



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

December 16, 2020

Via Email to cqmoore@wcpss.net

Ms. Cathy Moore
Superintendent
Wake County Public School System
5625 Dillard Drive
Cary, North Carolina 27518

RE: OCR Complaint No. 11-20-1364
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 September 8, 2020 against Wake County Public School System (the District). The Complainant filed the complaint on behalf of XXXXX a student (the Student) at XXXXX (the School). The complaint alleges that the District discriminated against the Student on the basis of disability (XXXXX). Specifically, the complaint alleges that the School denied the Student a free appropriate public education from XXXXX, when the XXXX (the Teacher) failed to implement the following accommodations from the Student's Section 504 Plan: XXXXX.

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 from the Department. 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 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 allegation 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 concerns 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.

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 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.

Factual Background and Analysis

During the 2020-2021 academic year, the Student is XXXXX and receives accommodations pursuant to a Section 504 Plan (Plan) for XXXXX. The Complainant alleged that in the first several weeks of the school year, the Teacher failed to provide certain related aids and services required by the Plan, including XXXXX. The Complainant informed OCR that, as a result of the failure to receive the required related aids and services, the Student XXXXX.

OCR reviewed an email indicating that on or about XXXXX, the Complainant wrote XXXXX concerning her failure to provide the related aids and services, and the Teacher XXXXX. The Complainant informed OCR that this experience – in which a teacher has not received the Student's 504 Plan at the beginning of a course and is unaware of the Plan's related aids and services – occurs XXXXX. The Complainant informed OCR that while she did not know when the Teacher ultimately received the Plan, the Teacher began "faithfully" providing the Student's services XXXXX. The Complainant added XXXXX. The District provided OCR with XXXXX.

Based on the information above, OCR has a concern that the Teacher may not have provided the related aids and services required by the Student's Plan XXXXX, and that the deficiency may have resulted in a denial of FAPE to the Student. As stated above, the District expressed a willingness to resolve the allegations by agreement pursuant to Section 302 of OCR's *Case Processing Manual* before OCR completed its investigation. On December 14, 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 (1) convene a group of knowledgeable persons to determine what, if any, remedial action is warranted for the time period when the Teacher did not provide the Student with related aids and services pursuant to the Plan; and (2) issue an internal memorandum including a statement that School staff must communicate special education and related services for each student to staff responsible for implementing those services. 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 Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.Love@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Kunal Choksi, Esq. (by email)