



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

August 20, 2019

Dr. Tony Baldwin
Superintendent
Buncombe County Schools
175 Bingham Road
Asheville, NC 28806

RE: OCR Complaint No. 11-19-1222
Resolution Letter

Dear Dr. Baldwin:

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 February 25, 2019 against Buncombe County Schools (the District). The Complainant alleged that the District discriminated against the Student on the basis of his disability, XXXXX XXXXX XXXXX XXXXX (XXXXX). Specifically, the complaint alleges that the District failed to complete the Student's XXXXX XXXXX in English, Math, Science, Social Studies, and other electives, as required by the Student's Section 504 Plan during 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. 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, OCR reviewed documents provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the 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

During the 2018-2019 school year, the Student was enrolled in Grade XXXXX at the School. With respect to the Student's XXXXX, the District determined that the Student required special education and/or related aids and services and developed a Section 504 Plan for the Student. The Student had two Section 504 Plans during the 2018-2019 school year, one dated XXXXX XXXXX XXXXX (Plan 1) and a second dated XXXXX XXXXX XXXXX (Plan 2).

Plan 1 provides for a "Student XXXXX XXXXX XXXXX XXXXX XXXXX," such that the Student will be responsible for taking his XXXXX XXXXX (XXXXX) to each of his teachers to verify and initial for respect for others and staying on task. Plan 1 also states that the Student will be responsible to take the XXXXX home to his parents daily for them to monitor.

Plan 2 provides for a "XXXXX XXXXX XXXXX" and states that the Student will be responsible to take his XXXXX to each teacher to check yes or no. The XXXXX will monitor if the Student has shown respect by using respectful words and actions daily. Plan 2 states that each day the Student is responsible to fill in an electronic form at the end of his 5th block class using Google Docs to keep his parents informed of his progress.¹

Allegation

The Complainant alleged that the District discriminated against the Student on the basis of his disability. Specifically, the complaint alleged that the District failed to complete the Student's XXXXX in English, Math, Science, Social Studies, and other electives, as required by the Student's Section 504 Plan during the 2018-2019 school year.

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

OCR reviewed the data provided by both the Complainant and the District. Specifically, OCR reviewed Plans 1 and 2, as well as the Student's XXXXX XXXXX. Upon review, OCR was unable to determine what role the Section 504 team intended for the District to serve in ensuring that the Student's XXXXX were completed. In addition, OCR found that there were days that the Student's XXXXX were left blank but was unable to determine the reasons why. In addition, in email correspondence with the District during the 2018-2019 school year, the Complainant

¹ Plan 2 also referenced the Student's Behavior Intervention Plan (BIP), also dated XXXXXXXX for additional details; with respect to the XXXXX, the BIP reiterated the information already included in Plan 2.

asserted that there were days that the District indicated that the XXXXX was completed when the Student was absent from school.

With respect to Plan 1 and any XXXXX that were supposed to be completed prior XXXXX, the District asserted that the XXXXX was the Student's responsibility, and that the XXXXX was maintained by the Student or his parents, particularly his father. The District asserted that once it became clear that the Student was not sufficiently maintaining or implementing the XXXXX, the District revised the Student's Section 504 Plan on XXXXX (Plan 2) in order to place more responsibility on District staff.

Without conducting interviews with District staff to clarify what role the District was expected to serve in implementing and monitoring the XXXXX and the reasons why the XXXXX were left blank on certain days, OCR has compliance concerns as to whether the District implemented the Student's Section 504 Plans and whether the Student was denied a FAPE. However, as discussed above, before OCR completed its investigation, the District requested to resolve the Complainant's complaint through a resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has determined that entering into a resolution agreement under Section 302 of the *Case Processing Manual* is appropriate.

On August 20, 2019, the District signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address the allegation investigated. 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 convene the Student's Section 504 Team to: assess the degree to which the District failed to implement the Student's Section 504 Plan during the 2018-2019 school year with respect to the completion of the Student's XXXXX; determine whether the Student requires any compensatory special education and/or related aids and services for occasions when the Student's XXXXX was not completed during that 2018-2019 school year; and determine whether the Student's Section 504 Plan should be revised for the upcoming 2019-2020 school year in order to clarify the District's role in ensuring that the Student's XXXXX are completed daily. In addition, the Agreement requires the District to train District/School faculty and staff regarding the District's responsibilities to implement students' Section 504 Plans, BIPs, or other individualized education programs (IEPs), and to monitor the implementation of such plans.

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 Mordecai Simha, the OCR attorney assigned to this complaint, at 202-453-7084 or Mordecai.Simha@ed.gov.

Sincerely,

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

Enclosure

cc: Dean Shatley, Attorney for the District (Sent via email)