



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, D.C.

April 30, 2015

Mr. Joseph Pye, Superintendent
Dorchester School District Two
102 Green Wave Boulevard
Summerville, South Carolina 29493

Re: OCR Complaint No. 11-14-1323
Resolution Letter

Dear Mr. Pye:

This letter is to advise you of the outcome of the complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), against the Dorchester School District Two (the District). The Complainant filed a disability discrimination complaint on behalf of a student (the Student) at XXXX School (the School). Specifically, the Complainant alleged that the District failed to implement the Student's Individual Education Program (IEP) when the Student did not receive all of the home-based instruction hours that he should have received in March and April 2014.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public educational systems, regardless of whether they receive financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR identified preliminary concerns about the provision of home-based instruction from March 1, 2014 until April 7, 2014. However, as described further below, after carefully considering all the information obtained during the investigation, OCR determined that there is insufficient evidence to conclude that the District discriminated against the Student regarding the provision of home-based instruction for the remainder of April 2014.

During OCR's investigation, the District expressed a willingness to resolve OCR's preliminary concerns regarding the provision of services from March 1, 2014 until April 7, 2014. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District. On April 23, 2015, the District signed the enclosed agreement which, when fully implemented, will resolve this allegation. The provisions of the agreement are aligned with the

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by fostering educational excellence and ensuring equal access.*

allegation raised by the Complainant and information obtained during OCR’s investigation, and are consistent with the applicable regulations. OCR will monitor the District’s implementation of the agreement.

Home-based Instruction between April 7, 2014 and April 30, 2014

The Complainant alleged that the Student did not receive home-based instruction during April 2014 because the District inappropriately withdrew the Student from the District on XXXX, despite the fact that she resided in the District.

According to the Complainant and the District, the Student was expelled from the School with special education services after a hearing XXXX. The Principal told OCR that the Complainant informed him prior to the hearing that she no longer resided in the District and would be withdrawing the Student from the District after the hearing. The District provided OCR a copy of an email the Principal sent to the Hearing Officer’s secretary informing the Hearing Officer of this information. Based on this, the letter sent to the Complainant’s registered address on March 19, 2014 (following the expulsion hearing on March 18, 2014) notified the Complainant of the outcome of the hearing and the residency concern. This letter was returned to the District labeled “Returned to Sender/Unclaimed/Unable to Forward.”¹

The District confirmed that, on April 7, 2014, it withdrew the Student from the District based on information it received that the Student no longer lived in the District. The District stated that the Complainant never submitted proof of residency to the District, despite repeated requests. The District also provided a copy of a School log, in which the Principal documented that he met with the Complainant to discuss the outstanding residency matter and informed her that the Complainant was required to submit proof of her residency to the Principal by April 4, 2014 (the date of the Complainant’s hearing regarding the expulsion decision) or he would withdraw the Student from the School.

The Complainant told OCR that she was aware of the District’s concern regarding her residency but indicated that she submitted documentation to the District verifying her residency on April 7, 2014, the day after the Student’s expulsion appeal hearing.² The Complainant provided OCR with a copy of a shared housing form proof of residency affidavit that she stated she provided to the District on April 7th. OCR notes that this affidavit was dated and notarized on April 8, 2014, the day *after* the Complainant alleges that she submitted it. Further, the Complainant stated that she submitted the affidavit to the Hearing Officer’s secretary with no further instruction, instead of providing the document to the Principal, who requested the information. District personnel denied receiving the affidavit the Complainant alleged she submitted. Documentation provided by the District shows that, due to a lack of residency documentation, the District withdrew the Student from the School on April 7, 2014 and ceased the provision of home-based instruction. OCR further notes that the Student did not enroll in the District for the 2014-2015 school year and is currently enrolled in a public school in another school district. OCR finds that there is sufficient evidence that the Complainant failed to submit the required residency documentation

¹ The Complainant provided a fax to OCR staff showing this document also was faxed to her on March 24, 2014.

² OCR notes that this was after the deadline established by the Principal.

by April 7, 2014, and, therefore, the District had no further obligation to provide home-based instruction after that date.

For the reasons explained above, OCR's investigation does not support a finding that the District discriminated against the Student by failing to implement the Student's Individual Education Program (IEP) when the Student did not receive all of the home-based instruction hours that he should have received after April 7, 2014.

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 this 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. The Complainant 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 may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. 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, including the assistance provided by the Director of Special Services, Dr. Antonia Cappelletti. If you have any questions, please contact Jan Gray, the OCR attorney assigned to this complaint, at 202-453-6028 or via e-mail at Jan.Gray@ed.gov.

Sincerely,

/S/

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure