



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

June 26, 2019

Dr. Lynn Moody  
Superintendent  
Rowan-Salisbury School System  
500 North Main Street  
Salisbury, North Carolina 28144

RE: OCR Complaint No. 11-19-1145  
Resolution Letter/Letter of Finding

Dear Dr. Moody:

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 XXXX against Rowan-Salisbury School System (the District). The Complainant filed the complaint on behalf of XXXX (the Student) at XXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability (XXXX) and subjected the Complainant to retaliation. Specifically, the complaint alleges that:

1. The District discriminated against the Student on the basis of disability when it failed timely to reevaluate the Student for related services under Section 504 between XXXX and XXXX.
2. The District discriminated against the Student on the basis of disability when it failed to consider the Complainant's request not to include the term "as needed" for each of the provisions on the Student's Section 504 Plan on XXXX.
3. The District discriminated against the Student on the basis of disability when it failed to implement any of the provisions of the Student's Section 504 Plan between the start of the XXXX school year and XXXX.
4. The District discriminated against the Student on the basis of disability when a School administrator informed the Complainant on or about XXXX that the School was not a good fit for the Student, XXXX.
5. On or about XXXX, the District retaliated against the Complainant for her disability-based advocacy on behalf of the Student when School personnel accused the Complainant of violating the School's Code of Conduct after the Complainant assisted the Student with her assignments.

*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 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.

During the investigation to date, OCR reviewed documents provided by the District; interviewed the Complainant and District staff; and listened to an audio recording of a meeting between the Complainant and a District administrator. After carefully considering the information obtained during the investigation, OCR found insufficient evidence to support Allegations 2 and 5. Before OCR completed its investigation concerning Allegations 1, 3, and 4, the District expressed a willingness to resolve those allegations. OCR determined that it is appropriate to resolve Allegations 1, 3, and 4 pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement.

### **Information Gathered During Investigation**

#### *Student's Enrollment in the School*

During the XXXX school year, the Student was enrolled in the XXXX grade at XXXX, XXXX school within the District. She received services under a Section 504 Plan (the Plan) dated XXXX. In XXXX, the Complainant learned that the School, XXXXX within the District, offered an XXXX program. The Complainant applied for the Student's admission for the XXXX school year, and the School admitted the Student on XXXX. The Complainant alleges that she reached out to the School's Principal and Assistant Principal both before and after the Student's admission concerning the Plan and the Student's academic standing.

The Complainant contacted School personnel multiple times prior to the school year concerning the Plan, which mandated related services such XXXX. On XXXX, the Complainant reached out to the Assistant Principal, stating that she had attempted to contact the School's 504 Coordinator to schedule a 504 Team meeting but had not received a call back. On XXXX and XXXX, she emailed the School Counselor, requesting a meeting with teachers, administrators, and the 504 Coordinator to review the accommodations in the Plan and "maybe make changes that would benefit her if needed." The Counselor circulated the Plan to instructional staff on XXXX, and subsequently attempted to schedule a 504 Team meeting. However, OCR did not receive any evidence to indicate that the meeting (or further correspondence among staff concerning the Plan or the Student's accommodations) occurred at that time or in subsequent weeks.

#### *Plan Revision and Implementation*

The Complainant informed OCR that, after the Student started School, her teachers did not implement the Plan and, as a result, the Student began failing her classes. In response to an internal complaint that the Complainant filed (see discussion below), the District’s Chief Legal Officer (CLO) acknowledged while meeting with the Complainant on XXXX that not only was the Plan “inappropriate” for the Student, but also that the School had failed to implement it in any event. Additionally, in discussions with OCR, the CLO confirmed her belief that the Student’s teachers had not implemented the Plan prior to XXXX.

The Complainant alleges that she had to contact the District’s “Central Office” to get the School to schedule a 504 Team meeting. In an email dated XXXX between the Complainant and the Counselor, she stated: “I would like to move forward with a 504 meeting and will expect a written invitation by the end of the day tomorrow.” In response, the Counselor scheduled the meeting, and the 504 Team convened on XXXX.

The Complainant alleges that, at the XXXX meeting, the 504 Team changed each of the Student’s prior accommodations to require implementation only “as needed,” thereby making permissive each accommodation that was previously mandatory. The Complainant informed OCR that the 504 Team ignored her objection to the term “as needed” and failed to explain why. A comparison of the Plan to the plan as revised at the XXXX meeting (the Revised Plan) shows the following concerning the accommodations in the Revised Plan that contain the term “as needed:”

XXXX CHART REDACTED XXXX

Another Assistant Principal at the School (Assistant Principal 2), who attended the XXXX meeting, informed OCR in an interview that she does not recall any discussion at the meeting concerning the addition of the term “as needed.” She also cannot recall the Complainant objecting during the meeting to that term or to any other Plan modification; she recalls that “everyone was on the same page” and “everyone was happy” at the end of the meeting. In an email sent to the 504 Team on XXXX, following the meeting, the Complainant stated:

Thank you all so much to take time out of your busy days to meet with us and create this new 504 plan for [the Student]. We look forward to see her improve and grow more as the year goes on. We appreciate everyone’s input and that [the Student] was also included in some of this process as well and we find out first hand what she feels works and doesn’t for her . . . Thank you guys for your continued support and you will have my support as well in case things happen in the future. Please always reach out if needed.

