



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

November 29, 2018

Donald Phipps Ed.D.  
Superintendent  
Caldwell County Schools  
1914 Hickory Boulevard, SW  
Lenoir, North Carolina 28645

Re: OCR Complaint No. 11-18-1342  
Resolution Letter

Dear Dr. Phipps:

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 May 21, 2018 against Caldwell County Public Schools (the District). The Complainant filed on behalf of a student (the Student) XXXX. The Complainant alleges that the District discriminated against the Student on the basis of his disability XXXX. Specifically, the complaint alleges that:

1. During the 2017-2018 school year, XXXX when:
  - a. XXXX;
  - b. XXXX;
  - c. XXXX;
  - d. XXXX
  - e. XXXX;
  - f. XXXX; and
  - g. XXXX.
  
2. The District failed to implement the Student's Section 504 Plan 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 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.

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

In reaching a determination, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff and administrators. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support allegation 2.

However, prior to the completion of OCR’s investigation of allegation 1, the District expressed an interest in engaging in a voluntary agreement to resolve this allegation pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). The following is a summary of the evidence obtained to date.

Legal Standards

XXXX  
XXXX

Analysis to Date

a. The XXXX

The Complainant alleged that XXXX

The Complainant further alleged that XXXX. The Complainant further alleged that XXXX. In an interview with OCR, XXXX

In an interview with OCR, XXXX.

In addition, the Complainant stated that XXXX. The Complainant further said that XXXX. The Complainant told OCR that when XXXX. The Complainant further said that XXXX. The Complainant told OCR that XXXX. The Complainant told OCR that XXXX. OCR spoke to the Complainant’s XXXX.

The XXXX denied making the comments the Complainant attributed to her. Rather XXXX. She told the Complainant that XXXX. She said that the Complainant XXXX. XXXX. XXXX.

Finally, the Complainant alleged that XXXX denied making each of these comments.

b. On XXXX.

The Complainant told OCR that XXXX. At the end of the 2016-2017 school year, when the Student was XXXX. The Complainant stated that XXXX. The Student XXXX. However, the Complainant told OCR that XXXX. The Complainant said that XXXX. She said that she did not XXXX. The Complainant stated that the Student XXXX.

XXXX confirmed that she told the Complainant that XXXX. XXXX further stated that at no time did XXXX. XXXX told OCR that she was XXXX.

OCR reviewed a copy of XXXX However, XXXX. OCR further reviewed the District's XXXX`.

The Student was XXXX.

c. In XXXX

According to the Complainant, XXXX. The Complainant told OCR that XXXX.

In an interview with OCR, XXXX. In an interview with OCR, XXXX.

OCR reviewed a copy of the document XXXX told OCR, the Student could XXXX. The Complainant told OCR that the Student was XXXX.

Both the XXXX and the XXXX in separate interviews stated that XXXX.

d. On XXXX

The Complainant told OCR that XXXX. The Complainant said that XXXX. According to the Complainant, XXXX. OCR reviewed XXXX It indicates that the Student XXXX. The Student's XXXX.

According to the Complainant, XXXX. The Complainant said that XXXX. The Complainant further said that on XXXX the Complainant checked XXXX. She stated that the XXXX. The Complainant told OCR that XXXX.

XXXX told OCR that XXXX. She stated that XXXX. She stated that XXXX. She said that XXXX.

In an interview with OCR, XXXX. She said that XXXX said that she was not sure if the Complainant told her about XXXX.

Because XXXX that the Complainant saw XXXX OCR is unable to find sufficient evidence that the XXXX.

e. From XXXX

The Complainant alleged that XXXX. The Complainant stated that XXXX The Complainant further said that XXXX. XXXX.

In an interview, XXXX told OCR that XXXX.

XXXX told OCR that XXXX. She corroborated XXXX.

Based on the above, OCR finds that there is insufficient evidence that XXXX.

f. From XXXX

The Complainant told OCR XXXX. The Complainant provided OCR with XXXX.

In an interview with OCR, XXXX.

OCR reviewed XXXX. OCR compared the Complainant's XXXX. There were two XXXX told OCR that XXXX. OCR notes that the Complainant XXXX.

OCR further reviewed copies of XXXX. However, they did not support the allegation that XXXX. OCR asked the Complainant to provide any evidence XXXX. In response the Complainant provided XXXX.

Thus, beyond the Complainant's allegation, the evidence consists of XXXX that basically reiterates the Complainant's allegation without specificity. The Complainant gave OCR a XXXX. However, most of the XXXX. In addition, most of the XXXX. However, those that do, do not reference XXXX.

Based on the information above and using a preponderance of the evidence standard, OCR finds there is insufficient evidence that XXXX.

g. On XXXX

In a letter dated XXXX On or around XXXX. The Complainant told OCR that after XXXX. Students XXXX. The form indicated that XXXX.

The District's XXXX

In a letter XXXX, the Superintendent informed XXXX In a subsequent letter to the Complainant XXXX the Superintendent informed XXXX.

On XXXX the District signed an Agreement (copy enclosed) that, when fully implemented, will address allegation 1. 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 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.

Additionally, OCR's insufficient evidence finding and conclusion with regard to allegation 2 is discussed below.

**Allegation 2:** XXXX

**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

At the time that the complaint was filed, XXXX. He has a Section 504 Plan for XXXX. The Complainant alleged that XXXX. According to the Complainant, the Student XXXX. The Complainant said that another student XXXX. The Complainant alleged that once the Student XXXX.

The Student's Section 504 Plan, XXXX. The Care Plan provides XXXX. Neither the Care Plan nor the Section 504 Plan mentions XXXX.

In an interview, XXXX. She stated that XXXX. According to XXXX.

Neither the Student's Section 504 Plan nor his Care Plan included XXXX. In fact, both documents XXXX. Thus, OCR finds insufficient evidence that the District XXXX.

### 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.

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.

The Complainant has a right to appeal OCR's determination with regard to allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement

to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact XXXX, the OCR attorney assigned to this complaint, at XXXX.

Sincerely,

XXXX  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXX