



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 27, 2018

Via Email claytonm.wilcox@cms.k12.nc.us

Dr. Clayton Wilcox
Superintendent
Charlotte-Mecklenburg Schools
P.O. Box 30035
Charlotte, NC 28230-0035

Re: OCR Complaint No. 11-18-1119
Resolution Letter of Findings

Dear Dr. Wilcox:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on January 19, 2018 against Charlotte-Mecklenburg School District (the District). The Complainant filed on behalf of herself and a student (the Student) at XXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of his disability (XXX) and race (XXX). Specifically, the complaint alleged that:

1. The District discriminated against the Student on the basis of his disability, when it:
 - a. Failed to provide the Student with special education and/or related aids and services in all of his classes, as required by his Section 504 Plan, during the XXX semester;
 - b. Failed to convene a group of persons knowledgeable about the Student to consider revising the Student's Section 504 Plan to include XXX, based on complaints the Complainant made to the School Resource Officer and Behavior Administrator regarding the same, in XXX; and
 - c. Revised the Student's Section 504 Plan without first providing the Complainant with notice, which is a procedural safeguard required by Section 504, on XXX.
2. The District treated the Student differently from other students on the basis of his race and/or national origin, when it failed to address incidents wherein other students bullied the Student in XXX.

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

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

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. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving 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, Title II, and Title VI.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District faculty and staff. Before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1(c) by taking the steps set out in the enclosed Resolution Agreement, pursuant to Section 302 of OCR's *Case Processing Manual*. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1(a-b) and 2. OCR's findings and conclusions are discussed below.

Background

During the XXX school year until XXX¹, the Student was enrolled in the XXX at the School. During the Student's XXX year, the District determined that the Student was eligible to receive special education and/or related aids and services pursuant to a Section 504 Plan (the Plan) due to his disability.

Allegation 1(a)

The Complainant alleged that the District discriminated against the Student on the basis of his disability, when it failed to provide the Student with special education and/or related aids and services in all of his classes, as required by his Plan, during the XXX semester.

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.

Analysis

The Complainant alleged that the District failed to implement the Student's Plan during the XXX. The Student's Plan, dated XXX, included the following special education and/or related aids and services, also referred to as accommodations:

- XXX;

¹ XXX.

- XXX;
- XXX;
- XXX;
- XXX;
- XXX;
- XXX;
- XXX; and,
- XXX.

OCR interviewed the Student’s teachers XXX. As is their practice for students receiving accommodations, the teachers all reported receiving copies of the Student’s Plan at the beginning of the school year, and they convened to discuss the Student’s Plan so that each teacher understood the Plan and would implement it consistently. The teachers also described how they implemented each provision of the Plan, as follows:

- XXX 1 PARAGRAPH REDACTED XXX.
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- XXX 1 PARAGRAPH REDACTED XXX.
- XXX 1 PARAGRAPH REDACTED XXX.

OCR also interviewed the teachers for XXX who all reported receiving the Student’s Plan at the beginning of the school year, and who also all reported implementing the provisions of the Plan, as applicable in each class.²

OCR also reviewed the Students grades. He received XXX.

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 above, OCR determined that there was insufficient evidence that the Student’s teachers failed to provide the Student with special education and/or related aids and services in all of his classes, as required by his Plan, during the fall 2017 semester. Each teacher described how they implemented the provisions of the Student’s Plan. Further, the Complainant did not provide OCR with details as to how she believed the Plan was not specifically implemented. Accordingly, OCR will take no further action regarding Allegation 1(a) as of the date of this letter.

Allegation 1(b)

² The teachers informed OCR that some provisions of the Plan may not be applicable for each class. For example, XXX.

The Complainant alleged that the District discriminated against the Student on the basis of his disability, when it failed to convene a group of persons knowledgeable about the Student to consider revising the Student’s Plan to include an on-site support person, based on complaints the Complainant made to the School Resource Officer and Behavior Administrator regarding the same, in XXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student’s educational program is not meeting the student’s individual needs, such as a significant decline in the student’s grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student’s Section 504 Plan or placement are necessary.

