



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 30, 2020

Via Email: [waltssl@pwcs.edu](mailto:waltssl@pwcs.edu)

Steven L. Walts, Ed.D.  
Superintendent of Schools  
Prince William County Public Schools  
14715 Bristow Road  
Manassas, VA 20112

Re: OCR Complaint No. 11-16-1797  
Resolution Letter

Dear Dr. Walts:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the above-referenced complaint we received on August 23, 2016 against Prince William County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX XXXXX School (the School). The Complainant alleged that the Division discriminated against the Student on the basis of disability (XXXXX XXXXX XXXXX). Specifically, the complaint alleged that the Division discriminated against the Student on the basis of disability, from August 2016 until the present [approximately XXXXX XX XXXX<sup>1</sup>], when it failed to implement the Student’s Section 504 Plan, as well as her Virginia School XXXXX XXXXX XXXXX XXXXX(XXXXX) and XXXXX XXXXX XXXXX XXXXX(XXXXX)<sup>2</sup>, both of which were referenced in the Student’s Section 504 Plan.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 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), 42 U.S.C. §§ 12131 et seq., 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.

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<sup>1</sup> As discussed below, the Complainant withdrew the Student from the Division on XXXXX XX XXXX for the remainder of the 2016-2017 school year.

<sup>2</sup> OCR notes that when OCR issued notification letters to both the Complainant and the Division, dated November 1, 2016, OCR did not specify that the Student’s XXXXX was at issue. However, during the course of OCR’s investigation, OCR determined that the Student’s Section 504 Plan referenced both the XXXXX and XXXXX, and the XXXXX was also relevant to the Complainant’s allegation.

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

## **Summary of Investigation**

During the investigation, OCR reviewed evidence provided by both the Complainant and the Division; and interviewed the Complainant. Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement.

## **Allegation**

The Complainant alleged that the Division discriminated against the Student on the basis of disability, from August 2016 until approximately September 30, 2016, when it failed to implement the Student's Section 504 Plan, as well as her XXXXX and XXXXX, both of which were referenced in the Student's Section 504 Plan, including but not limited to, when it:

- Failed to monitor the Student's XXXXX XXXXX XXXXX, including by checking the Student's XXXXX XXXXX XXXXXXXXXXXX (XXXXX), particularly prior to her Physical Education (PE) class;
- Failed to send the Student to the XXXXX when she had symptoms of XXXXX;
- Failed to treat the Student's XXXXX;
- Failed to allow the Student to retake tests when her XXXXX XXXXX XXXXX were "XXXXX XXXXX XXXXX";
- On occasions where the Student's XXXXX XXXXX XXXXX XXXXX, failed to appropriately XXXXXit, XXXXXit, and/or contact the Complainant; and,
- Failed to maintain confidentiality regarding the Student's XXXXX.

The Complainant informed OCR that, as a result of the Division's failure to implement the Student's Section 504 Plan, XXXXX, and XXXXX, the Student often could not participate in her PE class. For this reason, as well others, the Complainant informed OCR that due to her overall concern regarding the Student's safety and well-being, she withdrew the Student from the Division at the end of XXXXX XXXXX, for the remainder of the 2016-2017 school year.

## **Findings of Fact**

During the 2016-2017 school year, the Student was enrolled in Grade XXXXX. The first day of school for the 2016-2017 school year was August 29, 2016. The Student was diagnosed as having XXXXX XXXXX XXXXX, and the Student's Section 504 Team developed a Section 504 Plan, dated XXXXX XXXXX XXXXX, which required that the Division provide the Student with special education and/or related aids and services, from XXXXX XXXXX XXXXX through XXXXX XXXXX XXXXX.

### **The Student's Section 504 Plan**

The Student's Section 504 Plan states that the School should follow the Student's XXXXX.<sup>3</sup> The Section 504 Plan also includes a reference to the Student's XXXXX, which is an undated

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<sup>3</sup> The XXXXX was signed by the Complainant and the Student's healthcare provider on August 1, 2016. The XXXXX indicates that it may have been faxed to the School on August 23, 2016; reviewed by School staff, including the School

document developed by the School nurse that incorporated any changes made to the Student's XXXXX throughout the school year. All three documents indicate that they should be updated at the beginning of each school year.

