



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

September 17, 2021

*By email only to: Superintendent@cabarrus.k12.nc.us*

Dr. John Kopicki  
Superintendent  
Cabarrus County Schools  
4401 Old Airport Road  
Concord, NC 28025

Re: OCR Docket No. 11-16-1777  
Cabarrus County Schools and Cabarrus County Board of Education, North Carolina

Dear Superintendent Kopicki:

This letter is to advise you of the resolution of the complaint investigation that the U.S. Department of Education, Office for Civil Rights (OCR) initiated in the Cabarrus County Schools and Cabarrus County Board of Education (jointly, “the District”). The Complainant alleged that the District discriminated against students on the basis of disability. Specifically, the Complainant alleged that the District discriminated against students who are blind or visually impaired and who are deaf or have hearing impairments by delivering the District’s curriculum in relevant part through three online educational vendor-provided applications – XXXXX, XXXXXXXX, and XXXXXX – that are not accessible to students with such disabilities, without timely providing equally effective alternatives for those students.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

The District’s education-related services and programs, including those delivered electronically, must not exclude qualified people with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of Section 504 and Title II. In addition, the District is required to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, pursuant to Title II, at 28 C.F.R. § 35.160(a).

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

[www.ed.gov](http://www.ed.gov)

During its investigation, OCR interviewed the Complainant and District staff. OCR also reviewed documentation that the Complainant and District submitted. OCR made the following determinations.

The Complainant's children attended school in the District, including one child (Student A) who has a visual impairment and graduated from the District in XXXX. The Complainant was also employed by the District as XXXXXX XXXXX for XXXXX XXXXXX Students during school year XXXX-XXXX.

The Complainant alleged that the District discriminated against students who are blind or visually impaired and who are deaf or have hearing impairments by delivering the District's curriculum in relevant part through three online educational vendor-provided applications – XXXXX, XXXXXXXX, and XXXXXX – that are not accessible to students with such disabilities, without timely providing equally effective alternatives for those students. During the course of OCR's investigation, the District informed OCR that it no longer uses XXXXXXXX. Therefore, OCR's analysis addressed the District's use of XXXXX and XXXXXX.

XXXXX is a digital math computer program. The District's Assistant Superintendent of Curriculum and Instruction (the Assistant Superintendent) informed OCR that the District primarily uses XXXXX for students in grades 6-12. OCR determined that students could complete various types of assignments in XXXXX, including initial assessments of their knowledge and problem sets that track their classroom curriculum. Various staff members at the District emphasized that XXXXX is an adaptive computer program, such that it meets a student's individual skill level by changing the sequence of problems assigned to the student depending on whether the student answered the previous question correctly.

XXXXXX is a digital reading computer program. The Assistant Superintendent informed OCR that the District primarily uses XXXXXX for students in grades 1-5, but it is also available as a remediation tool for students in grades 6-8. OCR determined that students could complete various types of assignments in XXXXXX, including benchmark assessments throughout the school year to test their reading and comprehension abilities, as well as reading and comprehension lessons in which they read a passage and answer associated questions. The District informed OCR that, similar to XXXXX, XXXXXX is adaptable, such that the sequence of reading passages and questions assigned to a student is dependent on the student's performance on previous questions.

OCR determined that XXXXX and XXXXXX are used differently from classroom-to-classroom throughout the District. Various staff members informed OCR that both computer programs are examples of tools that teachers may use to supplement the general curriculum in order to meet the needs of each individual student. However, the Complainant provided to OCR copies of documentation indicating that XXXXX and XXXXXX may also be used formally as required elements of a particular classroom's curriculum.<sup>1</sup> Similarly, the District's Teacher for

---

<sup>1</sup> For example, the Complainant provided to OCR: a copy of the fall XXXX syllabus for the Math XXX course at XXXXXX XXXXXX High School, which stated that "XXXXX/Reviews" constituted 15% of a student's total grade; a link to a Math Teacher's webpage at XXXXX XXXXX Middle School, which stated that XXXXX is "mandated" by the District, students will complete an initial assessment on XXXXX, and XXXXX assignments will be assigned and graded (if an assignment is not completed, a grade of 0 is entered into XXXXXXXXXX); and a link

XXXXXXX XXXXXX Students informed OCR that she believed XXXXX and XXXXXX were tools that teachers had the option to use, but she also knew of one teacher that required students to complete a specified amount of time using these computer programs. Based on the foregoing, OCR determined that XXXXX and XXXXXX constituted an integral part of the programs, services, and activities of the District.

OCR tested the accessibility of XXXXX and noted possible compliance concerns including, but not limited to:

- Users with disabilities who use computer keyboards for navigation, including students with vision impairments using screen readers, did not have access to all content and functions, including answer choices in lessons;
- Some elements in the lessons had ambiguous programmatic labels, posing a barrier to people who use assistive technology;
- Important content was programmatically hidden from assistive technology users; and
- Color alone was used to convey important information, posing a barrier for people with low vision, color blindness, and those who are blind.

OCR also tested the accessibility of XXXXXX and noted possible compliance concerns including, but not limited to:

- Users with disabilities who use computer keyboards for navigation, including students with vision impairments using screen readers, did not have access to all content and functions, including answer choices in lessons; and
- Important content was only available visually, posing a barrier to users with vision impairments.

