



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

September 28, 2018

*Via U.S. Mail and Email at [tschott@highland.k12.va.us](mailto:tschott@highland.k12.va.us)*

Dr. Thomas Schott  
Superintendent  
Highland County Public Schools  
P.O. Box 250  
Monterey, VA 24465

Re: OCR Complaint No. 11-17-1519  
Resolution Letter

Dear Dr. Schott:

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 July 31, 2017 against Highland County Public Schools (the Division). The Complainant filed the complaint on behalf of a former student (the Student) at XXXX (the School). The Complainant alleged that the Division discriminated against the Student on the basis of disability and engaged in retaliation during the 2016-2017 school year. Specifically, the complaint alleges the following:

1. The Division discriminated against the Student on the basis of disability when it failed to provide the Student with the following special education services as required by her IEP:
  - a. Allowance for alternative methods of displaying mastery and completing assignments;
  - b. Permission for extra set of books for home;
  - c. Prohibition of time limits of less than five minutes on math fact activities; and
  - d. Collaborative instruction in Reading and Math thrice weekly in the general education setting.
2. In retaliation for the Complainant's disability-related advocacy on behalf of the Student, the Division failed to provide remediation in the Student's Study Skills class.

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

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

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.

Before OCR completed its investigation, the Division expressed a willingness to resolve portions of Allegation 1(b) as it pertains to providing an extra set of textbooks for the Student at home; and Allegation 1(d) as it pertains to providing collaborative instruction in English in accordance with the Student’s IEP, by taking the steps set forth in the enclosed Resolution Agreement. With respect to Allegation 1(a), Allegation 1(c), and Allegation 2, OCR determined that there was insufficient evidence to substantiate these allegations. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

**Background**

During the 2016-2017 school year, the Student was enrolled in XXXX at the School. According to the Student’s IEP in effect at the relevant time period, the Division found the Student eligible to receive special education and related services for a Specific Learning Disability. Specifically, the Student’s IEP required class accommodations and modifications including, but not limited to: allowance of alternative methods of displaying mastery and completing assignments for Math, English, Science, and History; permission for an extra set of textbooks for home for Math, English, and Science; and prohibition of time limits of less than five minutes on math fact activities. The Student’s IEP also required special education services including Collaborative English for 20 minutes three times a week; and Collaborative Math for 30 minutes five times a week, both in the general education classroom.<sup>1</sup>

The Student earned the following final grades in the courses listed below for the 2016-2017 school year:

Course	Final Grade
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX

**Allegation 1<sup>2</sup>**

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<sup>1</sup> During the course of the investigation, OCR clarified that the Student’s IEP required Collaborative Math instruction for 30 minutes five times a week in the general education classroom, rather than 20 minutes three times a week as initially alleged in Allegation 1(d).

<sup>2</sup> The Complainant formed the basis of her OCR Complaint from a draft IEP proposed for the 2017-2018 school year (Draft 2017 IEP). OCR reviewed the draft documentation prepared by the Division, which stated the following:

The Division discriminated against the Student on the basis of her disability, when it failed to provide the Student with the following special education and/or related aids and services as required by her IEP: (a) allowance for alternative methods of displaying mastery and completing assignments; (b) permission for an extra set of textbooks for home; (c) prohibition of time limits of less than five minutes on math fact activities; and (d) collaborative instruction in Reading and Math in the general education setting.<sup>3</sup>

### **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 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**

#### *(a) Allowance for alternative methods of displaying mastery and completing assignments in Math, English, and History*

As stated earlier, the Student's IEP required a class modification for the allowance of alternative methods of displaying mastery and completing assignments specifically for Math, English, Science<sup>4</sup>, and History. As a threshold issue, OCR asked Division staff, and in particular, the Student's Case Manager for the 2016-2017 school year (Case Manager 1), how the modification at issue was intended to be interpreted. Case Manager 1 reported that in drafting the Student's IEP, she included this particular modification because "the purpose of this was to address timed assignments," specifically in the subject of Math. She stated that previously, "some teachers would give [the Student] timed assignments and [the Student] needed another way" of displaying mastery and completing assignments. Case Manager 1 acknowledged that the modification for alternative methods was "probably left over from a previous year" because she had anticipated that the Student would have retained the same Math teacher from the 2015-2016 school year. Although the modification was initially purposed to address Math timed assignments, Case Manager 1 stated that "there were very few of those if any" during the 2016-2017 school year. She further stated that she included the modification for all core subjects to ensure that the Division generally provided the Student with differentiated instruction. To that end, OCR interviewed the Student's English, Math, and History Teachers, whom all provided examples of

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[The Student] had several accommodations listed in her IEP. Three were not used because the class size was small and the teaching methods met her needs. Those were: allow alternative methods of displaying mastery and completing assignments (not needed or used); extra copy of textbooks at home and do not place time limits on math fact activities.

