



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

January 11, 2021

Dr. Steven Walts  
Superintendent  
Prince William County Public Schools  
P.O. Box 389  
Manassas, VA 20108

Re: OCR Complaint No. 11-17-1361  
Resolution Letter

Dear Dr. Walts:

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 April 18, 2017 against Prince William County Schools (the Division). The Complainant alleges that the Division discriminated and retaliated against the Student on the basis of disability. Specifically, the complaint alleges as follows:

Allegation 1: The Division failed to provide the Student with a free appropriate public education when the Student's teacher did not implement the Student's Individualized Education Program (IEP);

Allegation 2: The Division retaliated against the Student when his teacher sent him to detention on February 1, 2017 after he advocated for his IEP accommodations.

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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. 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.

During the investigation, OCR: reviewed documents provided by the Complainant and the Division; and interviewed the Complainant and Division faculty/staff.

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

Before OCR completed its investigation, the Division expressed a willingness to resolve allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

OCR completed its investigation of allegation 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

OCR's findings and conclusions regarding allegation 2 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding allegation 1.

### **Facts**

At the time of the complaint filing, the Student was enrolled in the Division as a middle school student at the School. The Student was diagnosed with XXXX. The IEP in place at the beginning of the 2016-2017 school year indicated that the Student "has an XXXX need and gum is an effective tool to meet this need." On January 12, 2017, a new IEP was developed that stated the Student will have the following: 1) ability to chew gum; 2) ability to use fidgets; 3) a binder/organizer for all materials; 4) ability to take a picture on his phone of all classwork and homework; 5) allotted breaks in class (resource classroom, counseling, office)<sup>1</sup>.

The Complainant alleged that the Student was not permitted to chew gum by his teacher at the beginning of the 2016-2017 school year, and on February 1, 2017 was not allowed to take a picture of his homework assignment or take a break from class to go to the Case Manager's office. The Complainant also alleged that the Student was retaliated against when he advocated for his accommodation allowing him to take a picture of his homework on his phone on February 1, 2017.

**Allegation 1:** The Division failed to provide the Student with a free appropriate public education when the Student's teacher did not implement the Student's Individualized Education Program (IEP).

### **Legal Standard**

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

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<sup>1</sup> OCR notes that the Student's IEP lists the five items under "program support strategies." In interviews with OCR, the Case Manager and the Teacher both identified each of these items as accommodations they understood the Student was to receive in accordance with the IEP.

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.

### Analysis

The Complainant alleged that the Division failed to implement the Student's IEP when his teacher (the Teacher) instructed him to spit out his chewing gum. OCR interviewed the Teacher as well as the Student's Case Manager (the Case Manager). The Teacher acknowledged asking the Student to discard his chewing gum during the first week of school in August, but stated that at that point, chewing gum was not on the list of accommodations she was to implement in class. According to the Teacher, each student with an IEP has a profile sheet that is provided to their teachers so that they know which accommodations are to be implemented in each class. The Case Manager stated to OCR that he provided the Teacher with the student profile sheet for the Student, and that he believes it included gum chewing as an accommodation. The Case Manager noted that he was made aware of the incident, and called a meeting to clarify the IEP in September 2016 and that there were no further issues regarding the Teacher allowing the Student to chew gum. In a letter dated February 1, 2017 from the Complainant to the School, the Complainant confirmed that once she raised to the Case Manager that the Teacher was not allowing the Student to chew gum at the beginning of the school year, "the situation was immediately resolved." As a result, OCR has concerns that during the beginning of the school year, the Student was not permitted to chew gum in class.

As described above, on January 12, 2017, the School developed a revised IEP for the Student which included an accommodation that the Student be allowed to take a picture on his phone of all classwork and homework and that he be given allotted breaks from class. According to the Teacher, on February 1, 2017, she saw the Student take a picture of his homework assignment. She then requested that he also write the assignment down in his agenda notebook. The Student pushed back on this request, and then wrote the assignment down in very small font. The Teacher requested that he write it down larger, at which point the Student wrote the assignment down in very large font. The Teacher felt this was disrespectful and gave the Student lunch detention as a result. The Case Manager indicated to OCR that the Student was permitted to take the picture of his homework assignment, and that the request to have him write the assignment down as well was meant to help him work on the goals outlined in his IEP. The Teacher noted that after she assigned him lunch detention, the Student asked to go see the Case Manager. The Teacher acknowledged that she asked him to stay in class as they were about to take a short exam. According to the Teacher, the Student complied, finished the exam, and then went to see the Case Manager. The Case Manager confirmed that the Student came to see him that day. It is unclear to OCR from the language of the IEP whether the Student's accommodation required that he be allowed to go to the resource or counseling office at any time, or if it was appropriate for the Teacher to delay the implementation of the accommodation in situations such as testing<sup>2</sup>. OCR has concerns that the Student's accommodation providing "allotted breaks in class" may not have been properly implemented in this instance.