The District asserted that it nevertheless met the individual needs of each student who used XXXXX and XXXXXX by offering individual accommodations to account for any accessibility barriers in the computer programs. The District's XXXXXXXX XXXXXXXX XXXXXXXXXXXX generally informed OCR that if a parent, teacher, or student requested an accommodation to help a student access digital software, she would first review the nature of the computer program and its methodology. Then, she would reach out to service providers, including Teachers for Visually Impaired or Hearing Impaired Students, to assess what types of accommodations were necessary for the student to access the computer program. She stated that

---

to an undated syllabus for a sixth-grade math course at XXXXX XXXXX Middle School, which stated that students were required to master 10 topics each week in XXXXX, and their progress was considered a homework assignment. In addition, the Complainant provided a copy of the fall XXXX syllabus for a different Math XXX course XXXXXXXX XXXXXXXX High School, which indicated that students had the option to complete remediation work in XXXXX after each test to earn back part of the points they missed on the test; while this was not required, it did have an impact on students' testing grades.

some examples of accommodations include providing screen magnification software for visually impaired students and providing closed captioning for hearing impaired students.

The District informed OCR that it received complaints about three students' (Students A-C) ability to access XXXXX or XXXXXX.

Student A, who was a XXXXX school student during school year XXXX-XXXX, has a visual impairment and used a screen reader to access XXXXX for her XXXXXXXX-grade math class that year. The District stated that the Complainant raised concerns about Student A's ability to access XXXXX in April XXXX. The District asserted that it implemented various accommodations to provide Student A alternative access to the material presented in XXXXX. Namely, the District reported it provided Student A with access to a different screen reader that was able to interact with the text components of the computer program;<sup>2</sup> it converted worksheets into braille; and it created alternative tactile and braille versions of visual information, such as graphs and charts used in math problems.

The Complainant disputed that the accommodations the District provided to Student A were sufficient. Specifically, she asserted that the accommodations did not provide the same level of functionality and adaptability that is central to XXXXX. Rather, Student A was provided with a sequential list of braille worksheets starting with the first lesson that did not adapt to her individual knowledge and performance as she completed problems. OCR determined that the Complainant notified the District about her concerns in an email to the Related Services Coordinator on April 25, XXXX.

Student B was an XXXXX student during school year XXXX-XXXX. Student B had a visual impairment and required braille text to access the District's curriculum. The District informed OCR that it could not provide Student B's assignments from XXXXXX in braille in a way that captured the functionality of the computer program because it takes time to convert an assignment into braille, and due to the adaptive nature of the computer program, the passages and questions that needed to be converted would change depending on Student B's performance. The District stated that it therefore implemented two accommodations to provide Student B alternative access to the District's curriculum. First, the passages and questions from XXXXXX were read aloud to Student B using text-to-speech functionality, and Student B then verbally communicated his answers to an adult who input his selections into XXXXXX. Second, the District provided Student B access to alternative reading programs, including XXXXXX and XXXXXX, which had materials available in braille. The District asserted that Student B was therefore able to practice his comprehension skills using XXXXXX, and he practiced his reading skills through the alternative reading programs.

During its investigation, OCR reviewed information indicating that the accommodations implemented by the District for XXXXXX may not have provided Student B equally effective alternative access to the District's curriculum. OCR determined that the Complainant was Student B's XXXXXX XXXXXX. On May 25, XXXX, the Complainant sent the Teacher for XXXXXXXX XXXXXXXX Students an email describing her efforts to work with Student B to

---

<sup>2</sup> Student A initially used the NonVisual Desktop Access (NVDA) screen reader. The District later provided Student A with access to the Job Access with Speech (JAWS) screen reader.

complete XXXXXX assessments. She stated that she was directed to read the passages and answer choices from XXXXXX to Student B, but this process was unsuccessful because the answer choices were too long for Student B to remember when referring to and comparing various reading passages. She stated that they stopped the test as a result.

Student C was an XXXXX student during school year XXXX-XXXX. Student C has a visual impairment and required large-print reading materials. Information provided by the District to OCR indicated that XXXXXX could not be magnified.<sup>3</sup> The District informed OCR that it ordered screen magnification software so Student C could enlarge text. OCR found no evidence indicating that this accommodation was insufficient.

Based on the foregoing, OCR determined that there may have been technological barriers that impeded the ability of some students with disabilities to access the portions of the District's curriculum that were provided through XXXXX and XXXXXX. Prior to the time OCR reached a determination as to whether the District provided equally effective alternative ways for students with disabilities to access the impacted curricular activities, the District agreed to voluntarily resolve the Complainant's allegation through a resolution agreement pursuant to Section 302 of OCR's Case Processing Manual (CPM).

On September 15, 2021, the District signed the enclosed resolution agreement (Agreement) to voluntarily resolve the complaint pursuant to Section 302 of OCR's CPM. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation. 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 complaint. 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. An individual 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, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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.

If you have any questions, you can reach me at (216) 522-4974 or [vanessa.coterel@ed.gov](mailto:vanessa.coterel@ed.gov), or my colleague, Logan Gerrity, at (646) 428-3791 or [logan.gerrity@ed.gov](mailto:logan.gerrity@ed.gov).

---

<sup>3</sup> On May 20, XXXX, the Teacher for XXXXXXXXXX XXXXXXXXXX Students sent the Complainant an email, stating that she spoke with XXXXXX about enlarging the screen, but "the program will not allow the enlargement that we needed a bigger screen."

Sincerely,

/s/

Vanessa K. Coterel  
Attorney

Enclosure

*Courtesy copy by email only to:*

Jonathan A. Vogel, Esq.  
Attorney for the District  
jonathan.vogel@vogelpllc.com