



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. Lewis Ferebee
Chancellor
District of Columbia Public Schools
1200 First Street, NE
Washington, DC 20002

RE: OCR Complaint No. 11-19-1146
Resolution Letter

Dear Dr. Ferebee:

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 December 28, 2018 against the District of Columbia Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability and subjected her to retaliation for her disability-related advocacy, when the District failed to reevaluate the Student for the purposes of reviewing and modifying her Section 504 plan, as appropriate, for the 2018-2019 school year.

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 information provided by the Complainant and the District; and interviewed the Complainant. Before OCR completed its investigation, 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. The following is a summary of the evidence obtained by OCR during the investigation to date.

Facts

The Student was enrolled in XXXX at the School during the 2018-2019 school year. She has been diagnosed with anxiety and has been identified as a student with a disability under Section 504. The District provided records indicating that the Student previously was evaluated in XXXX. A copy of the Student's Section 504 Plan, dated XXXX, indicated that, in response to a General Anxiety Disorder, the Student was to receive a number of related aids and services, including XXXX. The Section 504 Plan indicates that the Student did not require accommodations to the School's behavior management system or a Behavior Intervention Plan. The Section 504 Plan was distributed to the Student's teachers and parents on XXXX.

Next, the District provided documentation of a comprehensive Functional Behavior Assessment (FBA) and Behavioral Intervention Plan (BIP) that were completed in XXXX. The District also provided a partial copy of a Section 504 Plan dated XXXX, which provides the Student with XXXX. The District did not indicate whether the FBA, BIP, or Section 504 Plan were ultimately distributed to the Student's parents and team of teachers.

Additionally, the District provided documentation indicating that in XXXX, during the 2017-2018 school year, it completed a Section 504 eligibility review for the Student. The Section 504 team convened XXXX, and it determined that the Student was eligible as a student with a disability under Section 504 based on an anxiety disorder that substantially limited XXXX.

The Complainant indicated that at the end of the 2017-2018 school year, the Student received additional diagnoses of Post-Traumatic Stress Disorder and Depression, which the Complainant reported to the District, and that the Student also XXXX, resulting in physical impairment. The Complainant also voiced continued concerns about the Student's receipt of services during the 2017-2018 school year, grades that she received while receiving homebound instruction during the XXXX 2017-2018 school year, and the status of the Student's Section 504 Plan for the 2017-2018 school year.

Thereafter, the District provided documentation indicating that it contacted the Complainant via email to attempt to schedule a meeting to review the Student's eligibility under Section 504 and complete a triennial reevaluation on XXXX. In response to the District's message, and in subsequent correspondence, the Complainant requested copies of reports and testing that the District planned to use as part of the eligibility review and triennial evaluation. The District indicated that it did not have additional information to provide to her. On XXXX, a team of individuals including the Student, the Complainant, the counselor, an administrator, a District representative, transition coordinator, and representative of the Rehabilitative Services Administration attended a Section 504 annual review meeting. According to the District, the Section 504 team was to review a report from the Student's teachers to discuss her present performance; however, the teachers were not in attendance, to which the Complainant objected.

There was no additional information or testing presented by the District. As a result, the team did not develop a revised Section 504 Plan for the Student at that time.¹

The Complainant submitted a psychological evaluation and FBA conducted by a private evaluator to the School following the meeting. The psychological assessment report and FBA are dated March 25, 2019. Additionally, the District submitted to OCR a Section 504 Plan for the Student dated February 21, 2019; however, the Plan does not indicate that it was distributed to anyone but the Student's counselor.

Allegation

The Complainant alleged that the District discriminated and retaliated against the Student when it failed to reevaluate her for the purposes of reviewing and modifying her Section 504 plan, as appropriate, for the 2018-2019 school year.

Legal Standards

Discrimination

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(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, BIP, or placement are necessary.

Retaliation

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.

Analysis

¹ The Complainant submitted a psychological evaluation and FBA conducted by a private evaluator to the School following the meeting. The psychological assessment report and FBA are dated XXXX. Additionally, the District submitted to OCR a Section 504 Plan for the Student dated XXXX; however, the Plan does not indicate that it was distributed to anyone but the Student's counselor.

Discrimination

OCR reviewed the documentation submitted by the Complainant and the District. Based on our review of the information, OCR has concerns that the District knew that the Student had changing behavioral and academic needs related to her disabilities, which were affecting her school attendance and performance during the spring and fall of 2018. However, the District did not revise the Student’s Section 504 Plan, modify the interventions provided, or otherwise reevaluate her during the spring or fall of 2018 for the 2018-2019 school year. Rather, the documentation reflects that the District began to seek reevaluation in XXXX, which is in line with its “timeline” for triennial reevaluation of the Student. However, the District may have been obligated to reevaluate the Student in the interim.

Before the completion of OCR’s investigation, the District requested to resolve the complaint pursuant to Section 302 of the *Case Processing Manual*. In order to complete the investigation, OCR requires additional information from the District, including that obtained from the Student’s Section 504 records and from District personnel during interviews, to further understand the District’s steps with regard to reevaluating the Student and to determine whether the District violated Section 504 and Title II.

Retaliation

OCR determined the Complainant engaged in protected activities during spring and fall 2018 when she advocated for the Student’s needs with respect to her disability. OCR would next consider whether the District treated the Student adversely. If the adverse action occurred as alleged, OCR would determine that there is a causal connection between the Complainant’s protected activity and the District’s action given the proximity in time and ongoing nature of interaction between the Complainant and District. However, as discussed above, because the District requested to resolve the complaint pursuant to Section 302 of the *Case Processing Manual*, OCR did not determine if the District took adverse action as alleged.

With respect to the Complainant’s retaliation allegation, and in light of the documentation gathered and OCR’s recommendation regarding the allegation of discrimination, OCR also would need additional information to determine whether the Student experienced an adverse action and, subsequently, whether the District retaliated against the Student for the Complainant’s advocacy. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.

On June 25, 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 determine whether compensatory education and/or remedial services are appropriate for the Student to address the delayed reevaluation during the 2018-2019 school year, and to provide training to School staff and administrators regarding Section 504 obligations to evaluate and reevaluate students as needed based on their needs. 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.

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 Amy Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

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

Enclosure

cc: Anitra Allen-King, Director (via email anitra.king@dc.gov)