



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

October 31, 2023

By email only to christopher.nace@dcinternationalschool.org

Christopher Nace
Principal
District of Columbia International School
The Parks at Walter Reed
1400 Main Drive NW
Washington, DC 20012

Re: Case No. 11-23-1482
District of Columbia International School

Dear Principal Nace:

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 District of Columbia International School (School). The Complainant filed the complaint on behalf of a student (Student) at the School. The Complainant alleged:

1. The School discriminated against the Student on the basis of disability during the 2022-2023 school year by failing to provide [redacted content] in the Student's [redacted content] class, as required by her Individualized Education Program (IEP) (Allegation 1).
2. The School retaliated against the Student in or around [redacted content] by removing her from [redacted content] class after the Complainant indicated she intended to file an OCR complaint about the School's failure to implement provisions in the Student's IEP (Allegation 2).

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 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. The School 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.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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During its investigation, OCR reviewed documents provided by the Complainant and the School and interviewed the Complainant and School staff.

Before OCR completed its investigation, the School expressed interest in resolving Allegation 1 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 the Complainant's allegation.

A summary of the evidence obtained by OCR during the investigation to date regarding Allegation 1 is discussed below, as well as OCR's findings and conclusions regarding Allegation 2.

Facts

The Student was enrolled as a [redacted content] at the School during the 2022-2023 school year. The Student's Individualized Education Program (IEP) that was in place at the beginning of the school year classified the Student's disability as [redacted content] and categorized her annual goals by the following areas of concern: [redacted content]. The Student's IEP required specialized instruction as well as classroom aids and services, such as [redacted content]. The Student's classroom and assessment accommodations required [redacted content]. The Complainant alleged that the School failed to implement classroom accommodations, aids, and services in the Student's [redacted content] class during the 2022-2023 school year.

The Complainant told OCR that she repeatedly reached out to School staff during the school year, and specifically regarding her concerns of implementation of the IEP in the Student's [redacted content] class. In [redacted content] the Complainant emailed the Student's [redacted content] teacher (Teacher) to request a brief check-in. The Teacher responded the same day and provided her availability and contact information, and asked the Complainant to text her. The Complainant and the Teacher provided conflicting explanations to OCR as to why the meeting did not occur as scheduled. Then on [redacted content], the Complainant emailed the School's Special Education Coordinator (Coordinator) and requested "support around challenges in [redacted content] class." The Complainant also requested to reconvene and review the Student's IEP as soon as possible. The Coordinator emailed the Complainant that the Student's IEP was due for annual review in [redacted content], and that she would send out a proposed date to meet within the coming days. The Complainant responded that "at minimum [the Teacher] does not confirm learning or understanding." The Complainant also shared that she had attempted to connect with the Teacher, but that "intervention" was needed.

The Student's IEP team met for an annual review on [redacted content]. Meetings notes reflect the Complainant told School staff that she was concerned about whether accommodations and supports were implemented in [redacted content] class. The Complainant said she had not heard back from the Teacher and requested that the Student be moved to another class. The Student shared that she was struggling in [redacted content] because she did not always receive responses to her questions. The Student preferred to stay in the assigned [redacted content] class, however.

The Student also reported that she would reach out to another [redacted content] teacher for tutoring due to scheduling conflicts with the Teacher's availability. The Student also shared that she enjoyed [redacted content] class "the least because she finds that the teacher is not very helpful." The [redacted content] IEP reflects non-substantive changes in the wording of aids and services previously listed in the [redacted content] IEP. The [redacted content] IEP included a new provision to "allow [the Student] to [redacted content]." The Student's classroom and testing accommodations were unmodified.

On [redacted content], the Teacher emailed the Complainant to share that the Student was failing [redacted content] class and would need to complete and submit an assignment on time in order to pass. The Complainant responded by email the same day with concerns that the Student's IEP was not implemented, that she intended to file an OCR complaint, and that she was aware the Teacher had approached the Student about cheating on a test. That same day, the Teacher forwarded the email to the School's principal, the Coordinator, and other School staff members.

