



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

October 2, 2019

Dr. Jeffrey Maples, Superintendent
Richmond County Schools
118 Vance Street
Hamlet, North Carolina 28345

Re: OCR Complaint No. 11-16-1270
Letter of Findings/Resolution Letter

Dear Dr. Maples:

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 March 30, 2016 against Richmond County Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) who attended XXXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged the following:

1. XXXXX; and
2. XXXXX.

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.

During the investigation, OCR reviewed documents provided by the Complainant and the District; and interviewed the Complainant.

Before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them

because OCR’s investigation has identified issues that can be addressed through a resolution agreement.

OCR completed its investigation of Allegation 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant’s allegation.

OCR’s findings and conclusions regarding Allegation 2 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegation 1.

Facts

XXXXX

Allegation 1: XXXXX.

Legal Standard

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.

Analysis

XXXXX.

Allegation 2: XXXXX

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student’s disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student’s disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student’s disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student’s current educational placement.

Analysis

XXXXX

Conclusion

On September 18, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address Allegation 1. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to train all instructional staff and administrators, including but not limited to school counselors, at all middle schools in the District on the District's Section 504 policies and procedures and the requirements of Section 504 and Title II. Additionally, it requires the District to convene a group of persons knowledgeable about the Student, making all reasonable efforts to include the parent/guardian, to discuss the provision of compensatory and/or remedial services to the Student for the time period the Student did not receive appropriate regular and/or special education or related services, from March 2015 to April 2016.

Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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.

The Complainant has a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>) or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the District. The District has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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, assists, or participates in a proceeding under a law enforced by OCR. 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 District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Jennifer Barmon, the OCR attorney assigned to this complaint, at (202) 453-6751 or Jennifer.barmon@ed.gov.

Sincerely,

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dennis Quick, Associate Superintendent