



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

February 6, 2019

Dr. Andrew Houlihan  
Superintendent  
Union County Public Schools  
400 N. Church Street  
Monroe, NC 28112

Re: OCR Complaint No. 11-18-1446  
Letter of Resolution/Finding

Dear Dr. Houlihan:

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 August 10, 2018 against Union County Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of his disability (XXXXX). Specifically, the complaint alleges that:

1. The District retaliated against the Complainant for her advocacy on behalf of the Student regarding disability-related behaviors, by XXXXX; and
2. On June 7, 2018, the District failed to implement the provision of the Student's BIP 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. 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 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.*

OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District staff.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 1. OCR's findings and conclusions regarding Allegation 1 are discussed below.

In addition, before OCR completed its investigation of Allegation 2, the District expressed a willingness to resolve the allegations 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 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. Following is a summary of the evidence obtained by OCR to date during the investigation of Allegation 2.

### **Background**

The District has been providing Special Education and related services to the Student through an Individual Education Program (IEP) since he was found eligible XXXXX in 2015. On August 23, 2017, the Student's IEP team met to consider the results of several re-evaluations, and review the Student's Functional Behavior Assessment (FBA) Behavior Intervention Plan (BIP) IEP. At that meeting, the Team again found the Student eligible for special education and related services under the primary category of XXXXX. The Team further found the Student eligible under the secondary category of XXXXX. The Team added a provision to the Student's BIP by which, when the Student engages in certain disruptive behaviors related to his disabilities, i.e., School staff will, among other strategies, XXXXX. On October 6, 2017, at the annual review of the Student's IEP, the Team added XXXXX to the Student's BIP. In addition, the Team determined that the Student needed additional special education services XXXXX.

**Allegation 1:** The District retaliated against the Complainant for her advocacy on behalf of the Student regarding disability-related behaviors, by XXXXX

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 Complainant participated in IEP meetings for the Student on XXXXX. An individual engages in a protected activity if he/she asserts a right or privilege or opposes an act or policy that he/she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing under one of the laws OCR enforces. OCR finds that attending an IEP meeting constitutes a protected activity.

Next OCR must determine whether the District took adverse action against the Complainant or Student. An adverse action is something that could deter a reasonable person from engaging in further protected activity. OCR finds that XXXXX for behavior potentially related to his disability is an adverse action because it could deter a reasonable person from further protected activity. However, the District maintains that it was XXXXX, not the District who XXXXX. The District added that XXXXX did not consult any employee of the School or District before XXXXX, and that no employee of the School or District suggested, requested, or approved such an action.

The Complainant told OCR in an interview that she believes the School administration was, in fact, involved XXXXX because when the Student arrived home from school on June 7, he told her that the XXXXX told him that they had to wait outside the classroom for XXXXX and that the XXXXX had XXXXX. The Student told the Complainant that XXXXX walked with him and XXXXX to the office and interviewed him there.

OCR interviewed several teachers and administrators at the School about what occurred on June 7. XXXXX told OCR that she did not witness what precipitated the escalation of the Student's behavior because her attention was elsewhere in the classroom at the time, but when she heard a student loudly say the Student's name, she turned around and saw the student XXXXX. The Teacher said that she walked over to the desk and asked what had happened. She said that several of the nearby students who had witnessed the incident told her XXXXX. The Teacher said that the Student left the classroom when she walked over to the desk, and so she called for the XXXXX to come to the classroom. She told OCR that she called specifically for the XXXXX and not just generally for an administrator because the XXXXX is the administrator assigned to the Student, and the Teacher has learned from previous experience that XXXXX. The Teacher told OCR that she met XXXXX at the door, briefly said what had occurred, the XXXXX asked her to have the students write statements about the incident, and the XXXXX went to locate the Student. The Teacher said that she did not call XXXXX to the classroom and that she does not know why XXXXX came to the classroom, but that XXXXX did not enter her classroom or speak with her or any student at that time.

