



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

August 21, 2019

Dr. David Jeck
Superintendent
Fauquier County Public Schools
320 Hospital Drive, Suite 40
Warrenton, Virginia 20186

RE: OCR Complaint No. 11-16-1385
Resolution Letter

Dear Dr. Jeck:

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 June 7, 2016, against Fauquier County Public Schools (the Division). The Complainant filed the complaint on behalf of her son (the Student), who attended XXXXX (the School) during the XXXXX School year. The Complainant alleges that, in XXXXX, the Division discriminated against the Student on the basis of disability XXXXX by failing or refusing to grant him an XXXXX based, in part, on his 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 Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to the above laws.

During the investigation to date, OCR reviewed information provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegation 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 Division 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. The following is a summary of the evidence obtained by OCR during the investigation to date.

The regulation implementing Title II at 28 C.F.R. §35.130(b)(7)(i) provides that districts must reasonably modify policies, practices, and procedures when necessary to avoid discrimination

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

against individuals with disabilities, unless the district can show that doing so would constitute a fundamental alteration to the service, program, or activity. Furthermore, the regulation implementing Section 504 at 34 C.F.R. §104(b)(1)(ii)-(iii) and (vii) provide that districts can't otherwise limit or impede individuals with disabilities from enjoyment of any benefits and opportunities enjoyed by nondisabled individuals.

The Student was enrolled in XXXXX at the School during the XXXXX school year. The School has an XXXXX policy that students who maintain XXXXX. The Division has a "block" schedule, which means that students complete an entire course in one semester. At the end of the XXXXX semester, the Student had a grade of B in Latin I and had been XXXXX over the course of the semester.

On XXXXX, the Complainant contacted staff at the School via email, including the Principal, to request a XXXXX. She believed that the Student XXXXX. The Division informed OCR that the Principal contacted the Complainant by phone the same day and denied the request because XXXXX. In a letter to the Principal dated XXXXX, the Complainant made the same request and wrote: XXXXX. The Division stated that the Principal again contacted the Complainant by phone and denied the XXXXX.

OCR reviewed contemporaneous documentation provided to the School dated XXXXX. One of the notes also states this was a XXXXX. OCR reviewed an addendum developed by the Student's IEP Team that recognized that the Student had XXXXX. Based on these facts, OCR has concerns that the Principal did not XXXXX to prevent the Student from being denied a benefit that was available to other students.

On XXXXX, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. 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 Division to send a memo to administrators and instructional staff at all Division high schools XXXXX, and to provide Section 504 and Title II training for all administrators at the Division's high schools. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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, 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact XXXXX, the OCR attorney assigned to this complaint, at XXXXX.

Sincerely,

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

Enclosure

cc: Nicole Cheuk, Esquire