



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

June 2, 2017

Dora Wynn  
Superintendent  
Brunswick County Public Schools  
1718 Farmers Field Road  
Lawrenceville, VA 23868

RE: OCR Complaint No. 11-17-1177  
Resolution Letter

Dear Ms. Wynn:

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 Brunswick County Public Schools (the Division). The Complainant alleges that the Division discriminated against the Student on the basis of his disability. Specifically, the complaint alleges that between XXXX and XXXX, the Student's XXXX teacher failed to implement the Student's Section 504 plan when it did not notify the Complainant that the Student's grade was XXXX.

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 District 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.

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

## **Factual Background**

The Student is enrolled for the XXXX school year at XXXX (the School) and is in the XXXX grade. The Student was diagnosed with XXXX, and as a result a Section 504 Plan was put in place on XXXX, which was revised on XXXX.<sup>1</sup> OCR determined that one of the provisions of the Student's 504 Plans require his teachers to notify the Complainant on a weekly basis about any grades XXXX.

## **Legal Standards and Analysis**

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 disabilities are met and that are developed in compliance with Section 504's procedural requirements. 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.

OCR generally finds that a school district denies the student a FAPE when it fails to implement aids, services, or accommodations/modifications of a student's Section 504 plan, resulting in him being denied a meaningful educational benefit; and, thus, violates Section 504 and Title II. However, not every failure to implement an aid, service, or accommodation/modification in an IEP or Section 504 plan automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and the impact, if any, that the failure had on the student's ability to participate in or benefit from a school district's services, programs, and activities.

According to the Complainant, the Student's XXXX teacher failed to follow the Student's 504 plan when she did not notify her of grades XXXX between XXXX, and XXXX. The Complainant added that as a result of this failure, the Student's grades suffered XXXX.

The Division denied that it failed to communicate with the Complainant and stated that it has consistently followed the requirements of the Student's 504 plan. The Division provided OCR with a copy of the Student's grade report that had been printed XXXX, and signed by the Complainant on XXXX. According to the grade report, the Student had XXXX grades XXXX between XXXX, and XXXX. Specifically, on XXXX, the Student received a grade of XXXX on a XXXX assignment XXXX and received a grade of XXXX on another XXXX assignment XXXX. The Division provided OCR with no additional documentation indicating that it provided this information to the Complainant within a week, as required by the Student's 504 plan.

Based on the information that OCR obtained during its investigation thus far, OCR has some concerns that the Division may have discriminated against the Student on the basis of his

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<sup>1</sup> OCR determined that the revisions did not impact the allegations outlined in this complaint.

disability by failing to provide him with FAPE. Specifically, the evidence reviewed to date raises concerns about whether the Division notified the Complainant about the Student's grades on a weekly basis between XXXX, and XXXX. Prior to the conclusion of OCR's investigation, the Division indicated its interest in resolving this complaint through the attached Resolution Agreement, pursuant to Section 302 of the Case Processing Manual. The provisions of the Resolution Agreement, when fully implemented, will resolve OCR's concerns.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on June 1, 2017 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 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  
Team Leader, Team III  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: LaRana J. Owens, Esq. *via email*  
Patrick Andriano, Esq. *via email*