



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

January 31, 2020

Ms. Cathy Moore
Superintendent
Office of the Superintendent
Wake County Public School System
5625 Dillard Drive
Cary, NC 27518

Re: OCR Complaint No. 11-19-1449
Resolution Letter

Dear Superintendent 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 August 5, 2019 against Wake County Public School System (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX XXXXX XXXXX XXXXX School (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability and engaged in retaliation. Specifically, the complaint alleged that:

1. The District discriminated against the Student on the basis of disability, when it failed to implement the Student's Section 504 Plan, dated XXXXX XX, XXXX, by not providing her with the following special education and/or related aids and services, between approximately XXXXX XX, XXXX and XXXXX X, XXXX:
 - a. XXXXX notes with XXXXX XXXXX in all of her classes; and
 - b. Examples with XXXXX XXXXX in her XXXXX and XXXXX classes.
2. The District discriminated against the Student on the basis of disability, when it failed to implement the Student's Section 504 plan, dated XXXXX X, XXXX, by not providing her with the following special education and/or related aids and services, from approximately XXXXX X, XXXX through XXXXX XX, XXXX:
 - a. XXXXX - XXXXX XXXXX XXXXX, and then XXXXX in for XXXXX in all of her classes;
 - b. XXXXX notes with XXXXX XXXXX in all of her classes;
 - c. Examples, which includes XXXXX descriptions to better understand XXXXX concepts, in her XXXXX and XXXXX classes; and
 - d. A testing accommodation, wherein long XXXXX XXXXX should be XXXXX over multiple days.

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. 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. 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 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.

Facts

Allegation 1

With respect to Allegation 1, the Complainant alleged that the District discriminated against the Student on the basis of disability, when it failed to implement the Student’s Section 504 Plan, dated XXXXX XX, XXXX (Plan 1), by not providing her with the following special education and/or related aids and services, between approximately XXXXX XX, XXXX and XXXXX X, XXXX:

- a. XXXXX XXXXX with XXXXX XXXXX in all her classes; and
- b. Examples with XXXXX descriptions in her XXXXX and XXXXX classes.

The Complainant informed OCR that she believed that the District failed to implement Plan 1, because the Student’s performance was declining, and she was failing some of her classes.

OCR reviewed Plan 1. Plan 1’s alternative teaching strategies section included that the Student will be provided with the following special education and/or related aids and services (also referred to as “accommodations”), which are consistent with the Complainant’s allegation:

- a. XXXXX XXXXX along with XXXXX XXXXX in class and for project assignments in all her classes; and
- b. Examples in her XXXXX and XXXXX classes, which include XXXXX descriptions to better understand XXXXX XXXXX.

The District asserted to OCR that it implemented Plan 1, and that many of the Student’s accommodations were implemented through the instructional methods that the Student’s teachers used when serving all students. Overall, with respect to Plan 1, the District did not provide OCR

with class syllabi, accommodation logs, copies of the Student’s assignments or projects, or other record-keeping materials, indicating whether the accommodations at issue (i.e., XXXXX notes along with XXXXX tasks, and examples in XXXXX and XXXXX classes) were provided, when they were provided, or how they were provided to the Student.

On XXXXX XX, XXXX, the Complainant emailed the District’s Section 504 Coordinator (the Coordinator), stating that she is concerned that the Student’s XXXXX XXXXX have dramatically dropped and that there is poor communication with the Student’s XXXXX teacher. The Coordinator responded to the Complainant’s email on XXXXX XX, XXXX, stating that she would meet with the Student, as well as the Student’s XXXXX teacher to discuss how he can communicate better. The School Counseling Intern emailed the Complainant on XXXXX XX, XXXX, informing her that the XXXXX team’s teachers will rotate and provide the Student with tutoring sessions every XXXXX after school so that the Student will have an opportunity to learn material from different teachers.

On XXXXX XX, XXXX, the Complainant emailed the Principal and Assistant Principal asking them to reconvene the individualized education program (IEP) team to discuss the Student’s poor XXXXX performance. That day, the Special Education Department Co-Chair sent an email to School staff, noting that the IEP team previously determined that the Student was ineligible for an IEP on XXXXX XX, XXXX. The email also stated that a meeting would be held to discuss the Complainant’s concerns. The Complainant again emailed the Assistant Principal and other school staff on XXXXX XX, XXXX, requesting that the IEP team reconvene to readdress the Student’s XXXXX weakness and IEP consideration.

