



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 22, 2015

Via U.S. mail

Dr. Aaron C. Spence
Superintendent
Virginia Beach City Public Schools
2512 George Mason Drive
P.O. Box 6038
Virginia Beach, Virginia 23456-0038

RE: OCR Complaint No. 11-15-1289
Resolution Letter

Dear Dr. Spence:

This letter is to advise you of the outcome of the complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on June 17, 2015, against Virginia Beach City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX School (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the Division has failed to evaluate the Student under Section 504 to determine his eligibility for special education or related services based on his medical conditions.

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

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires the school division to provide a free appropriate public education (FAPE) to each qualified student with a disability in the school division's jurisdiction, regardless of the nature or severity of the student's disability. The

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

provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and are based upon adherence to the procedural requirements of Section 504 pertaining to the educational setting, evaluation and placement, and the provision of procedural safeguards. OCR interprets the regulation implementing Title II as imposing substantially similar requirements to those found in the regulation governing Section 504.

The Section 504 regulation, at 34 C.F.R. § 104.35, requires a school division to evaluate any student who needs or is believed to need special education or related services because of a disability. A division must conduct an evaluation before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. In interpreting evaluation data and in making placement decisions, the school division must draw upon information from a variety of sources, establish procedures to ensure that information obtained from such sources is documented and carefully considered, and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

Factual Background

The Student is a second-grade student at the School. The Student has an Individualized Education Plan (IEP) and a Health Care Plan. While the Student's IEP is primarily focused on the Student's academic needs, it identifies the Student as having XXXX and outlines other medical limitations of the Student, including alignment issues, XXXX. For the most part, the IEP does not describe processes to address the identified medical limitations. The Student's Health Care Plan contains assessment notes, nursing diagnoses, goals, nursing interventions and responsible person, and expected student outcomes for the Student's medical conditions: XXXX. The Health Care Plan does include procedures for addressing some, but not all, of the Student's medical conditions. Neither plan fully accounts for the Student's individual educational needs related to his medical conditions. The Division indicated that it was likely the Student had not been separately evaluated under Section 504 to determine his eligibility for special education or related services based on his medical conditions.

The School failed to follow the procedures put into place by the Health Care Plan on at least one occasion. Under the assessment noting the potential malfunction of the VP shunt caused by bumps to the head, the Health Care Plan references the establishment of an Emergency Care Plan for actions if a shunt malfunction is suspected or if trauma to the head or neck has occurred. The Emergency Care Plan provides that an individual witnessing the Student suffer an injury to the head or neck should notify the nurse immediately. On June 12, 2015, the Student was hit in the head with a basketball during physical education class. The Student's physical education teacher notified the Complainant of the accident. Two hours later, the Student began to vomit, a sign of a shunt malfunction, and was seen by the School nurse. The Complainant indicated to OCR that, when the School nurse called the Complainant after seeing the Student, the nurse told the Complainant that she was unaware of the earlier head injury suffered by the Student in physical education class.

Conclusion

Pursuant to Section 207(b) of OCR's Case Processing Manual, the Division signed the enclosed Resolution Agreement on September 1, 2015 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant, the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 Division 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, 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. If you have any questions, please contact Marcelo Quiñones or Sara Clash-Drexler, the OCR attorneys assigned to this complaint, at 202-453-6567 or marcelo.quinones@ed.gov, or 202-453-5906 or sara.clash-drexler@ed.gov.

Sincerely,

/S/

Alessandro Terenzoni
Supervisory Attorney, Team II
District of Columbia Office
Office for Civil Rights

Enclosure