



**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 20, 2023

By email only to [tuner.cheryl@thesugarcreek.org](mailto:tuner.cheryl@thesugarcreek.org)

Cheryl Turner  
Superintendent  
Sugar Creek Charter School  
4101 North Tryon Street  
Charlotte, NC 28206

Re: Case No. 11-22-1248  
Sugar Creek Charter School

Dear Superintendent Turner:

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 the complaint filed against Sugar Creek Charter School, which we will refer to as the School. The Complainant alleged that the School discriminated against the Student on the basis of disability by failing to evaluate the Student until XXXXX despite a decline in the Student's behavior in the XXXXX (Allegation 1); suspending the Student on XXXXX for ten days while not conducting a Manifestation Determination Review (MDR) meeting until XXXXX or providing the Student with educational services during that time period (Allegation 2); and failing to provide the Complainant with procedural safeguards regarding how to appeal a decision made during an MDR meeting on XXXXXX (Allegation 3). The Complainant also alleged that the School retaliated against the Student after the Complainant disagreed with the outcome of the Student's MDR meeting held on XXXXX, by expelling the Student from the School on XXXXXX (Allegation 4).

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 laws enforced by OCR also prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws.

During its investigation to date, OCR reviewed information provided by the Complainant and the School; interviewed the Complainant and School staff; viewed video recordings of the Student's 504 and MDR meeting as well as the School board hearing.

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Before OCR completed its investigation into Allegations 1, 3, and 4, the School expressed interest in resolving 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.

OCR completed its investigation of Allegation 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 2. OCR's findings and conclusions regarding Allegation 2 are discussed below, as well as a summary of the evidence obtained by OCR during the investigation to date regarding Allegations 1, 3, and 4.

### **Legal Standards**

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 school district's jurisdiction. 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 a Section 504 Plan developed in accordance with Section 504's procedural requirements 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 the procedural requirements of Section 504, 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. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The Section 504 regulation, at 34 C.F.R. § 104.35(d), also requires a school district to periodically reevaluate a student who has been provided special education or related services. Additionally, 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 Individual Education Program (IEP), Section 504 plan, or placement are necessary.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a

significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

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.

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

The following three elements must be satisfied to establish an initial, or prima facie, case of retaliation: 1) an individual engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) an individual experienced an adverse action; and 3) there is some evidence of a causal connection between the protected activity and the adverse action. When these elements have been established, OCR then determines whether there is a legitimate, non-retaliatory reason for the adverse action, and if so, whether the reason is a pretext, or excuse, for retaliation.

### **Facts**

The Student enrolled as a XXXX grader at the School in the XXXXX with a Section 504 plan from a prior school district. The School held a meeting for the Student on XXXXX, and found him eligible for special education and related services under Section 504.<sup>1</sup> On November 20, 2020, the School held another Section 504 meeting to update the Student's Section 504 plan.

The Student attended XXXXX grade at the School during the 2021-2022 school year. In the first two months of the school year, the Student was involved in multiple behavioral incidents, including a XXXXX on XXXXX for inappropriate and disruptive behavior resulting in a XXXX suspension from riding the bus, and two separate XXXXX on XXXXX and XXXXX, XXXX for XXXXX, XXXXXX, and using XXXXXX.

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<sup>1</sup> The Student had been diagnosed with XXXXX and XXXXXX.

On XXXXX, the Complainant emailed the School's XXXXXX XXXXXX (the XXXXX) to request a meeting to discuss the Student's "current 504 plan and possibly an [Individualized Education Program]" to help the Student and the staff working with him to "create a more positive learning environment." That same day, the XXXXX contacted the XXXX and XXXXX (the XXXXX) about setting up a meeting with the Complainant to discuss the Student's special education options and current needs. On XXXXX, the XXXXX sent a follow up email to the Counselor asking if he had spoken with the Complainant. The XXXXX replied that same day that he had spoken with the Complainant that morning and would send dates and times for a possible meeting. To date, OCR could not find any evidence indicating that the XXXXX or anyone else responded to this email, or that the School otherwise attempted to convene a group of knowledgeable people to reevaluate the Student until late December.