<sup>3</sup> During the course of the investigation, OCR clarified that the Student's IEP required Collaborative Math instruction for 30 minutes five times a week in the general education classroom rather than 20 minutes three times a week as initially alleged in Allegation 1(d).

<sup>4</sup> Although Science is specifically listed in the Student's IEP for this particular course modification, the Student did not take a science course during the 2016-2017 school year.

differentiated instruction and modified assessments for the Student, which they contend satisfied the provision for alternative methods of displaying mastery and completing assignments.

With respect to XXXX, the Student’s Math Teacher stated that the Student fared well and earned a final grade of “XXXX.” The Math Teacher reported employing several alternative methods for the Student, including modifying tests and quizzes to multiple choice options, and limiting the number of responses required to achieve satisfactory performance for assignments. For instance, the Math Teacher cited that if a worksheet contained twenty questions, she would require the Student to complete a subset of the questions posed. For XXXX, the Student’s English Teacher stated that she employed web-based programs such as MyAccess and IXL, which helped the Student display mastery in previous areas of the Student’s weaknesses in grammar usage, mechanics, and writing assignments. Finally, the Student’s XXXX Teacher told OCR that she also routinely afforded the Student remediation opportunities and permitted the Student to redo assignments in instances where she did not display mastery. Although the Student received a final grade of “XXXX” in XXXX, the XXXX Teacher stated that she gave the Student extra time to complete assignments and provided a copy of notes, study guides, and answers sheets. Further, and in instances where the Student elected to take exams in the resource room, the XXXX Teacher stated that Case Manager 1 assisted the Student and reduced the number of options for multiple choice questions.

Because the Student’s Teachers asserted that they provided alternative methods consistent with her IEP, OCR requested documentation evidencing the implementation of the modification at issue.<sup>5</sup> However, none of Student’s Teachers reported a practice of documenting a student’s receipt of special education services. In the absence of documentation, OCR could not corroborate the teachers’ statements. Nevertheless, OCR found the teachers’ statements credible, and supported by the Student’s successful academic performance in two of the three subjects in question.<sup>6</sup>

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence, that is, evidence that it is more likely than not that discrimination occurred. Based on the foregoing, OCR’s investigation did not reveal information to corroborate or support the Complainant’s allegation that the Division failed to implement the IEP modification to allow alternative methods for the Student to display mastery and complete assignments. OCR found that the Student’s Teachers provided credible testimony to support that the Division provided the modification at issue consistent with the Student’s IEP. Because the information offered from the Complainant did not sufficiently rebut that the Division appropriately implemented the modification at issue, OCR determined that there is insufficient evidence to support Allegation 1(a).

*(b) Extra set of textbooks for home in Math and English*

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<sup>5</sup> When assessing whether a Division implemented a special education service consistent with a Student’s IEP, OCR considers several factors including: (1) records indicating how a school district intends to implement a special education service, (2) communications pertaining to the implementation of the special education service, and (3) service logs indicating the dates and time a student received the special education service.

<sup>6</sup> Additionally, OCR resolved concerns stemming from the Student’s Draft 2017 IEP, which included language that the modification for alternative methods was “not needed or used.” Based on the Case Manager’s statements to OCR, the context of the language in question was in response to the discontinued practice of giving the Student timed assignments rather than a wholesale discontinuation and failure to implement this particular modification provision.

The Division readily acknowledged that the Student’s IEP required “an extra set of books for home.” Case Manager I also told OCR that she informed the Student’s teachers of the Student’s IEP accommodation for textbooks and their obligation to equip the Student with textbooks to take home. Nevertheless, in responding to the allegation, the Division contended that it was the Student’s responsibility to initiate a request for textbooks for the 2016-2017 school year, and she had not. For example, the Student’s English Teacher stated that there is a “good chance [the Student] did not *request* or receive a textbook” when OCR asked whether she supplied a textbook to the Student for home.<sup>7</sup> Similarly, the Student’s Math Teacher stated the Student “never requested” an extra set of the math textbook and that the Student “could have requested” an online copy of the math textbook if needed.<sup>8</sup> OCR considered the foregoing testimonial evidence and found that the Division failed to provide the special education provision as described in Allegation 1(b) in accordance with the Student’s IEP. OCR notes that the Division, rather than the Student, bears the responsibility of providing special education and related aids and services as stipulated in a student’s IEP. Because the Division inappropriately placed the burden on the Student to initiate a request for a special education provision required by the Student’s IEP, OCR found that the Division’s position is inconsistent with Section 504.

