



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

September 6, 2022

By email only to [superintendent@gcsnc.com](mailto:superintendent@gcsnc.com)

Whitney Oakley, Ed.D.  
Superintendent  
Guilford County Schools  
712 N Eugene Street, PO Box 880  
Greensboro, NC 27402

Re: Case No. 11-22-1249  
Guilford County Schools

Dear Superintendent Oakley:

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 Guilford County Schools, which we will refer to as the District. The Complainant filed the complaint on behalf of a student at XXXX, whom we will refer to as the Student. The Complainant alleged that the District discriminated against the Student on the basis of disability (including XXXX and XXXX), when it failed to provide the Student with specially designed instruction, from XXXX through XXXX, as required by the Student's individualized education plans (IEPs), thereby denying the Student a free and appropriate public education (FAPE).<sup>1</sup>

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 of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation to date, OCR reviewed information provided by the Complainant and the District, as well as interviewed District teachers and staff. Before OCR completed its investigation, the District expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR

---

<sup>1</sup> The Complainant initially alleged that the District failed to provide the Student with a teacher in the areas of XXXX, but during the course of its investigation, OCR learned that the Student's IEP required specially designed instruction in the areas of XXXX.

making a determination if the 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. The following is a summary of the evidence obtained by OCR during the investigation to date.

### **Evidence Obtained to Date**

During the XXXX school year, the Student was enrolled in Grade XXXX with an XXXX.

On XXXX, the District convened IEP meetings and determined, in part, that the Student, who was on homebound, should receive specially designed instruction (SDI) XXXX. This totaled XXXX hours per week. The IEP's overall effective date was XXXX.

The District informed the Complainant that in the interim, the District would contact her once it had sent the Complainant an informational packet providing information regarding who would serve as the Student's teacher, when, and other details.

OCR reviewed records provided by the District, including emails, service logs for the Student's SDI, and home/hospital service logs. During the first week of the IEP's effective date, XXXX, the District did not assign the Student a teacher, whom we will call Teacher 1, until XXXX. According to the home/hospital service logs, Teacher 1 initiated SDI on that date and provided the Student with one hour of consultation for the initiation of service that week. The information is unclear as to whether Teacher 1 provided any SDI services to the Student that week.<sup>2</sup>

During the second week, which began on XXXX, Teacher 1 conducted an initial meeting with the Student for half an hour on XXXX. The Complainant reported to OCR that Teacher 1 decided she could not provide instruction to the Student after XXXX. However, the District reported that the Complainant told Teacher 1 that she no longer wanted her to work with the Student. Teacher 1's log indicates that she was to provide SDI XXXX, but that she received a message from the Complainant that her internet was down. Teacher 1's log for that day also indicates that the Student was reassigned to another teacher (Teacher 2).

Teacher 2's log indicates that on XXXX, Teacher 2 called the Complainant and sent the initial paperwork to the Complainant to set up service dates, which were to begin XXXX. The log indicated that Teacher 2 provided XXXX of SDI during this week. According to the Complainant, Teacher 2's schedule was limited and could not provide the required hours or time.

On the third week, beginning XXXX, according to Teacher 2's log and an email she sent to District staff, Teacher 2 called the Complainant on XXXX, but the Complainant declined SDI on behalf of the Student because the District scheduled an IEP meeting around that time. The log indicates that the Student was provided with XXXX hours of SDI services that week.

On XXXX, another teacher (Teacher 3), who taught the Student's general curriculum, began to provide SDI to the Student, in part, in the areas of XXXX and XXXX, according to Teacher 3's logs. According to Teacher 3's log, Teacher 3 provided the Student with XXXX on XXXX.

---

<sup>2</sup> OCR further notes that many of the logs reviewed by OCR break down the SDI services provided by subject matter.

On XXXX, the District also convened an IEP meeting for the Student wherein, in part, the Student's SDI was modified to the following: XXXX. This totaled XXXX. The IEP's overall effective date was XXXX.

Around XXXX, the District assigned the Student a teacher (Teacher 4), who was to begin providing SDI on XXXX. Another teacher (Teacher 5) was assigned to support Teacher 4 but did not have specific responsibilities for the Student.

In the week starting XXXX, according to Teacher 3's logs, Teacher 3 provided XXXX of SDI, with the student marked as "no show" for one day.

On the week of XXXX, Teacher 3 provided XXXX of SDI, according to her logs, and the rest of the SDI should have been provided by Teacher 4. According to Teacher 4, Teacher 4 attempted to contact the Complainant to establish services with the Student several times via telephone and text message, but she only had one meeting with the Complainant or Student. The Complainant reported to OCR that Teacher 4 said she had not provided instruction to the Student because she did not have the information she needed.

In the week of XXXX, Teacher 3's logs indicate that Teacher 3 provided XXXX of SDI to the Student. The Complainant reported to OCR that she texted Teacher 4 about instruction for the Student, but that Teacher 4 responded she had jury duty.

During the week of XXXX, Teacher 3's logs reflect that she provided XXXX of SDI to the Student that week. On the contrary, on or about XXXX, the Complainant called the District's Exceptional Children Services office and indicated that the Student's SDI had not started with Teacher 4. On XXXX, a XXXX for the District's Exceptional Children Services, whom we will call the Supervisor, emailed Teacher 4 to ask her when she was scheduled to meet with the Student and set up the Student's SDI. On XXXX, Teacher 4 sent the Complainant an invitation for a meet and greet on XXXX.

On XXXX, the Complainant had a telephone conversation with the Supervisor. The Complainant said that she wanted Teacher 3 to exclusively instruct the Student regarding the provision of SDI, and Teacher 3 had agreed to do so. Later that day, after the telephone conversation, the Supervisor emailed the Complainant to inform her of the proposed schedule, in which Teacher 3 would provide the Student SDI, and which the Supervisor wanted to put into place immediately. The Complainant replied later that day that the Supervisor's proposal would be "great."

On XXXX, Teacher 3 began providing the Student's SDI remotely, and neither the Complainant nor the District reported to OCR that there were any concerns thereafter. To date, OCR could not find evidence to indicate that the District had made up any SDI services not provided to the Student.

### **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. 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 IEP, 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.

### **Analysis**

Based on OCR's investigation to date, OCR has a concern that for some of the weeks during the time period under investigation, the Student may not have received all of the weekly hours or types of SDI, as required by his IEPs, effective XXXX and XXXX. Further, OCR is concerned that any failure to provide the Student with the required SDI was the result of failing to assign a teacher to the Student in a timely manner or that a teacher was unavailable. As a result, OCR also has a concern that the failure to receive all the services may have resulted in a denial of FAPE for the Student.

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 September 1, 2022, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. OCR will monitor the District's implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement and the statutes and regulations at issue.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Jacob Griffith, the OCR attorney assigned to this complaint, at [Jacob.Griffith@ed.gov](mailto:Jacob.Griffith@ed.gov) or 202-245-8015.

Sincerely,

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

Enclosure

cc: XXXX, Assistant Superintendent, Exceptional Children Services  
XXXX  
XXXX, Director of Secondary School Support, Exceptional Children Services  
XXXX  
XXXX, Partner, XXXX  
XXXX