On [redacted content], the Complainant emailed the Coordinator and shared her disappointment regarding "the lack of IEP adherence, participation, and input by the Teacher." The Complainant asked the Coordinator to call her and stated that she had been expressing the same concern to staff throughout the school year. The Coordinator responded one week later and stated that she was "sorry to hear of [the Complainant's] concerns as [staff felt] the IEP appropriately address[ed] [the Student's] needs." The Coordinator asked for the Complainant's availability to further discuss concerns and next steps. The Complainant reiterated that she was concerned about IEP implementation and the overall impact on the Student's academic progress. The Complainant expressed frustration that the Teacher had not participated in IEP meetings or responded to the Complainant's outreach. The Complainant shared, also by email on [redacted content], that she had filed an OCR complaint and requested information about the School's internal grievance process. The principal responded and asked for the Complainant's availability to further discuss the grievance process.

During an interview with OCR, the Teacher explained how she implemented the Student's IEP-required classroom accommodations, aids, and services. The Teacher told OCR that the Student's IEP did not contain [redacted content] areas of concern, but that the Student regularly received extended time on assignments. The Teacher provided an example in which the Student was given [redacted content] additional days to turn in a major assignment, and that the assignment was broken into smaller chunks throughout the months leading up to the [redacted content] due date. The Teacher also told OCR that the Student's [redacted content] class had a small number of students, which allowed the Teacher to individually address each student and discuss completion of assignments in greater detail with the Student. The Teacher identified the Student's small group testing location as [redacted content]. The Teacher noted that the Student was often distracted, on her cellphone, or sleeping in class. The Teacher also stated that she was not aware of the Complainant's concerns regarding IEP implementation prior to the Complainant's [redacted content] email.

The Complainant also alleged that the School retaliated against the Student when she was removed from [redacted content] class after the Complainant indicated that she would file an OCR

complaint.¹ The Student told OCR that in [redacted content] she was approached by the Teacher with concerns that the Student’s test answers were similar to other classmates’ answers. The Teacher confirmed to OCR that she approached the Student about the test, and both parties confirm that the Teacher asked the Student to explain how she came up with the answers to a specific test question. The Student and the Teacher told OCR that the Student declined to re-answer selected test questions. The Teacher told OCR the Student became visibly upset when asked to re-answer questions. At that point, the Teacher told the Assistant Dean of Students, who both parties acknowledge was present, that the Student “needed something before she could come back to class” and that the Student was not allowed back into the classroom.²

The Teacher further explained to OCR that she believed the Student may have cheated on the test because the Student was often disengaged in class when the tested material was being taught, so the relatively high earned grade was inconsistent with her lack of class participation. The Teacher also stated that she observed verbatim answers across other students’ test answers, and that she approached at least two other students who received higher grades than expected. The Teacher told OCR that she later learned that prior to administering the test, [redacted content] posted the test answer key online. The Teacher stated that, due to the answer key being posted, she decided not to penalize students and gave them the original grade they earned.³

The School’s attendance records reflect that the Student was absent from [redacted content] class beginning on [redacted content] through the end of the school year. On [redacted content], the Student received an unexcused absence with the following notation: “left class after being asked to explain a problem to [the Teacher] from [Student’s] assessment.” After [redacted content], the Student was marked absent for [redacted content] classes. The Student’s discipline record indicates she was seen on campus on [redacted content] but was absent from [redacted content] class. The Teacher also confirmed to OCR that she saw the Student on campus during the time when the Student was absent from [redacted content] class. The Student ultimately received a final failing grade in [redacted content] class.⁴

Regarding the Student’s repeated absences, the Teacher told OCR she assumed the Student was assigned to another [redacted content] class. The Teacher reports that administrative staff did not immediately follow up with her following the [redacted content] incident, and that she “shouldn’t have to hunt down” whether students are moved to another class. The Teacher stated to OCR that she reported the Student’s absences, but eventually stopped doing so. The Teacher also told OCR that she spoke to another [redacted content] teacher about the Student’s absences and realized the Student had not been assigned to another [redacted content] class. Attendance records reflect that the Student returned to class on one occasion in [redacted content]. According to the Teacher, the

¹ In a call to OCR, the Complainant clarified that she believes the Student was retaliated against due to the Complainant’s school year-long disability-related advocacy.

