



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

XXXXXX

By email only to XXXXXX

XXXXXX
Superintendent
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Case No. 11-20-1231
XXXXXXXXXXXXXX

Dear XXXX:

This letter is to advise you of the outcome of the investigation that the Office for Civil Rights (OCR) of the U.S. Department of Education conducted of the complaint we received on XXXXX against XXXXXXXX, which we will refer to as the District. While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the District for its patience.

The Complainant filed the complaint on behalf of her daughter, a student at XXXX Elementary School, whom we will refer to as the Student. The Complainant alleges that the District discriminated against the Student on the basis of disability (XXXX) when:

1. On XXXXX¹ and XXXXX, the Student’s teachers denied the Student access to her XXXXX as required by the Student’s XXXXX, causing her to sit out of XXXX and/or XXXXXXXXXXXXX; and
2. In or about XXXXX, the School denied the Student access to her XXXXXXXX throughout the school day by requiring her XXXXXXXX to remain with her homeroom teacher while the Student changed classes.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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. Because the District receives

¹ The Complainant identified November 26, 2019 as the date when the Student sat out of recess; however, OCR determined the date was November 25, 2019.

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

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 and corresponded with the Complainant about her allegations.

Before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 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 school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

OCR completed its investigation of Allegation 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant's allegation.

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

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities. Furthermore, school districts must ensure that students with disabilities participate in nonacademic and extracurricular services and activities with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Facts

The Student attended XXXX grade at the School during the XXXXX school year. The Student was diagnosed with XXXXX. The Complainant submitted a XXXXXX form to the School dated XXXXX, so that the Student could use her XXXX at school. The Student's XXXX indicated on the form that the Student should use XXXXXXXX before XXXXXXXX.

The School created an XXXXXX (XXXXX) for the Student for the XXXXX school year on XXXXXX that the Complainant signed on XXXXXX. The Action Plan indicated that the Student's XXXXX were triggered by XXXXXX and that the Student should use her XXXXXX and XXXXXX class. It also noted that the XXXXX and the Student's XXXXX would be kept in a XXX bag, and that the Student was not authorized to XXXXXXX.

XXXX teachers primarily taught the Student throughout the day. One teacher taught her XXXXX (XXXXX) and another taught her XXXXX (XXXX). According to the District, the teachers made it a practice to hand off the XXXX containing the Student's XXXXXXXX when the Student switched classes. In XXXXXX, the XXXX met with XXXXX to discuss the XXXXX. XXXXX

documented the Student's XXXXX beginning on XXXXX and XXXXX began documenting the Student's XXXXX on XXXXXX.

On XXXXXX, XXXXX emailed the Complainant and informed her that she had the Student XXXXXX even though she wanted to play on the XXXXX after the Student told her she could XXXXXX. The Complainant responded that XXXXX should be following the Student's XXXXX, which required that the Student XXXXX prior to XXXXX. XXXX then replied that she allowed the Student to go to XXXX's classroom to XXXXX but by the time the Student returned, XXXX was over. XXXXX informed the School's XXXXX that the Complainant wanted to meet about the incident.

On XXXXXX, the XXXXX emailed the XXXX that XXXXX stated that she did not know about the Student's XXXX and asked whether she had informed the teachers of the XXXX. The XXXX replied that she had informed XXXX and that XXXX had the XXXXX in the XXXX of medical plans and supplies for the Student to access. On XXXX, the Complainant, XXXX, and the XXXX met to discuss the incident. XXXX stated that prior to XXXX, she was not aware that the Student had XXXXX. The XXXX directed the XXXX to meet with XXXXX to review the Student's XXXX, which she did on XXXXX.

The Complainant stated that XXXX did not provide the Student with access to her inhaler on XXXX at XXXX. According to contemporaneous logs, XXXX recorded that the Student used the XXXX with her XXXX in XXXX and XXXX in XXXX, including on XXXX, and XXXX recorded that the Student used XXXXXXXXXXXXXXX.

Analysis

With regard to Allegation 1, OCR has a concern that the District failed to follow the Student's XXXX – particularly on and before XXXXXX, resulting in the Student's inability to participate in XXXXX on that date.² Specifically, the evidence to date does not indicate that XXXXX provided the XXXXXXXXXXX, even though the Student would be actively XXXXX on the XXXXXX. By the time the Student accessed XXXXXX, the Student had lost the opportunity to participate in XXXXX.

More generally, the evidence to date indicates that despite the fact that the XXXX was signed on XXXXX, as of XXXXX, XXXXX was unaware of the existence or contents of the XXXX. Specifically, XXXXX acknowledged that she did not know that the Student had an XXXXX and the logs do not indicate that XXXXX started providing the inhaler to the Student until XXXXX.

With regard to Allegation 2, OCR determined that as of XXXXX, both XXXXX knew of the Student's XXXX, and logs indicated that these teachers provided the Student with access to her XXXX. While the Complainant raised concerns that the Student would not have access because XXXXX remained with her XXXXX teacher while the Student changed classes, OCR found that while the XXXXX made clear that the Student could not XXXXX, it did not specify who at the District should hold the XXXX at any given time so long as the Complainant was ultimately able

² Contemporaneous documentation indicates that the Student was likely provided access to an XXXXXX on XXXXXX.

to get access to it. The Complainant could not provide, nor could OCR otherwise find, evidence indicating that the Student did not have access to the XXXX during the month of XXXX. Thus, OCR found insufficient evidence to substantiate the Complainant's allegation that in XXXX the Student was denied access to her XXXX throughout the school day because the Student's XXXXX remained with her XXXXX teacher while the Student switched classes.

Conclusion

Before OCR completed its investigation of the complaint, the District expressed interest in resolving Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*. On March 6, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

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. OCR would like to make you aware that individuals who file complaints with OCR 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 Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here 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 of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit, to OCR, a response to the appeal. The District must submit any response 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 regarding this letter, please contact the OCR attorneys assigned to this complaint, XXXXXXXXXX and XXXXXXXXXX.

Sincerely,

XXXXXXXXXXXXX
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

cc: XXXXXXXXXX