A school district violates Section 504 when its failure to implement a service or modification that is proscribed in a student’s IEP results in a denial of FAPE. Therefore, OCR next considered whether the Division’s failure to provide the Student with extra textbooks for home amounted to a denial of FAPE. In doing so, OCR considered the Student’s “XXXX” average in both Math and English. Although the Student’s grades suggest that the Student performed above average in the subjects in question, OCR determined that further investigation is warranted to determine what educational impact, if any, resulted from the Division’s failure to implement the IEP provision for extra textbooks for home. Prior to the conclusion of OCR’s investigation, and before OCR making a compliance determination as to the provision of FAPE with respect to providing the Student an extra set of textbooks for home in Math and English, the Division expressed interest in resolving Allegation 1(b) pursuant to section 302 of OCR’s *Case Processing Manual*.

*(c) Prohibition of time limits of less than five minutes on math fact activities*

The Student’s Math Teacher stated that she did not impose time limits for students, including the Student, and “extended any activity as necessary for students to complete.” Case Manager I corroborated the information reported by the Math Teacher and confirmed that the Student did not have timed math assignments during the time period at issue. Further, when probed, the Complainant was unable to provide a specific instance where the Student was allotted less than five minutes for math fact activities. She also acknowledged that she was “unsure” whether the Division had, in fact, imposed any time limits for the Student. Because the Complainant did not provide any information to rebut the corroborating testimony from Division staff that time limits were not imposed against the Student, OCR found insufficient evidence to substantiate Allegation 1(c).

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<sup>7</sup> Case Manager I also stated that the Student’s English Teacher did not allow students to take textbooks home because she feared students would not return them.

<sup>8</sup> The Math Teacher further reported that every student was given a textbook and was given the choice to leave the textbook in class or at home. Case Manager I stated that the Student often completed her assignments from the math textbook in the resource room.

*(d) Collaborative instruction in Reading and Math in the general education setting<sup>9</sup>*

With respect to Math, the Student’s IEP provided for Collaborative Math for 30 minutes five times a week in the general education classroom. Case Manager I told OCR that this particular IEP service was included to have “someone in the classroom to help the Student when needed” and to ensure that the Student received accommodations and modifications through specialized instruction. To this end, Case Manager I stated that she was in the Student’s Math class “most of the time” and “also co-taught” the class along with the Math Teacher. Similarly, the Math Teacher separately reported that Case Manager I was in the classroom to assist the Student for the entire class period or approximately 47 minutes daily. Both the Math Teacher and Case Manager I indicated that Case Manager I assisted the Student in completing assignments, worked on organizational skills, reworded math problems, and reinforced skills for the Virginia Substitute Evaluation Program (VSEP). Further, during the pendency of the investigation, the Complainant acknowledged that Case Manager I “was in the classroom” for both “VSEP” and “math.” Yet, she maintained that she did not believe that Case Manager I was in the classroom daily because there were occasions where only the Math Teacher helped the Student. Because the Complainant could not provide sufficient information to evidence an occasion where Case Manager I did not provide daily collaborative instruction, or any further information to rebut the Division’s staff’s corroborating testimony, OCR found insufficient evidence to support a finding that the Division failed to provide collaborative instruction in Math in accordance with the Student’s IEP.

Regarding English, the Student’s IEP required Collaborative English for 20 minutes three times a week. However, both Case Manager I and the English Teacher readily acknowledged that collaborative instruction in English did not occur during the 2016-2017 school year. As stated previously, Case Manager I reported that the inclusion of collaborative instruction on the Student’s IEP was intended to ensure that the Student received specialized instruction. Specifically for English, Case Manager I stated that collaborative instruction generally involved providing accommodations and/or modifications to a student, such as having things read or explained, either in the classroom or in “a smaller different setting.” Further, in describing what collaborative instruction entailed, the English Teacher described her experience with the Student’s subsequent case manager [Case Manager II] for the 2017-2018 school year. According to the English Teacher, Case Manager II worked with the Student in areas of identified deficiencies, reinforced class instruction, and collaborated with the English Teacher to discuss “methods and programs to use.”<sup>10</sup> In contrast, the English Teacher acknowledged that such collaboration did not occur during the 2016-2017 school year. Case Manager I tacitly acknowledged that such collaboration in English did not occur, which she attributed to the

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<sup>9</sup> With respect to Allegation 1(d), OCR initially opened an investigation into whether the Division provided the Student with collaborative instruction in Reading and Math thrice weekly in the general education setting. During the course of the investigation, OCR clarified that the Student’s IEP required Collaborative Math instruction for 30 minutes five times a week in the general education classroom rather than 20 minutes three times a week as initially alleged.

