



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 30, 2016

Dr. Carol S. Fenn  
Superintendent  
Rockingham County Public Schools  
100 Mount Clinton Pike  
Harrisonburg, VA 22802

Re: OCR Complaint No. 11-16-1026  
Letter of Findings

Dear Dr. Fenn:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on October 21, 2015 against Rockingham Public Schools (the District). The Complainant filed the complaint on behalf of two students (Student G and Student C) at XXXX School (the School). The complaint alleges that the District discriminated against the Complainant and Student G and Student C on the basis of disability. Specifically, the complaint alleges that:

1. The District failed to evaluate Student G for a 504 plan although she has asthma and absence seizures; and
2. The District required Student G and Student C to stay home from the School because of bedbugs when other students were permitted to attend the School for several days in September and November, 2015.

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 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.

In reaching a determination, OCR reviewed documents provided by the District and interviewed the Complainant.

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After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation as to allegation 1, which the District agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support allegation 2.

OCR's findings and conclusions are discussed below.

### **Background**

Student G and Student C enrolled in the School in August 2014. Complainant is the Students' parent. Student C was a student with a disability and had an Individualized Educational Program (IEP) in place while at the School. Complainant first informed the School of Student G's asthma and seizures in 2015.

### **Allegation 1**

The Complainant alleged the District failed to evaluate Student G for a 504 plan although she has asthma and absence seizures.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Virginia state regulations generally require that all evaluations and decisions about eligibility be completed within 65 business days of the receipt of the referral by the special education administrator or designee (8VAC20-81-60(b)(1)(g)).

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that

information obtained from all such sources is documented and carefully considered; 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; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

To determine whether a health care plan satisfies a school district’s obligations to provide a Free and Appropriate Public Education (FAPE) under Section 504, OCR examines whether the school district complied with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards. The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents’ right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

#### Analysis

The District provided that Student G’s parent first informed the School that Student G had asthma and required an inhaler on August 25, 2015. In response, the District put in place a “health care plan for Asthma” for Student G dated August 25, 2015. On September 11, 2015, the School nurse’s notes indicate Student G’s parent informed the School that she also suffered from absence seizures, migraine headaches, and XXXX. On September 30, 2015, the District documented it received a report from Student G’s medical provider that required monitoring for symptoms of seizures but not any treatments to be performed at School. The District stated it did not evaluate Student G at this time because “...it had no indication from [Student G] during any School day that seizures or migraine headaches were affecting her ability to function during the School day in any way.”

**Comment [WS1]:** R DRR response p 44

The District produced a letter from Student G’s medical provider dated March 10, 2016, which recommended the development of a “504 plan” for Student G and included several specific recommendations including academic modifications, classroom accommodations, and in-school treatment in the event of headaches. The District stated that in response to the letter, the School Principal informed Complainant that the process to consider a 504 plan, pursuant to the District’s § 504 Handbook, begins with a Student Study Meeting led by a Student Study Committee. The Student Study Committee meeting was held on March 17, 2016. The District stated the meeting “...consisted of a review of all available information relating to the student and her migraine headaches, including medical documentation relating to the migraine headaches; input from teachers, parents, and members of the Student Study Committee; and relevant historical information; and otherwise as prescribed in the Division’s § 504 Handbook.” The meeting resulted in the creation of another health plan for Student G that included some but not all of her medical provider’s recommendations.

**Comment [WS2]:** p. 58

Once the District had information from parents and confirmation from Student G’s medical provider on September 30, 2015 that Student G had and was at risk of further seizures, it had a duty to evaluate the Student pursuant to Section 504 to determine her placement and assure her access to a FAPE. The District failed to do so in a timely manner.

While it appears the Student Study Meeting on March 17, 2016 included persons knowledgeable about the Student and considered information from various sources, the process did not include a system of procedural safeguards that included notice, an impartial hearing with an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents’ right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing. Therefore, the Student Study Meeting in March did not comply with the Section 504 requirement to provide parents with procedural safeguards in the evaluation process.

Since the District failed to timely evaluate Student G after having notice of her seizures in September, 2015, and failed to provide procedural safeguards related to the Student Study Meeting in March, 2016, OCR finds sufficient evidence the District violated Section 504.

## **Allegation 2**

The Complainant alleges the District required Student G and Student C to stay home from the School because of bedbugs when other students were permitted to attend the School for several days in September and November, 2015.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District’s programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the District treated the Students less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

### Analysis

#### *Prima facie case of discrimination*

The District stated it first learned the Students had bed bugs on August 26, 2015. Bed bugs were found on Student C, and Student G reported they had bed bugs all over their home. The District

stated it immediately began a common-sense approach to maintain student safety and health, including the implementation of “bug checks” each morning for potentially infected students. The District stated that of the approximately 18 students who were identified as potentially infected with bed bugs from August through December, 2015, only 4 students, Student C, Student G, and 2 students from another family, were found to be infected and offered alternative education arrangements due to bed bugs. The District stated the 2 students from the other family were students with disabilities.

For a prima facie determination of different treatment, OCR looks at whether the Students were treated less favorably than similarly-situated students without disabilities. Since the other 2 students found to have bed bugs and offered alternative educational arrangements were also children with disabilities, OCR does not have a comparator group to determine whether there was different treatment.

*Legitimate, non-discriminatory reasons*

Next, OCR considers whether the District had a legitimate, non-discriminatory reason for excluding the Students from attending the School. The District has proffered that it took a common sense approach to addressing the bed bugs at the school in the interest of the health and safety of all students, to contain and prevent the spread of bed bugs. Since bed bugs can spread from person-to-person, the District determined that the best way to achieve its goal was to exclude Students with live bugs on their person and an on-going infestation in their homes until the infestation was abated. The District provided the School nurse’s log documenting that bed bugs were found on the Students. The Complainant does not dispute the Students had bed bugs. OCR finds the District’s reason for excluding the Students legitimate and non-discriminatory.

*Pretext*

It is undisputed the Students had bed bugs. The District stated it took a common-sense approach to the issue at the outset while it gained more information about bed bugs. Thereafter, the District published a formal, written administrative directive that outlined the procedures the Division would observe and implement upon the presence or suspected presence of bed bugs. The directive stated that any infected students would be placed “in a safe and private location away from others immediately, continuing the student’s educational program in the interim as much as possible in the safe and private location” until the student is “permitted to return to school after confirmation of appropriate treatment has occurred”. The evidence indicates the District acted in accordance with this directive. There is no evidence the District’s proffered reason for excluding the Students from the School while they had bed bugs was pretext or an excuse. OCR contacted the Complainant for her rebuttal to the District’s position, but did not receive a response from the Complainant.

Therefore, OCR finds insufficient evidence the District discriminated against the Students on the basis of disability when it excluded them from the School while they had bed bugs.

### Conclusion

On September 30, 2016, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the District on September 30, 2016, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 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 District 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.

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We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Sheena Wadhawan, the OCR attorney assigned to this complaint, at 202-453-6664 or Sheena.Wadhawan@ed.gov.

Sincerely,

/S/  
Michael Hing  
Supervisory Attorney, Team 1  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXX  
*Via Electronic Mail to shand@rockingham.k12.va.us*