



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 21, 2021

By Email mark.garrett@mcdowell.k12.nc.us

Mark Garrett
Superintendent
McDowell County Schools
334 S. Main Street
Marion, NC 28752

RE: OCR Complaint No. 11-21-1132
Resolution Letter

Dear Mr. Garrett:

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 received on March 17, 2021 against McDowell County Schools, which we will refer to as the District. The Complainant filed the complaint on behalf of a student at XXXXX, whom we will refer to as the Student. The Complainant alleges that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges that:

- 1) The District discriminated against the Student based on disability when staff denied the Student a free appropriate public education (FAPE) when, from XXXXX through XXXXX, they failed to implement the Student's Section 504 Plan when the Student was not provided with extra time on his exams, and
- 2) The District failed to provide the Complainant with procedural safeguards in violation of the procedural requirements of Section 504 after a Section 504 meeting in 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. 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. The District receives federal financial assistance from the Department and is a public entity, so 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 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. 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.

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.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Facts and Analysis

The Student was enrolled in the XXXXX in the District during the 2020-2021 school year and spent part of the year learning remotely due to COVID-19. The District developed a Section 504 Plan for the Student on XXXXX, based on a diagnosis of XXXXX. The meeting was held virtually due to COVID-19 protocols. The Section 504 Plan included the related aid and service of "extended time (60 min)" and indicated the persons responsible for implementation of the related aid and services were the Student's teachers. Of the Student's four core and graded classes for the 2020-2021 school year, XXXXX.

The Complainant alleged that the District was not implementing extended time for the Student. She noted that the Student had failed several exams in XXXXX and reported to her that he felt rushed to complete them. When requested, the District reported to OCR that they did not have any records that this related aid and service had been implemented noting that they were not required to maintain records of extra time provided on other exams. The District also stated that the School did not have any information that extra time had been requested by the Student for an

exam and denied by District staff. OCR notes that the Section 504 Plan does not indicate that it was the Student's burden to request extra time. Based on this, OCR identified a concern that the related aid and service of extra time was not provided to the Student consistent with the Section 504 Plan.

The Complainant further asserted that while she attended the XXXXX Section 504 meeting virtually, she was not provided a copy of the Section 504 Plan or any procedural safeguards and was not aware of the changes that were made to the Section 504 Plan in October. In their response to OCR, the District stated that School staff placed a copy of the District's *Parent's Rights and Grievance Procedure* in the Student's XXXXX on XXXXX. The Complainant reported that she did not receive this document. Additionally, the District provided OCR a "504 Plan Checklist" that was completed by District personnel on different dates before and after the Section 504 Plan meeting. The checklist indicated that a copy of the Section 504 Plan was "mailed to parents" on XXXXX, but not that the documents had been sent with the Student through its backpack. Based on the above with information, OCR identified a concern that the District may not have provided the Complainant procedural safeguards consistent with the Section 504 regulation.

Prior to the completion of the investigation, the District indicated a willingness to enter into a resolution agreement to resolve the concerns about implementation of the accommodations.

On October 25, 2021, the District signed the enclosed Resolution 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 provide training to 504 Coordinators and instructional staff regarding the District's obligations under Section 504 to provide a FAPE to students with disabilities by developing, implementing, and monitoring the provision of special education and/or related aids and services pursuant to students' Section 504 Plans, and to provide procedural safeguards to 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. 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.

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 Jasmine Gibbs, the OCR attorney assigned to this complaint, at 202-401-7949 or jasmine.gibbs@ed.gov.

Sincerely,

Zorayda Moreira-Smith
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Cynthia Lopez, Counsel
Mark Garrett, Superintendent