



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

December 6, 2021

By Email: XXXXX

Dr. Richard O'Malley
Superintendent
Florence County School District 01
319 Irby Street
Florence, SC 29501

Re: OCR Complaint No. 11-21-1211
Resolution Letter

Dear Dr. O'Malley:

The Office for Civil Rights (OCR) of the U.S. Department of Education has completed its investigation of the complaint we received on May 17, 2021 against Florence County School District. The Complainant filed the complaint on behalf of her son, who we will refer to as the Student, at XXXXX. The Complainant alleged that the District discriminated on the basis of disability during the XXXXX-XXXXX school year. Specifically, the complaint alleged that:

1. The District discriminated against the Student on the basis of his disability, by denying the Student a free and appropriate public education (which is sometimes referred to as FAPE), when the District:
 - a. Denied the Complainant's request for Medical Homebound Instruction on XXXXX¹; and
 - b. Denied the Complainant the right of parental participation at an Individual Education Program (IEP) meeting on XXXXX.
2. The District discriminates against individuals on the basis of disability because the District:
 - a. Has not designated a responsible employee to coordinate its efforts to comply with Section 504; and
 - b. Does not maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the regulation implementing Section 504, at 34 C.F.R. §104.7(a)-(b).

¹ OCR notes that in the Notification Letters issued to the Complainant and the District on June 25, 2021, OCR stated that the denial for Medical Homebound Instruction occurred on XXXXX. However, during the course of OCR's investigation, OCR found that the request for Medical Homebound Instruction was signed on XXXXX, but the District notified the Complainant that her request was denied on XXXXX. Therefore, OCR has amended the allegation, as stated above.

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 federal financial assistance from the Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Summary of Investigation

During its investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District faculty/staff.

Before OCR completed its investigation, the District expressed a willingness to resolve a concern raised with respect to a portion of Allegation 2(a) as well as Allegation 2(b) pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations may be resolved prior to OCR making a determination, if a school district 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.

Further, after carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to substantiate Allegations 1(a) and 1(b), and the remaining portion of Allegation 2(a), pursuant to Section 303(a) of OCR's *Case Processing Manual*.

OCR's findings and conclusions regarding Allegations 1(a) and 1(b), and the relevant portion of Allegation 2(a), are discussed below, as well as a summary of the evidence obtained to date by OCR regarding the concerns identified in the relevant portion of Allegation 2(a) as well as Allegation 2(b).

Background

During the XXXXX-XXXXX school year, the Student was enrolled in Grade 11 at the High School. The Student received special education and related aids and services for his disabilities pursuant to an IEP, with the Student's primary area of eligibility being XXXXX, and his secondary areas of eligibility being XXXXX and XXXXX.

Allegation 1

The Complainant alleged that the District discriminated against the Student on the basis of his disability, by denying the Student a FAPE, when the District: (a) denied the Complainant's request for Medical Homebound Instruction on XXXX; and (b) denied the Complainant the right of parental participation at an IEP meeting for the Student on XXXXX.

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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

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.

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.

Findings of Fact

The Complainant informed OCR that in XXXXX, the Student's XXXXX sent the School an instruction authorization form requesting that the Student receive Medical Homebound Instruction due to XXXXX She stated that the XXXXX spoke with the District's XXXXX, who informed the XXXXX that the District could not accept the request because the XXXXX was not a physician.

The District provided OCR with information and documentation indicating that on XXXXX, the District received a Medical Homebound Instruction Form from the Student's XXXXX, dated XXXXX. The Form requested that the Student receive Medical Homebound Instruction between XXXXX and XXXXX, indicating that the Student could not attend school because of illness or a medical condition. The Form specified that the Student has XXXXX, which impacted the Student because he has significant XXXXX, XXXXX, and requires one-to-one support XXXXX.

