



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

January 13, 2020

Via Email: earnest.winston@cms.k12.nc.us

Dr. Earnest Winston
Acting Superintendent
P.O. Box 30035
Charlotte, NC 28230-0035

RE: OCR Complaint No. 11-19-1438
Resolution Letter

Dear Dr. Winston:

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 July 17, 2019 against Charlotte-Mecklenburg Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXX Middle School (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability. Specifically, during the 2018-2019 school year, the complaint alleges that the District denied the Student a free appropriate public education (FAPE) when the Student transferred to the School with an existing Section 504 Plan.

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 information provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation voluntarily. Section 302 of OCR's *Case Processing Manual* states that allegations may be resolved prior to OCR making a determination if the recipient 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.

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

Facts

The Student transferred to the District XXXX with an existing Section 504 Plan in Summer 2018. The Student had been diagnosed with attention deficit hyperactivity disorder (ADHD) and her previous Section 504 Plan required staff to: (1) XXXX, (2) XXXX, and (3) XXXX. According to the District’s documentation, the Complainant indicated on the Student’s enrollment form that the Student had a Section 504 Plan. The District’s documentation confirmed that the District requested the Student’s previous school records on July XXXX, 2018, noting that “504 [was] checked on enrollment forms.”

According to correspondence provided to OCR, the Student’s parents visited the school counselor on December XXXX, 2018 to express concerns about the Student’s grades and a meeting was scheduled for XXXX, December XXXX, 2018. According to the Complainant and the District, the Complainant shared with School staff that the Student had a Section 504 Plan at this meeting. OCR notes that the Complainant asserted that he previously told School staff about the existence of the Section 504 Plan at the beginning of the 2018-2019 school year. During the investigation, School staff asserted that they did not become aware of the existence of the previous Section 504 Plan until December 2018. Subsequently, according to the District’s documentation, the Student was referred to be evaluated on March XXXX, 2019 and a Section 504 Plan was developed on May XXXX, 2019.¹

OCR also reviewed the Student’s attendance and academic records. According to the Student’s attendance record, the Student was absent twenty-four (24) days out of the 2018-2019 school year. Notably, she was absent for sixteen (16) continuous days from March 30, 2019 to April 10, 2019 due to medical reasons. According to the Complainant’s documentation, the Student’s grade point average for the 2017-2018 school year was a 3.5. According to the District’s documentation, the Student’s grades declined throughout the 2018-2019 school year. Specifically, in English language arts, the Student’s first semester grade was a seventy-two (72) and then her second semester grade was a sixty-four (64); in Math, the Student’s first semester grade was an eighty-two (82) and her second semester grade was a sixty-four (64); in Social Studies, the Student’s first semester grade was a sixty-nine (69) and her second semester grade was a sixty (60).

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. If a school district fails to comply with the procedural requirements of Section 504 or fails to implement a student’s Section 504 Plan, OCR determines whether that failure resulted in a denial of FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

¹ According to the Student’s Section 504 Plan, dated May XXXX, 2019, the Student’s areas of impairment expanded from the previous Section 504 plan to include: oppositional defiant disorder (ODD), attention deficit hyperactivity disorder (ADHD), and unspecified depressive disorder. OCR notes that the Student’s May 2019 Section 504 Plan provided additional accommodations, including XXXX.

Analysis

The Complainant alleged that the District denied the Student a FAPE during the 2018-2019 school year. The Complainant specifically alleged that School staff failed to implement the Student's previous Section 504 Plan and/or provide her comparable services, which resulted in the Student's grades declining significantly.

The District written narrative response "recognized that there are compliance concerns as it relates to the implementation of the Student's Section 504 Plan." The District confirmed to OCR that the Student's enrollment documentation indicated that she had a Section 504 Plan. The District told OCR that, during their own investigation, School staff denied knowing about the Student's Section 504 Plan at the beginning of the school year and explained that School staff did not become aware of the previous plan until December 2018 when School staff met with the Student's parents. The District further told OCR that there was a delay in re-evaluating the Student after School staff learned of the plan, due to the Student's subsequent absences in Spring 2019.

Based on all the information obtained during this investigation, OCR has concerns that the District may have denied the Student a FAPE. Here, the documentation clearly confirms that the District had notice of the Student's disability status and previous Section 504 Plan at the beginning of the 2018-2019 school year. Despite this, the School did not provide the Student any disability-related aids and services during the first half of the school year, did not implement the Student's previous Section 504 plan, and did not evaluate the Student for disability-related aids and services until May 2019. The District confirmed to OCR that it had notice of the previous Section 504 Plan by July 2018 but the District's documentation confirms that school staff did not refer the Student to be evaluated until March XXXX, 2019 and failed to put a Section 504 in place until May XXXX, 2019. Further, OCR reviewed the Student's academic record for 2017-2018 and 2018-2019 school years and notes that the Student's grades did in fact decline from her 2017-2018 school year and throughout the 2018-2019 school year when she transferred to the District. However, the District requested to voluntarily resolve this complaint prior to OCR continuing to investigate to determine whether the School staff's actions resulted in a denial of FAPE.

On January 13, 2020, the District signed the enclosed Resolution 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 train all School staff at the School regarding FAPE requirements concerning students with disabilities, including those students who transfer into the District from out-of-state with a Section 504 Plan, and to convene a group of knowledgeable persons to carefully consider and discuss compensatory education and/or remedial services for the Student. 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 Zorayda Moreira-Smith, the OCR attorney assigned to this complaint, at 202-453-6946 or Zorayda.Moreira-Smith@ed.gov.

Sincerely,

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: J. Melissa Woods, Senior Associate General Counsel