



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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October 6, 2017

Sharon McCollum
Commissioner of Education
Virgin Islands Department of Education
1834 Kongens Gade
St. Thomas, Virgin Islands 00802

Re: Case No. 02-17-1293
Virgin Islands Department of Education

Dear Commissioner McCollum:

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the Virgin Islands Department of Education (the VIDOE). The complainant alleged that the VIDOE discriminated against her son (the Student), on the basis of his disability, by refusing to allow him to attend the XXXXX School (the school) during school year 2016-2017.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The VIDOE is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

Section 504 and the ADA prohibit individuals, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities, respectively. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

In its investigation, OCR interviewed the complainant. OCR also reviewed documentation that the complainant and the VIDOE submitted. OCR made the following determinations.

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The complainant alleged that the VIDOE discriminated against the Student, on the basis of his disability, by refusing to allow him to attend the school during school year 2016-2017. The complainant informed OCR that the Student was diagnosed with XXXX, and XXXX to several XXXX and XXXX; including XXXX, and XXXX. She stated that she attempted to enroll the Student at the school on or about XXXX, 2016, and submitted the necessary forms on or about XXXX, 2016, including a “XXXX Application” (the application); a “Student Admission Slip;” a “Student Health History;” and, an “Administration of Medication” form.¹ The complainant stated that in XXXX 2016, she met with the school’s principal, assistant principal, two nurses, and two counselors to “unofficially” discuss the accommodations the Student would need to attend the school. The complainant asserted that the participants were not willing to accommodate the Student.²

The complainant stated that from XXXX, 2016, she corresponded with medical and/or school staff about necessary medical information and documentation. The complainant advised OCR that on XXXX, 2016, she, the Student’s pediatrician, the principal, the assistant principal, two nurses, and two counselors “officially” met to further discuss the accommodations the Student needed to attend the school. The complainant stated that the Student was not thereafter permitted to enroll, and as of the filing of the complaint with OCR on April 10, 2017, she had not been notified of the outcome of the above-described meetings.³

The VIDOE asserted that the Student was never denied enrollment or admission into the school. The VIDOE stated that the Student was not enrolled at the school for school year 2016-2017 because the complainant never completed the necessary enrollment forms. The VIDOE relayed to OCR that the complainant was provided with a “Student Admission Slip,” along with the application; however, the complainant never submitted a completed application to the school. The complainant, however, provided to OCR a completed copy of the application that she said she submitted to the school.

Before OCR conducted additional investigation of the complainant’s allegation, the VIDOE expressed an interest in voluntarily resolving this case. In light of the VIDOE’s willingness to address the complaint without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate.

¹ At the time of the Student’s application to the school, the Student was XXXXX. The complainant advised OCR that she was XXXXXXXX.

² The complainant asserted that when she explained that the Student’s teacher would need to be knowledgeable about the signs of the Student’s conditions and to be able to provide appropriate assistance, the principal stated that “she was not aware that [the Student] had so much going on” and accommodating the Student as the complainant described “would be too much for the teacher to do if she has other students in the class,” or similar words to that effect. The complainant also asserted that one of the nurses present at the meeting stated that the school did not have a XXXX to XXXXX. The complainant further asserted that she was questioned as to who would provide the Student’s XXXX since he is “XXXX, and XXXX.” The complainant stated that school staff made her feel that “it would be a strain for [school staff] to even entertain accepting [the Student] into their system.” She added that she was “questioned by everyone in the room and the atmosphere wasn’t nice.”

³ The complainant informed OCR that she and the Student are currently residing in XXXXX and she does not know if and when the Student will return to the VIDOE.

On October 6, 2017, the VIDOE agreed to implement the enclosed resolution agreement to address the compliance issues identified above. OCR will monitor the VIDOE's implementation of the agreement.

This letter should not be interpreted to address the VIDOE'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. 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 VIDOE may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

If you have any questions regarding OCR's determination, please contact Ronald Scott, Compliance Team Attorney, at (646) 428-3820 or Ronald.Scott@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or Anna.Moretto.Cramer@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX XXXXXX