On XXXXX, the XXXXX sent a letter by email to the Complainant confirming receipt of the Form. In the email, the XXXXX denied the request for Medical Homebound Instruction, which he signed on XXXXX, stating that the XXXXX's "credentials do not meet the state requirements," as the state of South Carolina requires that a licensed physician, nurse practitioner, or physician's assistant sign the Form. Further, the XXXXX attached the South Carolina Medical Homebound Instruction Guide to the email to provide the Complainant with the state requirements at issue.

OCR reviewed the Guide, which states that a licensed physician must certify that the state of the child’s mental health is the cause of his or her inability to attend school. The Guide defines a licensed physician as, “an individual who has met the basic requirements for a license to practice medicine in South Carolina.” OCR also reviewed the District’s website, which includes a separate section for the provision of Medical Homebound Instruction.²

In his letter, dated XXXXX, the XXXXX also noted that the Form was not complete, and, to the extent that the Student’s XXXXX also sent a letter recommending that the Student receive virtual instruction, the District would like to schedule an IEP meeting as soon as possible to review all of the XXXXX’s recommendations. The Assistant Superintendent proposed meeting on XXXXX, at 1:00 pm, and stated that the District would also require an updated release from the Complainant for District staff to speak with the XXXXX, which the Complainant had initially failed to complete on the Form. The Assistant Superintendent also attached a release form for the XXXXX to his email.³ Subsequently, in an email sent to the District’s Superintendent on XXXXX, the Complainant appealed the District’s denial of the request for Medical Homebound Instruction.

Thereafter, on XXXXX, the Complainant emailed the XXXXX requesting confirmation that an IEP meeting would be held in-person on XXXXX. On XXXXX, the XXXXX responded by stating that the meeting would be held virtually, and that he still had not received a signed release for the XXXXX; the XXXXX also issued a formal IEP meeting notice.

The Complainant responded by email on XXXXX, stating that she would attend the IEP meeting, with a guest, in-person at the School. The XXXXX responded by stating, “As I have stated to you numerous times, all of our IEP meetings for now are being held virtually,” and noted that he could send a link to anyone else that the Complainant wished to attend so that those individuals also could participate virtually. The Complainant and the District provided OCR with documentation indicating that the District subsequently sent the Complainant a Google Meet invitation for the IEP meeting. The invitation also contained an option to join by telephone and included a telephone number. The Complainant informed OCR that she could have joined the IEP meeting by telephone, but “nobody wants to do an IEP on the phone.”

The District also provided OCR with documentation indicating that for the XXXXX-XXXXX school year, as early as XXXXX, the District scheduled a virtual IEP meeting for the Student, and, as early as XXXXX, the District informed the Complainant that it was only holding virtual meetings with parents due to the COVID-19 pandemic, including IEP meetings.

The Complainant informed OCR that she notified the District that she did not have internet access in her home and therefore, she could not access virtual meetings, which would apply to the IEP meeting scheduled for XXXXX. In response to the Complainant’s assertion, the District stated and provided documentation indicating that the District provided the Student with a wireless device to access the internet on XXXXX; the device was enabled until XXXXX. The District also asserted that the Complainant had participated in other meetings by telephone.

² See <https://www.f1s.org/Page/23173>.

³ OCR notes that the Complainant previously provided the District with a release to speak to the XXXXX, dated XXXXX, but that release pertained to prior issues involving the Student at issue in a due process hearing.

The District stated that on XXXXX, the Complainant arrived at the School with two guests to attend the IEP meeting. The Complainant explained that the School was locked, so she called a District XXXXX. The XXXXX called the XXXXX of the School and told the XXXXX to let the Complainant into the School.

The XXXXX informed OCR that the Complainant was allowed into the School and was provided with a computer and access to a conference room, even though the Complainant had the link to the meeting on her telephone. She was told she would have to use her phone or her own Google account credentials to log into the IEP meeting using the School's computer, as they could not provide her with credentials belonging to a staff member. The Complainant asserted that she told the XXXXX that the School needed to create an account for her, but he refused. The XXXXX stated that Complainant refused to log into the IEP meeting on her phone, or by using her own credentials on the computer because she was afraid that the School would retain her information. The XXXXX stated that he and the other IEP meeting participants were waiting for the Complainant to call or log into the meeting, but when she did not, the meeting was not held.