The Section 504 Plan provides that at least XXXXX XXXXX XXXXX XXXXX will be trained as XXXXX XXXXX ( XXXXX ), and either a school XXXXX or a XXXXX will always be onsite where the Student is located, to provide XXXXX care in accordance with the Section 504 Plan and the XXXXX . The XXXXX will be XXXXX with XXXXX or XXXXX XXXXX of XXXXX or other XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX , and responding to XXXXX and XXXXX , including XXXXX XXXXX .

The Section 504 Plan states that because School XXXXX are not trained specifically on all the XXXXX and XXXXX of XXXXX that are used to XXXXX XXXXX , the Complainant is responsible to either provide the training herself, or to arrange for training to be conducted by a XXXXX XXXXX on any specific XXXXX XXXXX the Student uses.

The Section 504 Plan states that the School will provide the Student with an XXXXX XXXXX that will connect with her XXXXX . Staff are responsible for XXXXX the Student's XXXXX XXXXX and notifying the school XXXXX or XXXXX to ensure they check the Student's XXXXX and respond accordingly. The School XXXXX , School administration, or XXXXX are responsible for XXXXX the Student's XXXXX through shared XXXXX . Teachers may also XXXXX XXXXX and notify the XXXXX or XXXXX , so that XXXXX actions can be taken, and the Complainant is notified. If the Student's XXXXX XXXXX XXXXX XXXXX or XXXXX , then the School will confirm with an additional XXXXX , call XXXXX, and notify Complainant.

Regarding testing, the Section 504 Plan states that teachers will XXXXX and support the Student to ensure that her XXXXX XXXXX XXXXX are XXXXX in prior to all unit tests. For everyday testing, the Student may use XXXXX XXXXX. For unit benchmarks and the Standards of Learning (SOL) testing, she will perform XXXXX XXXXX . If the Student's XXXXX XXXXX XXXXX out of XXXXX , she will be given an opportunity to stop and restart her test or retake her test entirely, by the end of the quarter, or the testing window for SOLs, without penalty.

With respect to the issue of confidentiality, the Section 504 Plan states that the School will keep the Student's XXXXX confidential, except to the extent that the Student or the Complainant decides to openly communicate about it with others. The Student should be treated in a way that encourages the Student to progress toward self-care with her XXXXX XXXXX skills while providing her with necessary assistance.

### The Student's XXXXX

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nurse, on August 29, 2016, and signed by the School XXXXX on September 12, 2016. The Complainant and the Division also provided information that the XXXXX may have been updated on September 22, 2016; however, neither provided OCR with a copy of a revised XXXXX .

The Student's XXXXX for the 2016-2017 school year was developed by the Student's XXXXX and the Complainant. The XXXXX states that the Student may XXXXX her own XXXXX XXXXX XXXXX with supervision.

Regarding the issue of the Student's XXXXX XXXXX XXXXX in relation to exercise or PE class, the XXXXX states that the Student should not exercise when her XXXXX XXXXX is greater than XXXXX XXXXX or her XXXXX are moderate to large immediately prior to exercise. The Student can participate in exercise activities when her XXXXX XXXXX is greater than XXXXX XXXXX or her XXXXX XXXXX are XXXXX to small.

The XXXXX lists all the actions relating to the Student's XXXXX XXXXX , which actions she requires assistance with, and which actions the parent/guardian is responsible for. The only action that the Student can do on her own is give herself an XXXXX with a XXXXX or XXXXX . The XXXXX also states that the Student requires assistance to XXXXX and XXXXX her XXXXX , and the Complainant should be contacted if the XXXXX becomes XXXXX or XXXXX .

