



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

April 22, 2021

Via Email: [William\\_Benson@abss.k12.nc.us](mailto:William_Benson@abss.k12.nc.us)

W. Bruce Benson, Ed.D.  
Superintendent  
Alamance-Burlington School System  
1712 Vaughn Road  
Burlington, North Carolina 27217-2916

Re: OCR Complaint No. 11-21-1015  
Resolution Letter

Dear Dr. Benson:

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 XXXXX against Alamance-Burlington School System (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of her disability during the 2020-2021 school year. Specifically, the complaint alleged that the District failed to timely reevaluate the Student, despite having information indicating that the Student's Section 504 Plan did not meet the Student's individual needs, thereby denying the Student a free appropriate public education (FAPE).

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; interviewed District staff; and viewed video recordings of the Student's Section 504 Team and Individualized Education Program (IEP) Team meetings. 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

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

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.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related aids and services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. North Carolina state regulations require initial evaluations to be completed and placement determined within 90 days of receipt of a written referral (NC 1503-2.2(c)(1)).

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related aids and services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan, IEP, or other placement are necessary.

If a school district fails to comply with the procedural requirements of the Section 504 regulation, 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.

### **Findings of Fact**

For the 2020-2021 school year, the Student is enrolled in XXXXX at the School. The Student currently attends the School under a hybrid model in which the Student receives both in-person and remote virtual instruction due to the COVID-19 pandemic. The Complainant reported that the Student has been diagnosed as having XXXXX and XXXXX.

The Complainant reported that on or about XXXXX, during the prior 2019-2020 school year, she notified the XXXXX that the Student had been diagnosed with XXXXX. The Complainant also asserted that she provided School staff with a copy of the Student's XXXXX dated XXXXX (the Evaluation Report). Although OCR's investigation to date could not establish whether the School had, in fact, received the Evaluation Report on XXXXX, OCR reviewed documentation indicating that on this date, the District initiated the Section 504 eligibility process for the Student by obtaining from the Complainant a signed notice of procedural safeguards and a signed consent for release of confidential information from the physician (the Physician) responsible for the Evaluation Report.

OCR reviewed the four-page Evaluation Report, which outlined the Student's present level of cognitive functioning and academic achievement.<sup>1</sup> The Evaluation Report included several scores for tests, which were administered to evaluate the Student's intellectual and psychological processing, academic achievement, behavior, and visual motor integration. The Evaluation Report also included a narrative assessment which concluded, in part, that XXXXX XXXXX XXXXX XXXXX." The Evaluation Report did not identify any specific diagnoses, but it included information that the testing conducted suggested that the Student was "XXXXX," and exhibited "XXXXX XXXXX."

On XXXXX, School staff convened a Section 504 Team meeting, including the Complainant, to discuss the Student's eligibility for services under Section 504. Email correspondence between the Complainant and the School XXXXX indicates that the Complainant provided the School with a copy of the Evaluation Report on XXXXX.<sup>2</sup> During the meeting, the Complainant told OCR that the School's XXXXX asked the Complainant to explain the Evaluation Report. The Complainant recalled stating to the Section 504 Team that she was uncomfortable and unqualified to comment about the specific information contained in the Evaluation Report; however, she understood that the Student had XXXXX, and that a component of the Evaluation Report recommended that the District evaluate the Student to determine whether she qualified for special education and/or related aids and services (also referred to as "accommodations").<sup>3</sup>

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<sup>1</sup> The Complainant asserted that she initially provided a four-page summary of the Evaluation Report to the School, and subsequently submitted the full Evaluation Report, including testing data and materials for further consideration on XXXXX. The District disputes receiving the full Evaluation report and contends that the Complainant only provided a summary copy. For the purposes of this discussion, the Evaluation Report refers to the four-page summary the Complainant provided to the District.

<sup>2</sup> Specifically, in an email dated XXXXX, and in response to a statement by the Complainant that the School had received the Evaluation Report on XXXXX, the School XXXXX stated to the Complainant, XXXXX XXXXX XXXXX XXXXX XXXXX.

<sup>3</sup> The District's evaluation and placement processes for students under Section 504 are bifurcated from the IDEA processes. The District's Support Services Office handles Section 504, while the District's EC Department handles the IDEA process.

The Complainant and the District each reported to OCR that the Section 504 Team found the Student eligible for accommodations under Section 504 and proceeded to develop a Section 504 Plan the same day. The Student's Section 504 Plan included the following accommodations: XXXXX XXXXXX XXXXXX XXXXX XXXXX. The Section 504 Plan also provided state testing accommodations, including: XXXXX XXXXX XXXXX XXXXX XXXXX.