On XXXXX XX, XXXX the District held an IEP meeting to discuss the Student’s eligibility for an IEP. According to the IEP meeting notes, the Complainant expressed concerns at the meeting that the Student was struggling in her XXXXX class and she was requesting an IEP for the Student. The Student’s teachers were concerned with the Student’s lack of XXXXX to do well in class. The Student expressed concerns at the meeting, including that she finds it challenging to ask questions in XXXXX class. The Assistant Principal stated at the meeting that she would discuss the expectation of student workload with the XXXXX teacher, and the Complainant and Student were told to communicate with the XXXXX teacher when the Student has trouble with homework. Ultimately, the team determined that the Student did not require an IEP, and that the Student’s Section 504 accommodations were appropriate at that time, but it agreed to provide the Student with additional interventions.¹

Thereafter, on XXXXX XX, XXXX, the Complainant emailed the Coordinator asking for a meeting to discuss the implementation of Plan 1 and the Student’s progress in school. On XXXXX XX, XXXX, the District met with the Complainant to discuss the Student’s Section 504 Plan and progress in school.

On XXXXX X, XXXX, the Coordinator sent an email to School staff stating that she had met with the Complainant and Principal to discuss the Student’s 504 accommodations. She also stated that

¹ Specifically, the team agreed to an intervention where the Student would be given a XXXXX that she would XXXXX down her XXXXX in it for her teachers. The team also changed the Student’s schedule to include a XXXXX intervention course for support with XXXXX, which will enable her to get support from another teacher as well as practice skills using XXXXX.

it should be remembered that Section 504 plans are legally binding documents and that if staff have questions, they should ask her. Lastly, the emails indicate that she made clerical clarifications to the Student’s Section 504 Plan.

Allegation 2

Regarding Allegation 2, the Complainant alleged that the District discriminated against the Student on the basis of disability, when it failed to implement the Student’s Section 504 plan, dated XXXXX X, XXXX (Plan 2), by not providing her with the following special education and/or related aids and services, from approximately XXXXX X, XXXX through XXXXX XX, XXXX:

- a. XXXXX - XXXXX XXXXX XXXXX, and then XXXXX in for understanding in all of her classes;
- b. XXXXX XXXXX with XXXXX XXXXX in all of her classes;
- c. Examples, which includes XXXXX descriptions to better understand XXXXX XXXXX, in her XXXXX and XXXXX classes; and
- d. A XXXXX accommodation, wherein XXXXX XXXXX XXXXX should be administered over XXXXX days.

The Complainant informed OCR that she believed that the District failed to implement Plan 2, because the Student’s performance was declining, and she was failing some of her classes.

OCR reviewed Plan 2.² Plan 2’s alternative teaching strategies section included that the Student will be provided with the following accommodations, which are also consistent with the Complainant’s allegation:

- a. XXXXX XXXXX XXXXX XXXXX, and then XXXXX in for understanding in all her classes;
- b. XXXXX XXXXX will be provided with XXXXX XXXXX in class or for project assignments in all her classes;
- c. Examples with answers will be given for XXXXX and XXXXX to include XXXXX descriptions to better understand XXXXX XXXXX in her XXXXX and XXXXX classes; and
- d. A XXXXX accommodation for the Student’s XXXXX class that allows her to take long XXXXX tests on multiple days.

The District again asserted to OCR that it implemented Plan 2, and that many of the Student’s accommodations were implemented through the instructional methods that her teachers used when serving all students. The District stated that the Student’s XXXXX teacher regularly provided the Student with a copy of printed notes from his Smartboard, which reflected a step-by-step process for problem solving. The District further stated that the Student’s XXXXX co-teacher recalled that the Student used her XXXXX accommodation to take XXXXX over XXXXX XXXXX XXXXX and that sometimes the multiple sessions took place over more than one day. In addition, the Student’s co-teacher remained present in the Student’s XXXX and XXXX classes from April to

² OCR notes that although Plan 2 is dated XXXXX XXXXX XXXXX, it notes that the meeting date was XXXXX, and that it was a “Clerical Addendum” such that a “team presence was not required.”

