



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 23, 2019

Ms. Cathy Quiroz Moore
Superintendent
Wake County Public Schools
5625 Dillard Drive
Cary, NC 27518

RE: OCR Complaint No. 11-19-1253
Letter of Findings / Resolution Letter

Dear Ms. Moore:

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 March 15, 2019 against Wake County Public Schools (the District). The Complainant filed the complaint on behalf of XXXXX. The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged the following:

Allegation 1: XXXXX a teacher treated the Student differently by not allowing him to complete his work even though other students without disabilities were able to continue working on their assignments past the due dates.

Allegation 2: XXXXX a teacher harassed the Student based on his disability.

Allegation 3: During the 2018-2019, the School denied the Student FAPE by failing to XXXXX on a consistent basis per his IEP accommodations.

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 to date, OCR reviewed information and documentation provided by the Complainant and the District. OCR completed its investigation of Allegation 1. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation. Before OCR completed its investigation, the

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

District expressed a willingness to resolve Allegations 2 and 3 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.

OCR's findings and conclusions regarding Allegation 1 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegations 2 and 3.

Background

The Student was XXXXX

The Student was XXXXX.

Allegation 1: XXXXX a teacher treated the Student differently by not allowing him to complete his work even though other students without disabilities were able to continue working on their assignments past the due dates.

Facts

The Complainant alleged that the Teacher treated the Student differently by locking him out of his online assignments and then giving him zeros for not completing overdue work even though XXXXX was able to continue working on the same assignments past the due dates. XXXXX

In response to OCR's inquiry into the issue, the District investigated and found that AES allows teachers to create and manage assignments so that the assignments either close on a certain date or remain open indefinitely. Settings are managed on a class-wide basis. Once closed, the assignment is locked, and students cannot access it unless the teacher manually unlocks the assignment for an individual student. The District found that assignments for the Student's class were set up so that overdue assignments closed and locked, whereas assignments for the XXXXX were set up so that overdue assignments did not lock. No other student in the Student's class could access their overdue assignments without requesting an extension from the Teacher whereas everyone in XXXXX class could access overdue assignments. The District stated that the difference between the two classes was not purposeful and likely due to a clerical error.

Legal Standard

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

Analysis

While it is true that the Student who has a disability, was treated less favorably than XXXXX who does not have a disability, the Student was not treated any differently from any other student in *his* class. Pursuant to the facts gathered during the investigation, OCR considers the other students in the Student’s class to more appropriately constitute similarly situated comparators. Because all of the students in that class, whether or not they had a disability, were subject to the same class-wide settings for assignments as the Student, OCR has determined that the Student was not subjected to different treatment as alleged. OCR therefore finds insufficient evidence to substantiate Allegation 1.

Allegation 2: XXXXX a teacher harassed the Student based on his disability.

Facts

The Complainant alleged that XXXXX. The Assistant Principal started working with a colleague on the investigation the next morning. They interviewed the Student, XXXXX, other students in the XXXXX class, and the Teacher. XXXXX

The Complainant stated that the Student XXXXX

Legal Standard

Section 504 and Title II prohibits discrimination on the basis of disability. Disability-based harassment that creates a hostile environment is a form of disability discrimination. The District is required to provide a prompt and equitable grievance process to address complaints of disability discrimination.

Analysis

OCR has concerns that the Teacher’s actions, even though the Teacher may not have intended to engage in disability harassment, may have nevertheless created a hostile environment. OCR would need more information regarding the XXXXX and the context, nature, and frequency of the subsequent interactions to determine if it constituted a hostile environment from an objective perspective. OCR notes that the District took immediate action to investigate. While the District took steps to address the behavior with the Teacher and to address the Student’s needs by transferring his classes and subsequently convening the IEP team, OCR has concerns that they did not specifically consider whether the conduct at issue was disability discrimination or whether the remedial actions taken with regard to the Student and the Teacher were effective enough to be reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Before OCR completed its investigation, the District expressed a willingness to resolve this allegation.

Allegation 3: XXXXX the School denied the Student FAPE by failing to XXXXX on a consistent basis per his IEP accommodations.

Facts

The Student’s IEP for the 2018-2019 school year included the following accommodations, which the Complainant alleged were not implemented consistently, and thus denying the Student a FAPE:

XXXXX

The Complainant alleged that she often had to remind the Student’s teachers that he should have XXXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District’s programs or activities on the basis of disability.

Analysis

OCR has concerns that the School may have not implemented the Student’s IEP accommodations consistently and as intended, and that as a result, he may have been denied FAPE. Before OCR completed its investigation, the District expressed a willingness to resolve this allegation XXXXX. The District will also conduct a schoolwide Section 504 training and will send written communication to all School staff to ensure that they are aware of, carefully review, and fully comply with any accommodations in a student’s IEP or Section 504 Plan moving forward.

Conclusion

On August 23, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address Allegations 2 and 3. The provisions of the Agreement are aligned with Allegations 2 and 3 and the information obtained during OCR’s investigation, and are consistent with applicable law and regulation. XXXXX The District will also conduct an anti-harassment training for the Teacher and a Section 504 training for all School staff. And, the District will send written communication to all School staff to ensure that they are reminded of their legal obligation to implement IEP and Section 504 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.

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 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; 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 Dana Russo, the OCR attorney assigned to this complaint, at 202-453-6559 or Dana.Russo@ed.gov or Sandra Gibson, the OCR investigator assigned to this complaint, at 202-453-5913 or e-mail address Sandra.Gibson@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Jason Weber jweber@tharringtonsmith.com