*Post-Meeting Communications from Administrators*

On XXXX, Assistant Principal 2 emailed the Complainant, the Student’s XXXX teacher, and several other staff members “in regards to concerns about [the Student’s] performance in XXXX class.” The email attached two versions of an XXXX assignment by the Student, one submitted in class and the other submitted via an online portal. After listing the accommodations that the 504 Team had “agreed upon” in the XXXX meeting, the email quoted the District’s Academic

Honor Code, which is incorporated into the District’s Code of Conduct and prohibits academic dishonesty, including when a student “submits fraudulent work” or “gives or receives unauthorized assistance.” She stated: “It is expected that all students uphold the RSS Code of Conduct. Students that attend [the School] on a special transfer (XXXX) can have their transfers revoked if found in violation of the RSS Code of Conduct.” In an interview, Assistant Principal 2 stated that she sent that email because she believed that the Student was not completing her own work at home.

The School convened a meeting to determine the Student’s eligibility for an Individualized Education Program (IEP) on XXXX. Meeting notes suggest that the Principal raised the concern about the “parent doing her child’s work and then submitting it on behalf of the student.” The meeting notes contain no reference to the District Code of Conduct, and the District took no disciplinary action against the Student at any point.

The Complainant informed OCR that, when discussing the “so-called cheating,” the Principal also stated, “If [the Student] has this many problems [the School] is not the right fit for her.” Following that comment, the District EC Coordinator asked to meet with the Principal outside of the room, and when the two returned, the Principal made no further comment.<sup>1</sup> The Complainant further asserts that after the meeting, the District EC Coordinator called her and informed her that it was in the Student’s best interest to leave the School. The Student transferred to another school within the District XXXX.

#### *District Response*

On XXXX, the Complainant filed an internal complaint concerning, among other issues, the District’s failure to update the Plan and the administrator’s statements described above. The CLO met with the Complainant concerning the issues on XXXX, and she responded by letter on XXXX. In the letter or at the meeting, the CLO stated:

- “[T]he school staff procedurally violated the rights of [the Student] by its failure to meet in a timely manner to update the child’s 504 plan.”
- “[D]ata supports” the conclusion not only that the Plan was inappropriate, but also that the School’s teachers were not implementing it.
- While the School had a “legitimate reason” to question the Student’s homework assignments, the manner in which School staff raised the issue was “inconsistent with [District] procedures.”
- District staff determined with the Complainant that the Student should transfer to a different school “in the best interest of the child.”
- School personnel may have violated board policy, and confidential personnel actions have been or will be taken as a result. Additionally, School staff will have a “refresher training” on Section 504 procedures and “discrimination and harassment policy.”

The Complainant appealed the CLO’s determination concerning the issue of whether the Principal’s comments at the XXXX meeting constituted discrimination. In a letter dated XXXX,

---

<sup>1</sup> The Prior Written Notice contains no reference to this discussion.

the Superintendent stated that while the Principal’s comments were intended to address the high pace and level of work required for the XXXX program, the comments were “inappropriate” and “under the circumstances, should not have been made.” The Superintendent concluded that the statements and the prior actions of staff contributed to the Student’s transfer, and the transfer “could have been avoided had staff been better trained.” Finally, the letter reiterated the remedies (personnel action, staff training) described in the CLO’s prior communication.

### **Allegation 1**

The Complainant alleges that the District discriminated against the Student by failing timely to reevaluate her between XXXX, when she was admitted to the School, and XXXX, when the Section 504 Team ultimately convened. 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. 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. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The Section 504 regulation, at 34 C.F.R. § 104.35(d), further 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, a group of knowledgeable persons should consider whether further evaluation or revisions to the student’s Section 504 Plan or placement are necessary.

Here, as described above, contemporaneous correspondence between the Complainant and School personnel suggests that School staff failed to review or amend the Student’s Plan until XXXX, despite multiple expressions of concern by the Complainant about the Student’s needs and requests to convene before and upon her enrollment. In its data response and in discussions with OCR, the District acknowledged that it failed to reevaluate the Student as appropriate prior to her transfer to the School’s XXXX program or at any time prior to the XXXX meeting. Particularly, the District’s Chief Legal Officer “determined that the school staff procedurally violated the rights of [the Student] by its failure to meet in a timely manner to update the child’s 504 plan.” Based on the fact that the Student’s shift to an XXXX program may have constituted a significant change in placement, as well as information from the Complainant that shortly into the XXXX semester, the Student was failing her classes, OCR has concerns that the District’s actions prior to and following the Student’s enrollment at the School may have denied her FAPE.

Before OCR completed its investigation, the District agreed on May 24, 2019 to resolve this allegation by agreement.