The District asserted and provided email correspondence indicating that the XXXXX subsequently attempted to meet with the Complainant on XXXXX to discuss her appeal of the denial of Medical Homebound Instruction, but the Complainant stated that she could not attend the meeting and she did not propose any further dates. On XXXXX, the XXXXX sent the Complainant a letter upholding the denial and reiterating that the Student's XXXXX is not a licensed physician pursuant to state regulations. The letter also stated that if the Complainant obtained "medical information from a physician," she can submit it to the Office of Exceptional Children for their review and consideration. To date, neither the Complainant nor the District provided OCR with any information to indicate that the Complainant provided the District with the Form signed by a licensed physician, as required, or that the Complainant signed an updated release for the XXXXX to speak to District staff regarding her recommendations including with respect to Medical Homebound Instruction.

Analysis: Allegation 1(a)

Based on the foregoing, OCR found insufficient evidence to conclude that the District discriminated against the Student on the basis of his disability, when it denied a request for Medical Homebound Instruction for the Student on XXXXXX, as alleged.

Specifically, OCR found that the preponderance of the evidence OCR obtained indicates that the District denied the request for Medical Homebound Instruction on XXXXX, which was upheld on appeal on XXXXX, because the Form submitted on the Student's behalf was not signed by a licensed physician, as required by South Carolina state law, and as outlined in the Guide. Although the Student's XXXXX signed the Form, the XXXXX was not a licensed physician pursuant to state requirements. Moreover, to the extent that the Complainant alleged that the denial of Medical Homebound Instruction constituted a denial of FAPE to the Student, OCR found that despite the Complainant not returning an appropriately signed Form, the District sought to further discuss the XXXXX's recommendations during the IEP meeting scheduled for XXXXX. However, the Complainant failed to attend that meeting or to sign an updated release permitting District staff to speak to the XXXXX. Under these circumstances, OCR has insufficient evidence to conclude that the District denied the Student a FAPE.

Analysis: Allegation 1(b)

Based on the foregoing, OCR also found insufficient evidence to conclude that the District discriminated against the Student on the basis of his disability, when it denied the Complainant the right of parental participation at an IEP meeting on XXXXX, as alleged.

Specifically, OCR found that the preponderance of the evidence OCR obtained indicates that the District scheduled a virtual, not an in-person, IEP meeting for XXXXX, due to the COVID-19 pandemic. Further, OCR found that the Complainant was aware that the District had not been convening in-person meetings with parents during the XXXXX-XXXXX school year for this reason. OCR found that although the Complainant informed the District that she did not have internet access at home, the District provided her with the opportunity to join by telephone or through the Student’s wireless device provided by the District.

Nevertheless, the Complainant insisted on attending the meeting in-person and elected not to participate virtually on XXXXX, even though all of the other IEP meeting participants aside from her guests, including School/District staff, participated virtually. Additionally, once the Complainant had arrived at the School for the IEP meeting on XXXXX, the Complainant chose not to participate in the meeting by using the link on her phone or by calling-in using her phone. In addition, the District attempted to accommodate the Complainant by providing her with a computer and a conference room where she could access the IEP meeting using her own credentials, but the Complainant chose not to do so. Under these circumstances, OCR found that the District’s actions were not unreasonable and did not violate Section 504 or Title II.

Allegation 2

The Complainant alleged that the District discriminates against individuals on the basis of disability because the District: (a) has not designated a responsible employee to coordinate its efforts to comply with Section 504; and (b) does not maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the regulation implementing Section 504, at 34 C.F.R. §104.7(a)-(b).