On XXXXX, the School's XXXXXX (the XXXXX) notified the Complainant that the School issued the Student a XXXX-day out-of-school suspension (OSS), through XXXXX, for "XXXXXX" in his math class.

On XXXXXX, the Coordinator emailed the Complainant to schedule a Section 504 meeting. On XXXXX, the School held a meeting for the Student and added behavioral modifications to the Student's Section 504 plan, including XXXXX, XXXXX support, classroom breaks, and a XXXXX.

On XXXXX, the XXX school day of the Student's OSS, the School held an MDR meeting for the XXXXX incident. At the MDR meeting, the team determined that the Student's conduct was a manifestation of his disability and added an additional behavior modification to the Student's Section 504 plan, namely, XXXXXX in the Student's XXXXX and XXXXX classes. Following the MDR meeting, the XXXXX emailed the Complainant that the School would reconvene on XXXXX to see how things were progressing with the new behavior modification. The XXXXX also indicated that the School's XXXXX was working on a "Plan of Action" with the School's XXXXXX team to provide supports to the Student on the XXXX, however, a XXXX plan was not developed. School staff present at the XXXXX and XXXXX meetings did not recall giving the Complainant a copy of the procedural safeguards at either meeting or verbally informing her of them.<sup>2</sup>

On XXXXX, the School received an email stating that the Student had XXXXX of himself XXXXX in a School XXXXX on his social media account. The School reviewed the video and interviewed the Student about it. The Student initially denied that he was XXXX on School property and then wrote a statement stating that he XXXXXX in the School. The same day, the School notified the Complainant that the Student was being suspended for XXX days for the offense of "possessing/attempting to possess, using, controlling or being under the influence of alcohol, a drug, an imitation drug or drug paraphernalia or the misusing of a substance (possessing or tobacco in vape form)."

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<sup>2</sup> The School's Procedural Safeguards state that if a parent disagrees with the identification, evaluation, educational program, or placement decisions under Section 504, they may request mediation or an impartial due process by making a request to the Section 504 Coordinator.

On XXXXX, the School held an MDR meeting and determined that the Student's behavior was not a manifestation of his disability. The Complainant attended the meeting but left the MDR meeting before it concluded. Later that day, the XXXXX emailed the Complainant to notify her of the team's decision that the conduct was not a manifestation of the Student's disability. In the email, the XXXXX included a copy of the MDR meeting notes and stated that the School would hold a board hearing to determine whether the Student could remain a student at the School or "if an exclusion [would] be enforced." The Complainant stated that she disagreed with the MDR meeting decision, however, there was no documentation indicating that the School provided her with the School's procedural safeguards about how to appeal the decision, and School staff, including the Section 504 Coordinator, could not recall giving the Complainant information regarding procedural safeguards.<sup>3</sup>

Pursuant to the School's Student and Parent Handbook, the School may remove a Student from the School for "possessing/attempting to possess, using, controlling or being under the influence of alcohol, a drug, an imitation drug or drug paraphernalia or the misusing of a substance." The XXXXX stated that all students who had a XXXX on school grounds during the 2021-2022 school year automatically received a 10-day OSS and a referral to a School disciplinary board hearing, unless the student's parent elected to withdraw the Student from the School before the hearing. The XXXXXX explained that if a parent chooses to withdraw a student before the hearing, the exclusion will not be on the Student's record.

On XXXXX, the School held a disciplinary board hearing for the Student, which the Complainant attended. At the board hearing, a committee of School administrators, including the XXXX, the XXXX and XXXX representatives from the School's board, reviewed the incident and gave the Complainant an opportunity to explain why she believed the Student should not be excluded.<sup>4</sup> During the hearing, the Complainant raised that she disagreed with decisions made at the MDR meeting. The XXXX explained that the disciplinary board was not reviewing the MDR determination.