OCR reviewed the Student's Section 504 records, which documented the Student's eligibility for services under Section 504 for XXXXX. In reviewing the limited available data obtained thus far, OCR did not find any evidence indicating whether the Section 504 Team considered and documented the information presented in the Evaluation Report during the Section 504 Team meeting on XXXXX.<sup>4</sup>

Due to the onset of the COVID-19 pandemic, the Student received virtual instruction from March 2020 and for the remainder of the 2019-2020 school year through March 2021. The Complainant asserted that the Student struggled to adapt to virtual instruction as characterized by the Student's XXXXX and XXXXX. Given the Complainant's concerns, in an email addressed to several school and District administrators and staff dated XXXXX, the Complainant requested that the District's Exceptional Children [EC] Department "further evaluate" the Student. The Complainant also requested "XXXXX XXXXX XXXXX XXXXX," and noted that the Section 504 Team meeting on XXXXX failed to address "XXXXX XXXXX XXXXX XXXXX." Specifically, the Complainant told OCR that she was concerned that the District did not review and address the totality of information contained in the Evaluation Report, which, according to the Complainant, suggested that the Student had XXXXX XXXXX XXXXX, as well as the included recommendation to evaluate the Student to determine eligibility for services in the District's EC Department.

In response to the Complainant's XXXXX email, the District indicated that the XXXXX Coordinator and the EC Department staff, who are responsible for Section 504 and IDEA, respectively, each contacted the Complainant separately. The District contended that both the XXXXX Coordinator and EC staff had difficulties scheduling a meeting date with the Complainant. Specifically, the District stated that the School's EC XXXXX emailed the Complainant on XXXXX to schedule the Student's initial referral meeting. However, the District contended that the Complainant did not agree to a meeting date until XXXXX, at which time the Complainant agreed to meet on XXXXX. Similarly, the District asserted that the XXXXX Coordinator immediately contacted the Complainant in response to the XXXXX email to schedule a Section 504 meeting, which could not be scheduled for and did not occur until XXXXX.

On XXXXX, the District held a referral meeting to determine whether to move forward with the evaluation process under IDEA. The Complainant and her husband/the Student's father, the Physician, School staff, and EC staff, including the XXXXX attended the meeting and comprised the IEP Team. The XXXXX reported that the IEP Team discussed the Evaluation Report and received input from the Physician with respect to the Evaluation Report. The XXXXX recounted that the Physician believed that the Student's testing scores, as outlined in the Evaluation Report,

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<sup>4</sup> Although the Student's Section 504 Plan indicates by a "check mark" that "Evaluation Information" for the Student included a "Physician's Medical Report," no other details were provided; and, another section for a "XXXXX Medical Report" was not checked. Further, although OCR requested the Student's complete Section 504 and special education records, the District did not provide Section 504 meeting notes and/or minutes or any other additional information that was considered at the Section 504 meeting on XXXXX.

were indicative of XXXXX XXXXX. Further, XXXXX, in explaining the Evaluation Report to OCR, stated that the Student's assessment scores that were included in the four-page summary Evaluation Report showed discrepancies in the areas of XXXXX, XXXXX, and XXXXX, and were sufficient to warrant a referral to determine whether the Student was eligible for services with the EC Department. However, the XXXXX stated that the EC Department had no prior knowledge of the Student or the Evaluation Report prior to learning about it in XXXXX.

The XXXXX told OCR that the IEP Team determined that it would move forward with the evaluation process to determine the Student's eligibility in the areas of "XXXXX" and "XXXXX." The XXXXX acknowledged that the District exceeded North Carolina's 90-day timeline to determine the Student's initial eligibility under IDEA, citing scheduling difficulties and cooperation with the Complainant to obtain further progress monitoring data for the Student.<sup>5</sup> To date, the District has not determined the Student's eligibility for special education services under the IDEA.

In the interim, on January 7, 2021, the Student's Section 504 Team convened and revised the Student's Section 504 Plan to expand her existing accommodations for XXXXX XXXXX XXXXX XXXXX. The District further determined that the Student will be provided with recordings of class lessons during periods of remote learning.<sup>6</sup> OCR reviewed notes from the meeting, which indicate that the Physician participated and provided input in the meeting, and it is likely that he referenced some of the information that he provided in the Evaluation Report; however, the documentation from the Section 504 meeting does not indicate that the Evaluation Report was documented and considered.<sup>7</sup> OCR also viewed a videorecording of this Section 504 Team meeting, in which the XXXXX stated that the development of the Student's Section 504 Plan was based on the Student's current grades and teacher feedback. The XXXXX did not indicate whether the Evaluation Report had been considered in the development of the Section 504 Plan.