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.7(a), requires a school district that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504.

Further, the Section 504 regulation, at 34 C.F.R. § 104.8(a), requires a school district that employs fifteen or more persons to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the school district, of the identity of a responsible employee designated pursuant to the Section 504 regulation, at 34 C.F.R. § 104.7(a).

The Section 504 regulation, at 34 C.F.R. § 104.7(b), also requires school districts that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. However, the procedures need not apply to applicants for employment.

Findings of Fact and Analysis

Allegation 2(a)

Regarding Allegation 2(a), the District provided OCR with information and documentation indicating that it has designated the XXXXX as the District's Section 504 Coordinator, which the XXXXX confirmed with OCR. Therefore, based on the preponderance of the evidence obtained, OCR found insufficient evidence that the College has failed to designate at least one person to coordinate its efforts to comply with Section 504.

However, during the course of OCR's investigation, OCR identified a concern regarding whether the District has provided sufficient notice of the Section 504 Coordinator, as required by the Section 504 regulation, at 34 C.F.R. § 104.8(a). Specifically, based on the evidence obtained to date, OCR could not locate information regarding the Section 504 Coordinator on the District's website. Therefore, OCR will resolve this concern pursuant to Section 302 of OCR's *Case Processing Manual*.

Allegation 2(b)

With respect to Allegation 2(b), the District has adopted grievance procedures applicable to resolving complaints of Section 504 violations, which are available on the District's website.⁴ Specifically, the District maintains School Board Policy AC: Nondiscrimination and Equal Opportunity, which states that the District does not discriminate on the basis of disability, and that it has a grievance process for resolving complaints and grievances under Section 504. Further, Policy ACG: Resolution of Discrimination Complaints, is the implementing procedure for resolving complaints and grievances filed by employees; it is also the implementing procedure for resolving complaints and grievances filed by students, in tandem with Policy JII: Student Concerns, Complaints, and Grievances, alleging violations of Section 504.

Although the District's policies and grievance procedures applicable to Section 504 pertain to the resolution of student and employee complaints of Section 504 violations, based on the evidence obtained to date, OCR identified concerns regarding whether the District's policies and grievance procedures are sufficient to provide a prompt and equitable resolution of such complaints, as well as whether the procedures are applicable to third parties or other beneficiaries (e.g., visitors to the District). Therefore, OCR will resolve these concerns pursuant to Section 302 of OCR's *Case Processing Manual*.

Conclusion

On December 1, 2021, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the portion of Allegation 2(a) pertaining to the notice of the District's designated Section 504 Coordinator, as well as Allegation 2(b) pertaining to the District's Section 504 grievance procedures. The provisions of the Resolution Agreement are aligned with the allegations and the information obtained during OCR's investigation and are consistent with applicable law and regulation. The Resolution Agreement requires the District to revise all

⁴ See <https://boardpolicyonline.com/?b=florence>.

relevant policies, procedures, and publications to ensure that they provide sufficient notice of its designated Section 504 Coordinator(s), and that the designated employees are responsible for coordination of compliance with all aspects of Section 504 and Title II, not just with regard to the identification, evaluation, and placement of students with disabilities. Further, the Resolution Agreement requires the District to adopt and publish grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging violations of Section 504, including ensuring that its grievance procedures apply to students, employees, and other beneficiaries. Please review the enclosed Resolution Agreement for further details. OCR will monitor the District's implementation of the Resolution Agreement until the District has fulfilled the terms of the Resolution 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.

The Complainant has a right to appeal OCR's determination regarding Allegations 1(a) and 1(b), and the portion of Allegation 2(a) pertaining to the designation of the Section 504 Coordinator, within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-245-8392. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why she believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR 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 attorney assigned to this complaint, Arati Jain, at arati.jain@ed.gov.

Sincerely,

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

Enclosure

cc (Via Email): XXXXX, Counsel for the District, XXXXX
XXXXX