Analysis

The Complainant alleged that in XXX, she spoke with both the School Resource Officer and a Behavior Modification Technician regarding her modifying the Student’s Plan to include an on-site support person for the Student. She alleged that no Section 504 meeting was held as a result.

OCR interviewed the School’s Resource Officer, Behavior Modification Technician Student Support Coordinator (the Coordinator), and the XXX Behavior Modification Technician (the Technician). The School Resource Officer reported that he wasn’t aware that the Student had a disability and did not recall the Complainant requesting a support person for the Student. The School Resource Officer stated that if a parent inquired about services for a student, he would point them in “the right direction” including to the Guidance Counselor. The Coordinator and the Technician both informed OCR that the Complainant never spoke to them about the Student’s disability-related needs or requested an on-site support person for the Student.

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 determined that there was insufficient evidence to substantiate that the Complainant made a request for a support person for the Student, as alleged. Accordingly, OCR will take no further action regarding Allegation 1(b) as of the date of this letter.

Allegation 1(c)

The Complainant alleged that the District discriminated against the Student on the basis of his disability, when it revised the Student’s Plan without first providing the Complainant with notice, which is a procedural safeguard required by Section 504, on XXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an

opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Analysis

The Complainant alleged that the District failed to provide her with notice of the Section 504 meeting held on XXX; as a result, the Complainant was unaware of and did not attend the meeting. However, the District asserted that it invited the Complainant to the meeting by sending a Notice of Section 504 Meeting (the Notice) home with the Student. OCR reviewed the Notice, which is dated XXX inviting the Complainant to a meeting scheduled the following XXX. Documentation from the meeting reflects that the Complainant was informed of the meeting "in writing."³

OCR interviewed the District's Compliance Specialist for Section 504 (the Specialist). The Specialist reported that it is District practice for parents to be sent notice of a Section 504 meeting, and that the standard notice period is two-weeks, although an emergency situation might require a much shorter notice period. The Specialist also explained that the invitation is to be provided in written form, for example by email with a return receipt requested, phone call, or face-to-face; and that typically two forms of notice are provided, most typically by phone and by email. The Specialist informed OCR that it is not recommended to provide notice by sending it home with student.⁴

The School's Assistant Principal reported that the School's practice is that the Guidance Counselor would invite all participants to Section 504 meetings. She reported that the Guidance Counselor would do this via emails, letters, and phone calls, and that sometimes invitations would go home with the student. She reported that the Guidance Counselor would try to provide at least 10 days' notice.⁵

Documentation from the Section 504 meeting held on XXX reflects that the Guidance Counselor, the Assistant Principal, and the Student's ELA teacher participated in the meeting. The Assistant Principal reported participating in the meeting, and that she was invited via email. The Student's XXX teacher, however, reported that she did not recall being invited to or attending the meeting.⁶ Although they did not attend, the Student's XXX and XXX teachers reported being invited to the meeting. The XXX teacher reported that generally, he would receive notice of a meeting over a week in advance.

However, before OCR completed its investigation, the District requested to resolve this allegation. Therefore, pursuant to Section 302 of OCR's *Case Processing Manual*, the District

³ During the course of the meeting, the team revised the Student's Plan such that it only included the following special education and/or related aids and services: XXX.

⁴ The Specialist also informed OCR that the District's practice is also to try to contact the parent if they do not show up at the meeting, and at that point the team would decide whether to proceed or not with the meeting. If they reach the parent and the parent indicates that they want to attend, the meeting would be rescheduled.

⁵ OCR was unable interview the Guidance Counselor XXX.

⁶ She reported that if the team did meet, it would have been to ensure follow through regarding the Student's Plan.

signed the enclosed Resolution Agreement (the Agreement) on June 26, 2018 which, when fully implemented, will resolve Allegation 1(c). The provisions of the Agreement are aligned with the allegation 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 District's implementation of the Agreement until the District has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the allegation.