In response to the Complainant's allegation that the District failed to timely reevaluate the Student, despite having information indicating that the Student's Section 504 Plan did not meet the Student's individual needs, the District contended that it did not have an independent basis to suspect that the Student's Section 504 Plan developed on XXXXX was ineffective, such that it required the reevaluation of the Student. The District stated that the Student finished both the 2019-2020 school year and the first semester of the 2020-2021 school year, earning XXXXX and XXXXX in several XXXXX and XXXXX classes, as well as the Student's good attendance, when noting that there were no changes or declines in any of these areas to trigger the District's obligation to reevaluate the Student. Further, the District indicated that after the Complainant requested a reevaluation of the Student, the District promptly responded and initiated the processes for each request.

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<sup>5</sup> Specifically, the District asserted that email correspondence between EC personnel and the Complainant indicated that the District was attempting to obtain further intervention data required by the North Carolina State Board of Education's Policies Governing Services for Students with Disabilities for determining eligibility in the area of XXXXX.

<sup>6</sup> The District stated that if classes are not recorded, the Student will be provided with online resources. The District also indicated that the Student's amended Section 504 Plan still includes accommodations for XXXXX XXXXX XXXXX.

<sup>7</sup> As previously noted, however, the evidence indicates that the IEP team had reviewed this report in XXXXX.

OCR reviewed the Student's academic performance for the 2019-2020 school year and found that while the Student generally earned above average grades, the Student also received a cumulative grade of XX or a XX for the first semester of XXXXX<sup>8</sup>, as well as grades of XX or a XX, respectively, in companion XXXXX courses during the 2019-2020 school year. The Student's report card for the current 2020-2021 school year also indicated that as of XXXXX, the Student had a pending overall percentage of XX in XX and XX in XXXXX, both of which were XXXXX grades, seemingly due to missed assignments and low exam grades. However, the Student completed the first and second quarters of the first semester, respectively, with grades of XX or an XX in XXXXX, as well as grades of XX, or a XX in XXXXX.

### **Analysis**

Based on the foregoing, although the District contended that it did not have an independent basis to reevaluate the Student, OCR has concerns that the District had notice of information, particularly the Evaluation Report, which sufficiently triggered the District's obligation to further evaluate the Student's eligibility for special education services.

Specifically, the evidence reviewed to date leads to a concern that the Complainant may have furnished the Evaluation Report to the District at least as of the Student's first Section 504 Team meeting on XXXXX. The Complainant again raised the issue of the Evaluation Report in her request for further reevaluation of the Student, which she initiated on XXXXX. OCR has a concern that despite being on notice of the report on XXXXX, the evidence to date fails to indicate that the District considered it during the Section 504 meeting on that date, as required by the Section 504 regulation, at 34 C.F.R. § 104.35(c). As a result, OCR also has a concern that the District failed to timely evaluate the Student for special education services consistent with the Section 504 regulation, at 34 C.F.R. § 104.35(d). Despite the fact that the Evaluation Report included a discussion by the Physician about the need for special education services, the District did not begin the evaluation process for an IEP until XXXXX, approximately XXXXX months later, and this process is still pending as of the date of this letter. This delay, in conjunction with the District's initial failure to consider the Evaluation Report when devising the Student's Section 504 Plan, could have resulted in a denial of FAPE for the Student.<sup>9</sup>

In order to address the identified concerns, the District expressed an interest in resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

### **Conclusion**

On April 22, 2021, the District signed the enclosed Resolution Agreement (the 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 determine whether the Student requires compensatory and/or remedial services as a result of any denial of FAPE to the Student, and to provide training to District staff on the requirements of Section 504

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<sup>8</sup> The Student received a cumulative grade of XXXXX or a XXXXX for the second semester of XXXXX.

<sup>9</sup> OCR also notes that although the Student generally had received above average grades, she received grades of XXXXX and XXXXX during the 2019-2020 school year and had pending XXXXX overall grades for the current school year as of November 2020, which suggests that the Student's Section 504 Plan may not have been meeting her individual needs.

as it pertains to the provision of 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. A 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 Erika Westry, the OCR attorney assigned to this complaint, at 202-453-7025 or [Erika.Westry@ed.gov](mailto:Erika.Westry@ed.gov).

Sincerely,

Letisha Morgan-Cosic  
Team Leader, Team II  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc (Via Email): XXXXX