OCR interviewed the XXXXX, who said she heard a call on the radio for an administrator and because she was the Student's administrator, she responded to the classroom. She said that the Student was in the hallway when she arrived at the classroom and was XXXXX. She said that she does not recall telling the Student XXXXX. She explained that when a request is made over the walkie-talkie for an administrator, often XXXXX would report to that area of the school on his own, and that it would not be unusual for XXXXX to walk back to the office with her and the Student as a friendly gesture. According to the XXXXX, she, XXXXX, interviewed the Student in the main office about what happened in the classroom. She further stated that XXXXX was not present when she interviewed the Student.

The administrators and staff interviewed denied encouraging, suggesting, or requesting that the XXXXX. Moreover, none of the individuals interviewed knew of any other employee at the School that had done so either. Both the Principal and XXXXX told OCR that XXXXX told each of them later on June 7 that XXXXX. When asked what he said to XXXXX at the time, the Principal told OCR that he said XXXXX. The Principal told OCR XXXXX. The XXXXX

told OCR that XXXXX asked her later in the day on June 7 XXXXX. She said that she chose not to XXXXX because she felt they should come from an administrator. Finally, XXXXX said that after the School imposed an in-school suspension (ISS) for the Student's behavior, XXXXX spoke with her to "recount what occurred" because XXXXX. The XXXXX. The XXXXX until she learned of the Complainant's allegation in the OCR complaint.

Based on the above, OCR finds that, although the XXXXX could be considered an adverse action if taken by an employee of the District with knowledge of the Complainant's protected activity, here the action was taken by XXXXX who is not employed by the District, and there is insufficient evidence that any employee of the School or District suggested, instructed, or had any other involvement in XXXXX. Thus, OCR find insufficient evidence that the District retaliated against the Complainant for her advocacy on behalf of the Student regarding disability-related behaviors by XXXXX the Student on June 7, 2018, and it will take no further action with respect to Allegation 1.

**Allegation 2:** On June 7, 2018, the District failed to implement the provision of the Student's BIP XXXXX.

The following is a summary of the relevant evidence obtained by OCR during the investigation of Allegation 2 to date.

As stated above, at an August 23, 2017 meeting, the Student's IEP Team added a provision to the Student's BIP by which, XXXXX. On October 6, 2017, at the annual review of the Student's IEP, the Team added XXXXX. It was indicated on the BIP that District staff would be responsible for XXXXX.

Student statements written right after the incident occurred, uniformly describe XXXXX. In an interview with OCR, the Student's XXXXX said that she did not see the exchange between the Student and two other students before the Student XXXXX and thus the Student had already XXXXX. She said that the interaction between the students happened fast. When the Student left the room, she called the XXXXX to help her manage the situation. In an interview with OCR, the XXXXX, said that a teacher calls for an administrator when a student, with or without a disability, is "out of control" and the teacher feels they are unable to handle the situation.

In an interview with OCR, the XXXXX said that when she arrived at the classroom, she met the Student, who was XXXXX, in the hall and walked with the Student to the office. She said that she asked him to XXXXX. The Student was given XXXXX. The District explained that the ISS was to be served XXXXX. The Complainant confirmed that she requested this.

### **Conclusion**

On February 4, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address Allegation 2. 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 District to train administrators and instructional staff who work with the Student at the School on the District's Section 504 policy

and procedures and the requirements of Section 504 and Title II. The training will also include components specific to XXXXX and behavioral strategies that may be used with adolescent students who have been diagnosed with these disorders. 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.

The Complainant has a right to appeal OCR's determination regarding Allegation#1 within 60 calendar days of the date of this letter. The Complainant must submit a written statement of no more than ten (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.<sup>1</sup> The filing date of an appeal is the date that the appeal is postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District 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 District.

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

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<sup>1</sup> OCR is currently developing an appeal form that can be submitted online. At this time, anyone choosing to use the appeal form located at <https://www.ed.gov/ocr/docs/appeals-form.pdf> must first download the form before completing it, and then email the completed form to [OCR@ed.gov](mailto:OCR@ed.gov) in order for OCR to view all of the content.

questions regarding this letter, please contact XXXXX.

Sincerely,

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

Enclosure

cc: XXXXX