² Counsel for the School told OCR that the Teacher instructed the Student not to return to class until she had apologized or participated in school-based mediation.

³ The School provided OCR with a chart detailing 45 instances during the 2022-2023 school year in which students engaged in academic dishonesty, including a number of students who received a zero grade for cheating on a test.

⁴ The Student’s attendance record indicates excused absences for all classes beginning on [redacted content] through the end of the school year with the notation “[redacted content] – [Principal] Approved.” Counsel explained to OCR that [redacted content] complete classes at the end of [redacted content]. In 2022-2023, the last day of classes for [redacted content]. The Student [redacted content] due to multiple final failing grades.

Student reported to her that she had been in the [redacted content] because she believed she was not allowed back in [redacted content] class. The Teacher explained to OCR that she discussed the Student's absences with the Assistant Dean of Students, who told her that the Student "wasn't going to apologize" and that he would handle the situation going forward. The Student told OCR that no staff member approached her about returning to class, so she often worked at a desk in the hallway or in the library.

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 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 an Individualized Education Program (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 a 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. § 104.61, 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.

Analysis

Regarding Allegation 1, OCR has concerns that the Student's IEP was not fully implemented in the Student's [redacted content] class during the 2022-2023 school year, and thus the Student may have been denied FAPE. Documentation supports that the Complainant reached out to the School at least five times during the school year to raise concerns about IEP implementation in the Student's [redacted content] class. The School conducted the Student's requisite annual IEP review in [redacted content] and documented the Complainant's and the Student's concerns in the IEP meeting notes. OCR reviewed documentation that reflects the Student reported struggling in [redacted content] class, that her classroom attendance substantially decreased in Spring 2023, and she ultimately received a failing grade in [redacted content] class. Information provided to OCR also suggests that School staff, including administrators, were aware of the Student's absences

from [redacted content] class and that she was learning in alternative settings within the School. But OCR did not find information to suggest that administrative staff communicated the Complainant's or Student's concerns to the Teacher.

Also, although the Teacher provided examples of how she implemented the Student's IEP in [redacted content] class, the examples were inconsistent with correspondence OCR reviewed between the Complainant and the School. Specifically, regarding a [redacted content] assignment due date, the Teacher told OCR that the Student was given additional time to submit the assignment. However, email communications indicate the Student was given the same due date as her classmates and instructed to turn the assignment in "on time," despite the Student's extended time classroom accommodation. OCR also reviewed statements from counsel and the Teacher that the Student had "no [redacted content] related IEP goals," seeming to imply that this justified her IEP not being implemented in [redacted content] class. Based on the investigation to date, OCR is concerned that School staff did not fully implement the Student's required classroom accommodations, aids, and services in her [redacted content] class in the 2022-2023 school year. OCR also reviewed information that indicates the School did not direct the Complainant to its Section 504 grievance process, despite her written request in [redacted content] asking for such information.⁵

Regarding Allegation 2, OCR found insufficient evidence to support the Complainant's allegation of retaliation. The Complainant did engage in the protected activity of filing an OCR complaint. The parties agree the Student was removed from [redacted content] class on or about [redacted content]. However, the documentation OCR reviewed reflects that this removal and the Student being approached by the Teacher regarding potential cheating concerns both occurred before the Complainant mentioned that she intended to file an OCR complaint. OCR also received information that the Student was not penalized for potential academic integrity concerns. Accordingly, OCR did not find that the Student was asked about cheating or removed from [redacted content] class because the Complainant indicated she intended to file an OCR complaint, as alleged.

Conclusion

On October 29, 2023, the School agreed to implement the enclosed Resolution Agreement which, when fully implemented, will address OCR's compliance concerns regarding Allegation 1.

OCR will monitor the School's implementation of the agreement until the School is in compliance with the terms of the 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 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

⁵ The School's website and handbook state that individuals who wish to file a complaint regarding compliance with Section 504 and/or the ADA should contact the Director of Student Support Services.

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 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 Ravan Austin, the OCR attorney assigned to this complaint, at 202-987-1291 or Ravan.Austin@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Lauren Baum, counsel at l.baum@laurenebaumlaw.com