



**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

August 22, 2022

By email only to andrew.houlihan@ucps.k12.nc.us

Dr. Andrew G. Houlihan
Superintendent
Union County Public Schools
400 N. Church St.
Monroe, NC 28112

Re: Case No. 11-22-1232
Union County Public Schools

Dear Dr. Houlihan:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of this complaint filed against Union County Public Schools, which we will refer to as the District. The Complainant alleged that the District discriminated on the basis of disability by failing to implement Section 504 plans of students with disabilities at XXXXX (the School) during the first few weeks of school year 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 receiving 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 of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching its determination, OCR reviewed documents provided by the Complainant and the District. OCR also interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed interest in resolving the complaint allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that an allegation under investigation may be resolved prior to the conclusion of the investigation if the District expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve the allegation 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.

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Facts

OCR determined that the first five days at the School are considered a “schedule change period,” during which students may change their course schedules. OCR determined that School staff did not, as a practice, distribute Section 504 plans to teachers and other staff responsible for implementing Section 504 plans at the School before or during this schedule change period; but instead, distributed plans after schedules were finalized following the conclusion of the schedule change period. The XXXXX for the District shared with OCR that this practice at the School conflicted with the District-level expectation that all teachers receive Section 504 plans prior to the first day of each semester. The XXXXX stated that XXXXX was not aware of any other schools in the District that followed the School’s practice.

On XXXXX, the District provided training to School administrators regarding the requirements of Section 504; and emphasizing that “accommodations must be implemented on DAY 1 of the students’ attendance” and that “teachers must have access to plan documents prior to the first day of attendance.”¹ Additionally, on XXXXX, the District’s counsel met with all District principals and informed them that Section 504 plans must be distributed to relevant staff before the first day of each semester.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the student’s disability. The regulation, at 34 C.F.R. § 104.33(b)(1), defines an appropriate education as the provision of 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 a Section 504 plan developed in accordance with the procedural requirements of Section 504 is one means of meeting this standard. 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.

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.

¹ This training was provided to resolve an internal grievance the Complainant filed with the District on behalf of her child (the Student), in which the Complainant alleged that the School’s practice resulted in staff failing to implement the Student’s Section 504 plan at the beginning of school year XXXXX. The Complainant informed OCR that during the first week of school year XXXXX, one of the Student’s teachers did not have a copy of the Student’s Section 504 plan as a result of the School’s practice; and the teacher XXXXX, which did not comply with a provision in the Student’s Section 504 plan XXXXX. The Complainant did not provide and OCR found no information indicating that this incident impacted the Student’s education.

Analysis and Conclusion

The District acknowledged, and OCR confirmed, that the School, as a matter of practice, did not distribute Section 504 plans to teachers and other staff responsible for the implementation of Section 504 plans until after the first week of school. OCR is concerned that this practice may have resulted in the denial of a FAPE to students with Section 504 plans.

Before OCR completed its investigation of the complaint, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On August 22, 2022, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. The provisions of the agreement are aligned with the concerns identified during OCR's investigation and are consistent with the applicable statutes and regulations.² 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 in this case.

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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

² OCR could not determine, based on the evidence provided to date, whether the School's practice occurred at any other District school. As a result, the Resolution Agreement includes provisions regarding all District schools.

If you have any questions, please contact Lee K. Robbins at 202-245-8301 or Lee.K.Robbins@ed.gov, or Jasmine Gibbs at 202-987-1458 or Jasmine.Gibbs@ed.gov, the OCR attorneys assigned to this complaint.

Sincerely,

Team Leader, Team IV
Office for Civil Rights
District of Columbia Office

cc: Deborah Smith, Counsel for the District