



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

November 17, 2014

Dr. Deborah Pettit, Superintendent
Louisa County Public Schools
953 Davis Highway
Mineral, Virginia 23117

Re: OCR Complaint No. 11-14-1261
Resolution Letter

Dear Dr. Pettit:

This letter notifies you of the outcome of the above-referenced complaint that was filed with the District of Columbia Office of the Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), against Louisa County Public Schools (the Division) on June 12, 2014. The Complainant alleged that the Division: (1) discriminated against Students A, B, C and D on the basis of national origin by failing to provide them an alternative language program that is effective in meeting their educational needs; and (2) discriminated against Students A, B and C on the basis of disability in failing to provide a free appropriate public education (FAPE) by misclassifying Students A's and C's disabilities due to evaluations that reflected lack of English language skills rather than disability needs, not timely evaluating Students B and C for special education and/or related aids and services, and not implementing Student A's Individualized Education Program (IEP) with regard to bus seatbelts and responses to falls.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. In addition, 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 education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is

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

a public entity, OCR has jurisdiction over it pursuant to Title VI, Section 504, and Title II.

Legal Standards

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b) provides that recipients of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to separate treatment.

The Departmental Policy Memorandum issued on May 25, 1970, entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin” (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of schools to provide equal educational opportunity to language minority students. The May 1970 memorandum states in part: “[w]here the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.” The May 1970 memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standard for the Department’s Title VI policy concerning discrimination on the basis of national origin against language-minority students.

In December 1985, OCR issued a document entitled “The Office for Civil Rights Title VI Language Minority Compliance Procedures” (December 1985 memorandum). In September 1991, OCR also issued a memorandum entitled “Policy Update on Schools’ Obligations toward National Origin Minority Students with Limited-English Proficiency”. These documents outline the standards and procedures used to evaluate school divisions for compliance with Title VI in this area. In summary, a school division must identify which of its national-origin minority students have limited English proficiency and provide them with an effective program that affords them meaningful access to the school division’s educational program. Where an inability to speak and understand the English language excludes national-origin language-minority children from effective participation in the educational program offered by a school division, the division must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. See May 1970 Memorandum. A school division must provide alternative language services to all national-origin language-minority students who need such services. See December 1985 Memorandum.

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department. The regulation prohibits school systems from denying students, on the

basis of disability, the benefits of a program or activity because of disability. The regulation at § 104.33 also requires school systems to provide a free appropriate public education to each qualified student with a disability who is in their jurisdiction, regardless of the nature or severity of the student's disability, through regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of students without disabilities are met; implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. The regulation at § 104.35 further requires them to evaluate students who because of a disability need or are believed to need special education or related services, using validated tests administered by trained personnel that accurately reflect the student's ability on what the test purports to measure rather than the student's impaired skills (except where those skills are being measured); in interpreting evaluation data and in making placement decisions, the school must draw upon information from a variety of sources, follow established procedures, and ensure that decisions are made by a group of knowledgeable persons.

Resolution

In the course of OCR's investigation, the Division expressed an interest in resolving the complaint prior to the completion of OCR's investigation, pursuant to Section 302 of OCR's Case Processing Manual. On November 12, 2014, the Division signed a resolution agreement (copy enclosed), which, when fully implemented, will resolve the complaint. The provisions of the agreement are aligned with the allegations raised in the complaint and information obtained during OCR's preliminary investigation, and are consistent with the applicable regulations. OCR has notified the Complainant of the voluntary resolution agreement and we will monitor implementation of the agreement.

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. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Division 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. Also, 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 assistance of the Division during the resolution of this complaint. If you have any questions, please contact one of the OCR attorneys assigned to these cases: Kristi Bleyer at (202) 453-5901 or kristi.bleyer@ed.gov or Selena Fox at (202) 453-5910 or selena.fox@ed.gov.

Sincerely,

/s/

Kay Bhagat
Team Leader
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Carla Alpern, Director of Pupil Personnel Services
Bradford King, Esquire