After the hearing, the board members deliberated without the Complainant present. XXXX raised that typically he gives parents the option to withdraw so that an exclusion is not on their record, which can make it difficult to attend another school. The XXXX stated that they did not give that option to the Complainant because she left the MDR meeting early. The board discussed whether they should give the Complainant the option at the hearing prior to the decision to exclude him. XXXX stated that offering the Complainant the option to withdraw the Student might give her the impression that they are "targeting" the Student and that "she is looking for every possible pinpoint to try to present a narrative that we are not presenting in the best effort for" the Student. She added that if the Complainant does not feel the Student is getting the "full accommodations and services, maybe this is not the best placement for" him. Another member stated that giving her the opportunity to withdraw the Student would "strengthen her narrative and that is the last thing that

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<sup>3</sup> The Section 504 Manifestation Determination Review did not reference procedural safeguards. Additionally, OCR could not find the School's procedural safeguards on its website. See <https://thesugarcreek.org/> (last checked March 24, 2023).

<sup>4</sup> According to School policy, an exclusion is the removal of a student from the School for the remainder of the school year, and is different from an expulsion, which is the eradication of all educational rights for the remainder of the year.

we are going to want.” There was also discussion about how providing that option would likely result in extending the length of the meeting because of further advocacy.

The XXXXX made the decision that they would not offer the option to withdraw the Student and that they would exclude the Student from the School. In making the decision to exclude, they reviewed the video of the Student XXXXX, considered his statement admitting to the incident, and discussed that the conduct was not related to the Student’s disability, as determined by the MDR team. The same day, the XXXX sent the Complainant a letter stating that the disciplinary board decided to exclude the Student without the possibility of re-entry to the School, but that the Student he was eligible to enroll in another school.

During the 2021-2022 school year, the School stated there were 13 other students who possessed a XXXX on School grounds or the bus and all the students were suspended for ten days. Of the 13 other students, the School stated that it gave ten of the students the option to voluntarily withdraw from the School, which they all did. For the other three students, the School stated that they were not given the option to withdraw due to the severity of incidents they were involved in. Specifically, unlike the incident involving the Student, the incidents involved drug possession and distribution. However, the XXXX and XXXXX confirmed that the Complainant was the only parent to engage in any disability-related or other advocacy prior to the School’s decision to exclude the student.

### **Analysis**

#### **Allegation 1**

The Complainant alleged that the School failed to evaluate the Student until XXXX after a decline in the Student’s behavior in the XXXXX.

Based on the above, OCR has concerns that in the XXXXX, the School did not reevaluate the Student despite a decline in the Student’s behavior. Specifically, in XXXXXX, the Student engaged in inappropriate and disruptive behaviors on the school bus, with one incident resulting in a ten-day suspension from the bus. Additionally, on XXXXX, the Complainant requested that the School hold an evaluation meeting for the Student to consider whether he needed additional or different related services, however, the School does not appear to have held a meeting until XXXXX following imposition of a ten-day OSS. OCR notes that during this time period, the Student was involved in two additional incidents on the school bus on XXXXX. Therefore, OCR has concerns that the School may not have timely evaluated the Student in XXXXX to address his behavioral needs, despite a decline in the Student’s behavior in XXXXX. Before OCR completed its investigation, the School agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR’s compliance concern as it pertains to this allegation.

