



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

October 2, 2019

Dr. Todd Martin  
Superintendent  
Yadkin County Schools  
121 Washington Street  
Yadkinville, North Carolina 27055

RE: OCR Complaint No. 11-18-1050  
Resolution Letter

Dear Dr. Martin:

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 November 13, 2017 against Yadkin County Schools (the District). The Complaint was filed on behalf of a student (the Student) at West Yadkin Elementary School (the School), alleging that the District discriminated against the Student on the basis of disability XXXXX when his classroom teacher (a) denied him the opportunity to XXXXX; and (b) imposed discipline, including XXXXX.

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

During the investigation to date, OCR reviewed documents provided by the Complainant and the District, interviewed the Complainant, and communicated with District staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on September 17, 2019 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 school district expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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

## **Background**

During the XXXXX school year, the Student was enrolled in the XXXXX grade at the School. At that time, the School employed an incentive-based program in which students who exhibit positive behavior could XXXXX. School staff measured student conduct across the school setting in accordance with a matrix listing positive behavior expectations, such as staying on task, listening and following directions, and using self-control.

As pertains to this complaint, if a student maintained positive behavior 75% of the time XXXXX, he or she could XXXXX. The District asserts that during that time, the Student met behavioral expectations XXXXX. Particularly, the Student’s “Class Dojo” behavior tracking report shows that XXXXX the Teacher’s comments concerning the Student’s behavior include:

- XXXXX

The Complainant asserts that XXXX, the District’s teachers “all know his diagnosis XXXX and the Student’s teachers XXXX provided him accommodations, XXXXX. Several “Dojo” communications between the Complainant and the Teacher XXXXX. Additionally, OCR reviewed a Prior Written Notice, dated XXXXX, which addresses the question of why the Student may require related aids and services through a Section 504 Plan XXXXX, the District had given the Student XXXXX and other informal accommodations. The language does not specify when these accommodations were initially provided.<sup>1</sup>

The District maintains that it was not “officially made aware” of the Student’s XXXXX.<sup>2</sup> The District acknowledges that the Complainant reported XXXXX, and that the Teacher responded that the Student “could potentially receive a 504 plan due to this reported diagnosis if she were to provide a medical diagnosis to the school.” The Teacher’s notes XXXXX. The evidence to date does not indicate that the Student XXXXX.

One week later, the Teacher gave the Student XXXX. That afternoon, the Complainant messaged the Teacher, XXXXX.

The XXXXX, stating that XXXXX, the School’s SWAT (“school wide assistance team”) convened and determined that the Student was eligible for a Section 504 Plan. Following the development and implementation of the Plan on XXXXX, the District reported that the Student met behavioral expectations XXXXX of the time.

## **Legal Standard and Analysis**

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the school district’s programs or activities on the basis of disability. Additionally, the Section 504

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<sup>1</sup> The District asserts that these accommodations commenced XXXX, while the Complainant (as noted above) asserted that these informal accommodations dated back to previous school years.

<sup>2</sup> The District notes, and OCR confirmed, that in its official school records, the only reference to XXXXX.

regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities, defined as 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. The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability and to conduct the evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities.

Based on the above, OCR has concerns that the District may have had knowledge of a potential disabling condition and the need for related aids and services prior to XXXX that should have triggered an obligation to evaluate the Student for special education or related services, and that the delay in evaluation until XXXXX may have effectively denied the Student the ability to participate equally in all aspects of the District's educational program.<sup>3</sup>

On October 1, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegations investigated. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to provide mandatory training to School administrators and staff on the requirements of Section 504 and Title II, and convene to discuss the provision of compensatory and/or remedial services to the Student for any time period between XXXXX when the Student did not receive appropriate regular and/or special education or related services. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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.

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<sup>3</sup> Moreover, OCR has concerns with statements by the District in its narrative response to OCR implying that it may not typically provide a student with a Section 504 Plan unless the parent/guardian first procures a medical diagnosis. OCR notes that under Section 504 and Title II, the District bears the burden of evaluation and placement.

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.

We appreciate District's cooperation in the resolution of this complaint. If you have any questions, please contact Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.Love@ed.gov.

Sincerely,

David Hensel  
Team Leader, Team III  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Kristi Gaddis (via email)