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<sup>2</sup> In his interview with OCR, the Case Manager noted that the Student's accommodation allowed for him to take a break and meet with the Case Manager in the resource office.

**Allegation 2:** The Division retaliated against the Student when his teacher sent him to detention on February 1, 2017 after he advocated for his IEP accommodations.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

The following three elements must be satisfied to establish an initial, or prima facie, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action caused by the Division; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action; and if so, whether the reason is a pretext, or excuse, for retaliation.

### Analysis

As described above, according to the Teacher, on February 1, 2017, after the Student took a picture of his homework assignment, she requested that he write the assignment down in his notebook. The Student wrote the assignment down in very small font and then in very large font. The Teacher felt the Student was being disrespectful, and gave him lunch detention as a result. OCR finds that the Student's response to the Teacher's request that he write the assignment down may constitute a protected activity as he was advocating for his IEP accommodations. OCR also finds that the decision to assign the Student lunch detention constitutes an adverse action. Because the two occurred very close in time, OCR also finds that there is evidence of a causal connection between the protected activity and the adverse action, thereby establishing a prima facie case of retaliation. However, OCR finds that the Teacher articulated a legitimate, non-retaliatory reason for the assignment of lunch detention to the Student – the Student's copying of the assignment in very small, and then very large font, was perceived as disrespectful. OCR must next determine whether the Division's reason was pretextual.

The Division provided OCR with a copy of the Teacher's description of the events in question, dated February 3, 2017, that is consistent with the information she provided in her OCR interview. The Division also provided OCR with a letter from the Principal dated February 17, 2017, which was sent to the Complainant to provide her with the Division's findings after its investigation of her internal complaint. In the letter, the Principal noted that she spoke with the Student, who confirmed that he was frustrated by the Teacher's request to write down his homework assignment and wrote the assignment in very small, and then very large, font.

OCR also determined that the Teacher's decision to give the Student lunch detention for his behavior is consistent with the School's Code of Expectations and Disciplinary Program in effect during the 2016-2017 school year (the Code). The Code identifies the following student

behavior as a violation: Disrespect to teacher/staff member (arguing, refusal to cooperate, walking away, mumbling under breath, etc.). It also states that teachers may assign lunch detentions “to avoid writing a referral... for minor disciplinary infractions.”

Based on the evidence reviewed, OCR finds insufficient evidence to conclude that the Teacher’s reason for giving the Student lunch detention was pretextual. Specifically, the accounts given by the Teacher and the Student to the Division close to the time of the incident indicate that after the Teacher told the Student to write down the assignment, he wrote it in very small and then very large font. OCR also determined that the Teacher giving the Student lunch detention for disrespect was consistent with the Code in effect at the time. Finally, the Teacher stated that she recalled assigning lunch detention to several students for disrespectful behavior during the 2016-2017 school year, including both students with and without disabilities. Thus, OCR concludes that there is insufficient evidence to determine that the Teacher retaliated against on February 1, 2017 when she gave him lunch detention.

### **Conclusion**

On January 8, 2021, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address allegation 1. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to convene a meeting in the event the Student re-enrolls in the Division during the 2020-2021 academic year, to determine whether there were any instances during the 2016-2017 school year where the Student’s IEP accommodations were not properly implemented, and if so, whether any compensatory education is necessary. Additionally, the Resolution Agreement requires the Division to ensure that staff are trained on the implementation of IEP and Section 504 accommodations, including the Division’s internal procedures for communicating important IEP information to teachers. Please review the enclosed Agreement for further details. OCR will monitor the Division’s implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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.

The Complainant has a right to appeal OCR’s determination regarding allegation 2 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to [OCR@ed.gov](mailto:OCR@ed.gov); or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why she or he believes the factual information was incomplete or incorrect, the

legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the Division. The Division has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Division.

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 Sebastian Amar, the OCR attorney assigned to this complaint, at 202-453-6023 or [Sebastian.amar@ed.gov](mailto:Sebastian.amar@ed.gov).

Sincerely,

Jennifer Barmon  
Team Leader, Team III  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: LaRana Owens, Esq.