<sup>10</sup> OCR interviewed Case Manager II, whom corroborated that in accordance with the IEP service provision for collaborative instruction in English, she worked in the Student’s English classroom and differentiated instruction and provided accommodations as needed.

English Teacher's preference to solely provide the Student with differentiated instruction and any accommodations and/or modifications.<sup>11</sup>

Based on the testimony of Case Manager I, Case Manager II, and the English Teacher, OCR concluded that the IEP service provision for collaborative instruction for English was intended to provide collaborative instruction between the Student's English Teacher and Case Manager. Because both the English Teacher and Case Manager I acknowledged that this IEP service provision did not occur as described, OCR is concerned that the Division's failure to provide this IEP service provision may have had an educational impact on the Student. In order to conclude whether the Division violated Section 504 by failing to provide collaborative instruction in English as stipulated in the Student's IEP, OCR would need to conduct further interviews to assess whether the Division's actions amounted to a denial of FAPE. During the pendency of the investigation, the Division expressed interest in resolving Allegation 1(d) pertaining to collaborative instruction in English, pursuant to Section 302 of OCR's *Case Processing Manual*.

### **Allegation 2**

In retaliation for the Complainant's disability-related advocacy on behalf of the Student, the Division failed to provide remediation in the Student's Study Skills class. Specifically, the Complainant believed that Case Manager I permitted the Student to engage in extracurricular activities during the Study Skills period in lieu of providing remediation.

### **Legal Standards**

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.

When analyzing a claim of retaliation, OCR will consider: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took an adverse action against the complainant and/or the injured party; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

### **Analysis**

OCR presumes for purposes of this analysis that the Complainant engaged in protected activity given her ongoing disability-related advocacy on behalf of the Student to receive appropriate special education and/or related aids and services.

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<sup>11</sup> OCR cautions the Division that Section 504 requires that placement decisions, including modifications to an IEP, must be made by a team that includes people who know about the student and understands the meaning of the student's evaluation information.

OCR next considered whether the Division took an adverse action against the Student when it failed to provide remediation in her Study Skills class as the Complainant alleged. An adverse action is something that could deter a reasonable person from engaging in further protected activity.

Case Manager I indicated that the Study Skills class is a study hall course in which students receive elective credit. The general purpose for the class is to reinforce and remediate skills, according to Case Manager II. During the 2016-2017 school year, Case Manager I stated that during this particular period, she worked with the Student on “current assignments, specific skills identified by teachers,” “review and explained” coursework, “simplified terminology,” and reviewed skills for VSEP. Case Manager I also stated that the Student used the time to complete her assigned homework in other subjects.

Generally, during the course of the investigation, OCR found that Division staff provided corroborating testimony to support that Case Manager I provided remediation during the Student’s Study Skills class. However, some of the Division staff interviewed for the investigation acknowledged that on occasion, they recalled seeing the Student off-task during this specific period as the Complainant had suspected.<sup>12</sup> In responding to the allegation, Case Manager I acknowledged that the Student had assisted her in decorating a bulletin board, but limited the Student’s assistance to one occasion. Case Manager I also recalled that “there were a couple of times within that period that [the Student’s] class sponsor pulled her from the classroom to work on prom.” However, Case Manager I contended that the Student seldom engaged in such activities. Despite the above, OCR did not find sufficient evidence to outweigh the corroborating testimony of the majority staff interviewed, which supported that the Student primarily received remediation services in her Study Skills class.

Given the totality of information considered, OCR determined that there is insufficient evidence that the Division took an adverse action against the Student, as the evidence obtained does not support that the Division’s action could deter a reasonable person from engaging in further protected activity. Thus, OCR determined there is insufficient evidence to establish a *prima facie* case of retaliation. Accordingly, OCR will take no further action with respect to Allegation 2.

### **Conclusion**

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on September 27, 2018 which, when fully implemented, will resolve portions of Allegation 1(b) and Allegation 1(d) described above. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information 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 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

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<sup>12</sup> Specifically, some of the Division staff interviewed recalled seeing the Student help with decorating projects or other extracurricular tasks during her Study Skills period.



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 Erika Westry, the OCR attorney assigned to this complaint, at 202-453-7025 or [Erika.Westry@ed.gov](mailto:Erika.Westry@ed.gov).

Sincerely,

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

Enclosure