June XXXXX, and the co-teacher recalled continuing to assist with the testing and check-for-understanding accommodations during this period. The District also provided OCR with copies of the Student’s Review of Accommodations Used During XXXXX forms (XXXXXX Forms) for her May 26, May 29, and XXXXX XX, XXXX End-of-Grade (EOG) XXXXX. The Student’s XXXXX Form for XXXXX XX, XXXX states that for her EOG XXXXX XXXXX, she was provided with multiple XXXXX days, but it was marked N/A with no further explanation provided.³

After the meeting on XXXXX X, XXXX, the Complainant emailed the Coordinator on XXXXX X, XXXX, stating that she was concerned that the Student’s teachers may not understand the impact of the Student’s disabilities and how they affect her profile as a learner, and she is concerned that this may influence the lack of implementation of her accommodations. The Complainant also asked for additional accommodations.

On XXXXX X, XXXX, the Complainant emailed the Coordinator and Principal. The email stated that on XXXXX X, XXXX, they met to discuss the Student’s Section 504 accommodations; that she was assured that the Student’s accommodations would be provided; but that the Student is still not receiving accommodations regarding XXXXX XXXXX, and XXXXX or examples.

On XXXXX X, XXXX, the Complainant emailed the Student’s XXXXX Teacher asking whether the Student was given a reference sheet or notes to explain how to solve XXXX problems dealing with XXXXX XXXXX and XXXXX and whether she was expected to memorize the XXXXX. On XXXXX XX, XXXX, the XXXX teacher responded in an email stating that he doesn’t believe the Student has the notes, and that the Student was not in class when they worked on it. The XXXXX teacher wrote that the notes are on his desk and he will give them to the Student when she gets to class. He also noted that the Student needs to know the XXXXX, and at first, the students won’t need to memorize it, but after the break, they will be tested on it.

Overall, regarding Plan 2, and with the exception of the EOG XXXXX Form for XXXXX (which was unclear as to the accommodation provided), the District did not provide OCR with class syllabi, accommodation logs, copies of the Student’s assignments or projects, or other record-keeping materials, indicating whether the accommodations at issue (i.e., long-term assignments XXXXX, and then XXXXX in for understanding; XXXXX XXXXX along with XXXXX XXXXX; examples in XXXXX and XXXXX classes; and a XXXXX accommodation in XXXXX) were provided, when they were provided, and how they were provided to the Student.

Legal Standards

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.

³ OCR also notes that Plan 2 includes separate provisions for EOG tests, including but not limited to multiple XXXXX days for EOG XXXXX XXXXX.

If a school district fails to comply with 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.

Analysis

OCR reviewed information and documentation provided by both the Complainant and the District. Specifically, OCR reviewed Plans 1 and 2 and emails that were sent internally between District staff members and between the District and the Complainant, related to the Student. OCR also reviewed the District’s response to the complaint and its assertion that many of the Student’s accommodations in Plans 1 and 2 were implemented through the instructional methods that her teachers used when serving all students. Specifically with respect to Allegation 2 and the Student’s XXXXX accommodation in XXXXX, although the District provided OCR with anecdotal information from the Student’s XXXXX teacher and co-teacher regarding the provision of the required XXXXX accommodation, and a XXXXX Form for her EOG XXXX test on XXXXX XX, XXXX, such information did not conclusively establish that the District provided the Student with the required accommodation.

Therefore, based on its review of information and documentation provided, OCR was unable to determine whether the District failed to implement Plan 1 or Plan 2. As stated above, the District did not provide OCR with class syllabi, accommodation logs, copies of the Student’s assignments or projects, or other record-keeping materials, which could indicate whether each accommodation at issue in Plans 1 and 2 was provided, when it was provided, and how it was provided to the Student.

Without conducting interviews with District staff to clarify how and whether the Student received her accommodations or special education and/or related aids and services as required by Plans 1 and 2, OCR has compliance concerns as to whether the District implemented Plans 1 and 2 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.

Conclusion

On January 31, 2020, the District signed the enclosed Resolution Agreement (the 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 convene the Student’s Section 504 team to: assess the degree to which the District failed to implement Plans 1 and 2 during the 2018-2019 school year, as alleged, and determine whether the Student requires any compensatory special education and/or related aids and services for occasions when Plans 1 and 2 were not implemented; and determine whether the Student’s Section 504 Plan or other individualized education program should be revised for the current 2019-2020

school year in order to clarify the District's role in ensuring that the Student's Section 504 Plan is implemented. In addition, the District agreed to train School faculty and staff regarding the District's obligations under Section 504 to provide a free appropriate public education (FAPE) to students with disabilities. 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 (via Email): Melissa Michaud, Counsel for the District