Allegation 2

The Complainant alleged that the District treated the Student differently from other students on the basis of his race and/or national origin, when it failed to address incidents wherein other students bullied the Student in October 2017.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of race, color, or national origin.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals of a different race. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Analysis

On XXX, while the Student was XXX, he was XXX by a XXX student (Student 1). The following day, the Complainant visited the School to speak with someone about the incident, but was unsuccessful. On XXX, the Complainant emailed multiple members of District staff regarding the incident. Although the Complainant initially indicated to OCR that there were multiple incidents in which other students bullied the Student XXX, the Complainant and the District only identified the incident that occurred on XXX.

On XXX, School staff, including the Principal, the Technician, XXX, and School Resource Officer, investigated the incident. School staff interviewed the students involved in the incident and determined that XXX. As a result, on XXX, the Principal conducted an administrative conference with Student 1 and he was XXX.

After the conclusion of Student 1's XXX, he began XXX. The Complainant complained to the District Senior Administrative Secretary that Student 1 was still XXX. The Principal met with the Complainant in XXX and explained that, while she would not identify to the Complainant the specific student or consequence, Student 1 had been appropriately punished for his behavior. The Complainant expressed her desire that Student 1 be XXX. The Principal rejected that request, explaining that such a consequence would be too extreme. The Principal interviewed the Student and confirmed that Student 1 had not XXX, or otherwise bullied/harassed him since the initial XXX incident. Thereafter, in XXX, the Complainant submitted an "Affidavit of Fact" to

the Superintendent and the Principal. The Affidavit alleged that the Student had been harmed and that “no consequences have been taken against [Student 1].” The Complainant further asserted in the Affidavit that the reason that Student 1 was not punished is because the Student’s race.

OCR reviewed documentation indicating that the type of punishment Student 1 received (XXX) was similar to the consequence given to other students involved XXX, no matter the race of the student-victims. School staff confirmed that punishment related to XXX infractions is given pursuant to the District’s Code of Conduct and typically results in XXX. The Principal stated that the harshest consequence given to a student this academic year was XXX. School staff explained that, depending on the severity of the incident and a student’s history of infractions, for XXX, the typical punishment ranges from an XXX to XXX. The Principal further clarified that School staff are not authorized to XXX, as the Complainant had requested.

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 determined that there was insufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, although the Complainant alleged that the District failed to suspend or otherwise discipline Student 1 for his misconduct, thereby treating the Student differently from other students on the basis of his race, OCR’s review of the documentation and interviews with School staff confirms that, in fact, Student 1 was XXX. OCR also determined that there was insufficient evidence that Student 1 received punishment less harsh than that typically given in response to XXX, or that the Student’s race played any role in determining the punishment given to Student 1. Therefore, based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division failed to discipline Student 1 based on the Student’s race. Accordingly, OCR will take no further action regarding Allegation 2 as of the date of this letter.⁷

Conclusion

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.

⁷ OCR notes that the Complainant did not allege and OCR did not otherwise find that Student 1 XXX because of his disability, so as to subject the Student to disability-based harassment or bullying. However, OCR notes that if the Student or any other student was subjected to disability-based harassment, and such harassing conduct was sufficiently severe, persistent, or pervasive that it created a hostile environment, it could violate a student’s rights under Section 504 and Title II. When disability harassment limits or denies a student’s ability to participate in or benefit from a recipient’s programs or activities, the recipient must respond effectively. Where the recipient learns that disability harassment may have occurred, the recipient must investigate the incident(s) promptly and respond appropriately. Disability harassment that adversely affects a student’s education may also be a denial of FAPE under Section 504 and Title II. Harassment of a student based on disability may decrease the student’s ability to benefit from his or her education and amount to a denial of FAPE.

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 the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Dwayne Bensing or Shana Heller, the OCR attorneys assigned to this complaint. You may reach Mr. Bensing at 202-453-6910 or Dwayne.Bensing@ed.gov or Ms. Heller at 202-453-6599 or Shana.Heller@ed.gov.

Sincerely,

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

Enclosure

cc: XXX