



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

November 12, 2015

Steven Nichols, Superintendent  
Amherst County Public Schools  
P.O. Box 1257  
Amherst, Virginia 24521

Re: OCR Complaint No. 11-15-1306  
Letter of Findings

Dear Dr. Nichols:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on July 14, 2015 against Amherst County Public Schools (the Division). The Complainant filed the complaint on behalf of her son (the Student), who attended the Division's XXXX School (the School) during the 2014-2015 school year. The Complainant alleged that the Division discriminated against her son (the Student) on the basis of disability XXXX by:

1. Failing to conduct an Individualized Education Program (IEP) meeting before, on January 13, 2015, transferring him from his XXXX course to a Computer Applications (online) course for reasons related to his disability, which latter course was a more restrictive environment; and
2. Failing to implement his IEP when, in January 2015, it did not provide him with Teaching Assistant services during his first few days in the XXXX Academy.

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, it is subject to the provisions of the above laws and we have jurisdiction over it. Because the Complainant alleged discrimination under these laws, we have jurisdiction over the allegations.

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 agreement.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school systems to provide a free and appropriate public education (FAPE) to students with disabilities. 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 IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

### **Factual Background**

With respect to allegation 1, the numerous Complainant and Division emails submitted by the Complainant indicate that the Division's XXXX School (the School) transferred the Student from his XXXX course to a Computer Applications (online) course for reasons that appear to be related to his XXXX and, perhaps, to his XXXX, as he lacked focus and concentration when working with power tools, resulting in his failure of a safety test. There are no references in these emails to the Division having provided the Student with special education aids or services in connection with this course or to an IEP meeting having been conducted prior to this transfer (although such a meeting was not necessarily required).

Regarding allegation 2, the IEP in effect for the period covered by the allegations (January 2015) provides that the Student is to be provided with special education and related services for his English, Science, Resource Support and Math classes, each of which are to be provided for 50-minute periods five times a week. The Complainant's submissions do not include any evidence of or references to the provision of such services (or "Teaching Assistant" services) during the Student's first few days in the XXXX Academy

## **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed resolution agreement on November 6, 2015 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the agreement are aligned with the allegations, the issues raised by the Complainant and the information discussed above, and are consistent with applicable laws and regulations. OCR will monitor the Division's implementation of the agreement until the Division is in compliance with the statutes and regulations at issue in the case. 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.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact Peter Gelissen, the OCR attorney assigned to this case, at (202) 453-5912 or [peter.gelissen@ed.gov](mailto:peter.gelissen@ed.gov).

Sincerely,

/S/

Dale Rhines

Program Manager

District of Columbia Office

Office for Civil Rights

Enclosure