#### **Allegation 2**

The Complainant alleged that when the School issued the Student a ten-day OSS on XXXXX, it did not conduct an MDR meeting until XXXXX, or provide the Student with educational services during that time period. OCR determined that on XXXXXX, the School issued the Student a ten-

day OSS. The Student then served nine days of suspension. On the 10th day of the suspension, which (taking into account winter break and other holidays) was XXXXX, when the School held an MDR meeting and determined the Student's conduct was a manifestation of his disability. The School permitted the Student to return to school that day. OCR could not find any evidence to indicate that the School had excluded the Student from his education prior to XXXXX. Therefore, OCR determined there was insufficient evidence to substantiate that the School failed to conduct an MDR before significantly changing his placement. The School did not have an obligation to conduct a manifestation determination review during the 10 school days that the Student was suspended from school in XXXXXX as these first 10 days did not qualify as a significant change in placement. Nonetheless, the School held an MDR prior to the 10<sup>th</sup> day, determined that his conduct was not a manifestation of his disability, and did not have him serve out the remainder of his exclusion. Accordingly, OCR will take no further action with respect to Allegation 2.

### Allegation 3

The Complainant alleged that the School failed to provide the Complainant with notice of procedural safeguards regarding how to appeal a decision made during the MDR meeting on XXXXX. The School was unable to provide evidence to substantiate that it provided the Complainant with information regarding procedural safeguards during school year 2021-2022, including following the XXXXX meeting and OCR notes that there was no evidence that the Complainant ever availed herself of her right to an impartial hearing, even after explicitly informing the School that she disagreed with the determination made at the XXXXXX meeting. Therefore, OCR has concerns that the School did not provide the Complainant with the procedural safeguards during the 2021-2022 school year. Before OCR completed its investigation, the School agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concern as it pertains to this allegation.

### Allegation 4

The Complainant alleged that the School retaliated against the Student after the Complainant disagreed with the outcome of the Student's MDR meeting held on XXXXX, by expelling the Student from the School on XXXXX. OCR determined that the School offered a legitimate, non-retaliatory reason for the disciplinary committee's decision to exclude the Student, namely, the Student violated the School's Code of Conduct by XXXX on school grounds. OCR determined that this proffered reason was not a pretext for retaliation because the Code of Conduct indicated that a Student may be expelled for XXXX on school grounds; there was video showing the Student XXXX at school; and the Student admitted to School staff that he had XXXXX on school property.

However, during the course of the investigation, OCR determined that during an MDR meeting, School staff failed to communicate to the Complainant that the Student could withdraw from the School in lieu of a disciplinary hearing, which would have prevented an exclusion from being included on his academic record. The School informed OCR that it did not do so because the Complainant left the meeting early. However, the School did not provide this information between the date of the MDR and the date of the disciplinary board hearing. Additionally, during the hearing, the disciplinary board explicitly decided not to give the Student the option to withdraw, which was not aligned with standard practice and appears, based on statements made by board

members during the hearing, to be based in part on the Complainant's advocacy about the Student's accommodations and behavioral needs and fears that providing the option could trigger further advocacy by the Complainant. Additionally, OCR notes that of the 10 students in a situation similar to the Student, the Student was the only one who did not receive this option and was also the only one who had someone engage on his behalf in protected activity. Accordingly, OCR has concerns that the School subjected the Student to retaliation when it withheld the fact that the Student could withdraw. Before OCR completed its investigation, the School agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concern as it pertains to this allegation.

### **Conclusion**

On XXXXX, the School agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address the compliance concerns regarding Allegations 1, 3, and 4. The provisions of the agreement are aligned with the allegations and the information obtained during OCR's investigation and are consistent with the applicable law and regulation. OCR will monitor the School's implementation of the agreement until the School had fulfilled the terms of the agreement.

This letter should not be interpreted to address the School'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 Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the School. The School has the option to submit, to OCR, a response to the appeal. The School must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the School.

Please be advised that the School 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 School 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.

We appreciate the School's cooperation in the resolution of this complaint. If you have any questions, please contact Amy Fellenbaum, OCR attorney, at [Amy.Fellenbaum@ed.gov](mailto:Amy.Fellenbaum@ed.gov), or Tracey Solomon, OCR investigator, at [Tracey.Solomon@ed.gov](mailto:Tracey.Solomon@ed.gov).

Sincerely,

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

cc: XXXXX, XXXXXXXX