



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

May 4, 2017

Dr. Andrew Houlihan  
Superintendent  
Union County Public Schools  
400 North Church Street  
Monroe, North Carolina 28112

Re: OCR Complaint No. 11-17-1102  
Resolution Letter of Findings

Dear Dr. Houlihan:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint that was received on XXXX against Union County Public Schools (the District). The Complainant<sup>1</sup> filed the complaint on behalf of XXXX (the Student), who attended XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of her disability during the XXXX school year, by failing to evaluate the Student to determine whether the Student required special education and/or related aids and services, despite the School Principal receiving notice of the Student's diagnosis of XXXX, thereby denying the Student a free appropriate public education (FAPE).

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 education institution, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed information and documentation provided by the Complainant and the District; and interviewed the Complainant. After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding the complaint, which the District agreed to voluntarily resolve through a Resolution Agreement pursuant to Section 302 of OCR's *Case Processing Manual*.

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<sup>1</sup> Hereinafter, in referring to the Complainant, OCR may also be referring to the Complainant's XXXX/the Student's XXXX.

OCR’s findings and conclusions are discussed below.

### **Background**

The Student attended the School and was enrolled in Grade XXXX for the XXXX school year.<sup>2</sup> The Complainant informed OCR that at the beginning of the XXXX school year, and in an email sent on XXXX, he notified the District, including the District’s Superintendent and Superintendent, that the Student was receiving treatment for XXXX. Specifically, in the email, the Complainant provided medical documentation in the form of a doctor’s letter, dated XXXX, which stated that the Student had been diagnosed with “XXXX.” The Complainant provided this information in the context of requesting that the District transfer the Student from the School to another school the Student previously attended in Grade XXXX.<sup>3</sup> XXXX SENTENCE REDACTED XXXX.

The Complainant indicated that he continued to request a transfer via email to the Superintendent and Assistant Superintendent through XXXX and XXXX. Finally, the Complainant emailed the Superintendent and the Assistant Superintendent again on XXXX, and the Superintendent responded to the Complainant regarding his concerns and copied the School’s Principal. Thereafter, the Complainant stated that he met with the Principal on XXXX.

The Complainant informed OCR that at the meeting on XXXX, he reiterated to the Principal that the Student had been diagnosed with XXXX, and he provided the Principal with the doctor’s letter, as described above. However, the Complainant asserted that the District did not respond to the information he provided or otherwise take any further action to evaluate the Student.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipients to provide a free appropriate public education FAPE to students with disabilities. An appropriate education is regular or special education and/or 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 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 recipient to evaluate any student who needs or is believed to need special education and/or related aids and services due to a

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<sup>2</sup> For the XXXX school year, the Student is XXXX for Grade XXXX. The Student lives in the XXXX attendance zone.

<sup>3</sup> The Student attended the other school prior to a District-wide redistricting plan, which led to the reassignment of students, including the Student, to specific schools.

disability. A recipient must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

### **Analysis**

In response to the Complainant's allegation, the District informed OCR that it maintains a Child Find process to identify and evaluate students who are suspected of having a disability.<sup>4</sup> The District acknowledged that the Complainant had provided notice that the Student had been diagnosed with XXXX beginning on XXXX. The District also confirmed that it did not take any action to evaluate the Student to determine whether she required special education and/or related aids and services for the duration of the XXXX school year through XXXX.

Rather, the District asserted that the Student had XXXX. XXXX SENTENCE REDACTED XXXX.

The District asserted that the Student generally performed well academically at the School; and that the Student's teachers provided positive feedback regarding the Student, including that XXXX. However, OCR also reviewed correspondence between the Complainant and District personnel throughout the school year and up until XXXX, which indicated that the Complainant expressed concerns that the Student XXXX.

Based on the above, OCR is concerned that the District's failure to evaluate the Student to determine whether she required special education and/or related aids and services during the XXXX school year may have resulted in a denial of FAPE. Although the Student may not have exhibited academic challenges, as reported by the District, OCR determined that District personnel, including the Superintendent, Assistant Superintendent, and/or the Principal, had actual knowledge of the Student's diagnosis as early as XXXX, but the District failed to evaluate the Student for the entire XXXX school year through XXXX. Moreover, OCR determined that the Complainant continued to express concerns regarding the Student's diagnosis and XXXX during this timeframe. In order to establish sufficient evidence that the District's failure to evaluate the Student resulted in an adverse educational impact upon the Student and a denial of FAPE, OCR would be required to conduct further investigation.

However, during the course of the investigation, and considering OCR's concerns regarding the District's failure to evaluate the Student, the District expressed interest in resolving the Complainant's allegation. Accordingly, OCR negotiated a Resolution Agreement with the District to remedy the concerns OCR identified with respect to the Complaint, pursuant to Section 302 of OCR's *Case Processing Manual*.

### **Conclusion**

On May 4, 2017, the District agreed to implement the enclosed Resolution Agreement

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<sup>4</sup> See

<https://www.ucps.k12.nc.us/cms/lib/NC01910453/Centricity/Domain/2226/Section%20504%20Handbook%20for%20Parent%20and%20Students%20Policy%20Updated.pdf>.

(Agreement), which commits the District to take specific steps to address the identified areas of concern, as described with respect to the complaint. The Agreement entered into by the District is designed to resolve the issues of concern. Under Section 302 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 concern. 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 by the District on May 4, 2017, 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.

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, 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.

If you have any questions regarding this letter, please contact the OCR staff assigned to this complaint, Judy Briggs at 202-453-5902 or [Judy.Briggs@ed.gov](mailto:Judy.Briggs@ed.gov); or Dwayne Bensing at 202-453-6910 or [Dwayne.Bensing@ed.gov](mailto:Dwayne.Bensing@ed.gov).

Sincerely,

/s/

Letisha Morgan  
Team Leader, Team II  
Office for Civil Rights

District of Columbia Office

Enclosure