### **Allegation 2**

The Complainant alleges that the District’s failure to consider her request not to include the term “as needed” for each of her 504 Plan related services at the XXXX Team meeting constitutes discrimination. In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Here, OCR find insufficient evidence to support the Complainant’s allegation that the District failed to consider her request not to include the term “as needed” in each of the Student’s related services. In a comparison of the Plan with the Revised Plan, OCR found only two instances in which the Revised Plan accommodation included the term “as needed” where the corresponding Plan accommodation did not:

XXXX CHART REDACTED XXXX

The revisions expand the related services of XXXX. OCR did not uncover evidence beyond the Complainant’s allegation that she objected to the inclusion of “as needed” at any point during or after the XXXX Section 504 meeting. Assistant Principal 2 informed OCR in an interview that she did not recall the Complainant objecting to that term or any other Plan modification. Additionally, the tenor and language of Complainant’s email to the 504 Team contains no objection to this language, and to the contrary appears to express approval and appreciation for a collaborative meeting. OCR offered the Complainant an opportunity to produce documentation or other evidence that 504 Team ignored her objection to the “as needed” language, but she did not do so; instead, she provided only a copy of the Plan. Accordingly, OCR finds insufficient evidence to support Allegation 2.

### **Allegation 3**

The Complainant alleges that the District failed to implement the Plan between the start of the XXXX school year and XXXX. As previously noted, to provide FAPE, school districts must offer 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.

The Complainant informed OCR that the Student’s teachers “weren’t doing anything” to implement the Plan upon the Student’s enrollment at the School. She alleges, for example, that one teacher simply allowed the Student XXXX as long as she was quiet rather than provide the Student with the related services under the Plan. She also alleged that, following the Student’s absences, the teachers took several weeks to update Power School, an online database containing the Student’s assignments/performance, suggesting that the teachers failed to implement the Plan’s related services for XXXX, including requirements that the Student XXXX. Moreover,

the CLO informed the Complainant in response to her internal complaint, and informed OCR, that teachers were not implementing the Plan during the relevant time. As such, OCR has concerns that the District was not implementing the Student’s Section 504 Plan in any of her classes during XXXX.

Before OCR completed its investigation, the District agreed on May 24, 2019 to resolve this allegation by agreement.

#### **Allegation 4**

The Complainant alleges that the Principal’s statement at the XXXX IEP meeting—particularly, that the School “is not a good fit” for the Student “if she has this many problems”—discriminated against the Student on the basis of disability, leading to her transfer out of the XXXX School. While the meeting notes do not reflect this comment particularly, the District does not dispute it. As stated above, in a letter dated XXXX, the Superintendent informed the Complainant that the Principal’s comments were “inappropriate” and “under the circumstances, should not have been made.” The Superintendent also acknowledged that the Student’s transfer “could have been avoided” had staff been better trained. The District informed OCR that after the XXXX meeting, “it was clear that additional interventions for staff were needed to support the overall school environment at [the School].” Nonetheless, the District noted that rather than addressing the need for interventions at the School, it instead suggested that the Complainant enroll in a different school that did not have an XXXX Program. Accordingly, OCR has concerns that the District encouraged the Complainant to transfer the Student out of the accelerated program as a result of the Student’s disability, rather than addressing the acknowledged need for interventions at that School so that the Student would receive a FAPE.

Before OCR completed its investigation, the District agreed on May 24, 2019 to resolve this allegation by agreement.

#### **Allegation 5**

The complainant alleges that District retaliated against her on or about XXXX when School personnel accused her of violating the School’s Code of Conduct after the Complainant assisted the Student with her assignments. The Section 504 regulation, at 34 C.F.R. § 104, 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.

OCR determined that the Complainant’s retaliation claim fails because a preponderance of the evidence indicates that the District did not take an adverse action against the Complainant or the Student. An adverse action is something that could deter a reasonable person from engaging in further protected activity. Petty slights, minor annoyances, and lack of good manners do not normally constitute adverse actions. While the Complainant may have interpreted the XXXX email from Assistant Principal 2 as an accusation of cheating and a threat to revoke the Student’s enrollment in the School, the email does not indicate, nor did the Student or the Complainant

ever receive, any disciplinary or other consequence. Accordingly, OCR finds that the Assistant Principal's communication would not reasonably deter further protected activity. Thus, OCR finds insufficient evidence to support Allegation 5.

On June 26, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address Allegations 1, 3, and 4. 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 compensatory and remedial services for any educational deficiency the Student experiences during the XXXX year while at the School. It also requires that the District offer reenrollment to the Student into the XXXX program at the School and, if accepted, to reconvene District staff to determine whether the Student's Section 504 plan requires any modifications due to the Student's placement in the School, and whether the Student requires any compensatory and/or remedial education or other services (e.g., tutoring) as a result of the Student's transfer. 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 Allegations 2 and 5 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or 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. The filing date of an appeal is the date that the appeal is submitted online, 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

questions, please contact Kathyne Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathyne Love.

Sincerely,

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

Enclosure

cc: April Kuhn, Esq.