504 and Title II regarding students with disabilities in the adult education program. Prior to completing our investigation, OCR would need to re-interview several of the witnesses to clarify points of contradiction and miscommunication. OCR would also need to review communications between the Coordinator and the Transition Specialist and between the Lead Teacher and other staff members, as the Lead Teacher informed OCR that she had not been asked to produce any documentation for this investigation. However, before completing the investigation, the Program volunteered to resolve this complaint.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on January 18, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation 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 Division’s implementation of the Agreement until the Division 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 Division’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 Division 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, 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. 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 Division’s cooperation in the resolution of this complaint. If you have any questions, please contact Katie Teigen an OCR attorney assigned to this complaint, at 202-453-5564 or [Katie.Teigen@ed.gov](mailto:Katie.Teigen@ed.gov). You may also contact Jan Gray, another attorney assigned to this complaint, at 202-453-6028 or [Jan.Gray@ed.gov](mailto:Jan.Gray@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Ms. Julia Judkins – Counsel for the Division