



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

March 8, 2017

Dr. Freddie Williamson
Superintendent
Hoke County Schools
310 Wooley Street
Raeford, NC 28376

RE: OCR Complaint No. 11-16-1828
Letter of Findings and Resolution

Dear Dr. Williamson:

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 XXXX against Hoke County Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) attempting to enroll at XXXX (the School). The complaint alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the District denied the Student a free and appropriate public education (FAPE) when it refused to allow the Student to attend classes at the School pending the District's evaluation of the Student from XXXX until XXXX when the Student began attending a school in a different district.

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.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation. OCR also identified an additional concern in the course of investigating the complaint. The District stipulated to the violation and agreed to resolve the identified violations through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

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

Factual Background

The Student was entering XXXX in the XXXX school year. XXXX SENTENCE REDACTED XXXX. Prior to attempting to attend the School in the XXXX school year, the Student attended XXXX and XXXX in the District.

The District provided OCR a copy of a notification form dated XXXX notifying the District that the Student was diagnosed with XXXX. Between XXXX, the District evaluated the Student for eligibility for special education services. The Summary of Evaluation/Eligibility Worksheet noted the Student had medical diagnoses of XXXX. The District found the Student ineligible for special education and related services on or about XXXX.

XXXX 4 PARAGRAPHS REDACTED XXXX.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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. 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 a FAPE to the same extent required under the Section 504 regulation.

Analysis

Denial of FAPE

The Complainant alleged that School staff told her they would need to have a meeting about the Student before he could attend the School, and that nobody from the District communicated with her again until XXXX. Internal emails between District staff, as described above, corroborate this and demonstrate that the District did not offer any interim arrangements so that the Student could receive an education until the meeting could occur. As such, OCR finds sufficient evidence the District violated Section 504 when it denied the Student the ability to attend the School, because of his disability, from the beginning of the school year until at least XXXX.

Initial Eligibility Decision

The documentation the District provided to OCR also raised concerns about the District's initial decision finding the Student ineligible for special education and related services despite having evidence the Student XXXX.

The District considered the Student for eligibility for an Individualized Education Program (IEP) for "other health impairment" in XXXX. North Carolina policies governing services for students with disabilities provide that in order to be determined eligible in the disability category of "other health impairment", the student must have a chronic or acute health problem that results in

limited strength, vitality, or alertness¹. Internal emails indicate that the District did not find the Student eligible for an IEP because XXXX. After finding the Student ineligible for an IEP for “other health impairment”, the District was still required to evaluate the Student for services under Section 504, but did not do so.

The District has agreed to stipulate that certain District staff members, including the XXXX, did not comply with Section 504 when they failed to evaluate the Student for services under Section 504 despite having found him ineligible for an IEP in the category of “other health impairment”.

Pursuant to Section 303(b) of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on March 6, 2017, which, when fully implemented, will resolve this issue.

Conclusion

On March 6, 2017, 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 March 6, 2017, 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.

¹ North Carolina Policies Governing Services for Students with Disabilities 1503-2.5.

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, 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
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Nickolas J. Sojka, Jr., Counsel for the District
Via electronic mail to: nsojka@williamsondean.com