### The Student's XXXXX

OCR also reviewed the Student's undated XXXXX . The XXXXX states that if the XXXXX XXXXX XXXXX or becomes XXXXX , the Student should be provided with a XXXXX XXXXX and the Complainant should be contacted immediately so that she can replace the XXXXX . Further, the XXXXX states that the Student's XXXXX XXXXX XXXXX should be XXXXX at XXXXX and XXXXX times and before physical activity or XXXXX of XXXXX or XXXXX .

### The Complainant Withdraws the Student from the Division

According to information provided by the Complainant and the Division, the Student's last day at the School for the 2016-2017 school year was XXXXX XX XXXX. Thereafter, the Complainant withdrew the Student from the Division and homeschooled the Student for the remainder of the 2016-2017 school year.

Overall, the Division denied that it failed to implement the Student's Section 504 Plan, XXXXX , or XXXXX , as alleged. OCR requested that the Division provide it with documentation indicating that during the relevant time period, it provided the Student with all provisions outlined in her Plans. However, the Division has not yet provided OCR with information and documentation, such as checklists or XXXXX , regarding the implementation of the provisions at issue, as outlined above. The Division did provide OCR with information and documentation indicating that for the 2016-2017 school year, in August and September 2016, it trained specific members of School staff, including the School XXXXX , on the following topics, as relevant to Student: XXXXX XXXXX; XXXXX XXXXX; XXXXX XXXXX XXXXX ; XXXXX XXXXX : and XXXXX XXXXX .<sup>4</sup>

### Legal Standards

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<sup>4</sup> For the 2019-2020 school year, the Student was enrolled in Grade XXXXX in the Division's XXXXX XXXXX XXXXX

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient 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.

If a recipient fails to comply with the procedural requirements of a student's Section 504 Plan, OCR determines whether that failure resulted in a denial of FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

### **Analysis**

The Complainant alleged that the Division discriminated against the Student on the basis of disability, from August 2016 until approximately XXXXX XX XXX, when it failed to implement the Student's Section 504 Plan, as well as her XXXXX and XXXXX , both of which were referenced in the Student's Section 504 Plan, in various ways with respect to: monitoring the Student's XXXXX XXXXX XXXXX ; sending the Student to the XXXXX for and treating her XXXXX ; allowing the Student to retake tests due to "XXXXX XXXXX XXXXX " XXXXX XXXXX levels; maintaining the Student's XXXXX XXXXX and/or contacting the Complainant; and, maintaining confidentiality.

Based on the investigation conducted to date, upon reviewing the Student's Section 504 Plan, XXXXX , and XXXXX , as well as some additional information from the Complainant and the Division, OCR is unable to determine whether the School provided the Student with the required special education and/or related aids and services. As previously noted, although the details of some of the provisions of the Student's Section 504 Plan, XXXXX , and XXXXX are not always clear, they do require the monitoring of the Student's XXXXX XXXXX XXXXX , involvement by the XXXXX , the retaking of tests if XXXXX XXXXX XXXXX are not within XXXXX XXXXX , assistance with the Student's XXXXX XXXXX , and the maintenance of confidentiality. In this instance, the Division has not yet provided OCR with sufficient records or other evidence indicating that it implemented these provisions of the Plans as alleged. As such, OCR has compliance concerns as to whether the Division implemented the Plans, and if so whether the Student was denied a FAPE.

However, as discussed above, before OCR completed its investigation, the Division requested to resolve the Complainant's complaint through a resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.

### **Conclusion**

On September 30, 2020, the Division agreed to implement the enclosed Resolution Agreement (the Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the recipient deemed compliant when the recipient enters into and fulfills

the terms of a resolution agreement. OCR will monitor closely the Division's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request information as necessary to determine whether the Division has fulfilled the terms of the Agreement. If the Division fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 regarding this letter, please contact Mordecai Simha, the OCR attorney assigned to this complaint, at 202-453-7084 or [Mordecai.Simha@ed.gov](mailto:Mordecai.Simha@ed.gov).

Sincerely,

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

Enclosure

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