



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

XXXX

David O. White
Superintendent
King William County Public Schools
18548 King William Road
King William, Virginia 23086

RE: OCR Complaint No. 11-17-1038
Resolution Letter

Dear Dr. White:

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 King William County Public Schools (the Division). The Complainant filed the complaint on behalf of her daughter, a student (the Student) at XXXX. The complaint alleged:

1. Since XXXX, the Division failed to implement the Student's Individualized Education Program (IEP) provisions for (i) audio versions of XXXX, XXXX, and XXXX texts; and (ii) daily teachers' initials on the Student's agenda entries at the end of classes.
2. The Division retaliated against the Complainant for retaining an advocate to help her secure an IEP for the Student when Division staff required the Complainant's written consent before exchanging information with her advocate via email, despite the advocate having attended XXXX meetings with the Complainant in XXXX and XXXX.¹

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. Additionally, the laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under

¹ Allegation 2 originally stated: "XXXX." OCR revised Allegation 2 during the course of its investigation.

these laws. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Legal Standards

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

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation. When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the school district took an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the school district has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the school district's reason for its action is a pretext, or excuse, for unlawful retaliation.

Background and Information Obtained During the Investigation

This complaint concerns alleged discrimination and retaliation that occurred in connection with the development and early implementation of the Student's IEP at the beginning of the XXXX school year, when the Student was enrolled in the XXXX grade at XXXX (the School). Particularly, the Complainant alleges that the Division retaliated against her for retaining a special education advocate (the Advocate) during that time period, and also that Division staff failed to implement two provisions of the Student's IEP after it was signed on XXXX.

During its investigation, OCR reviewed documents and information provided by the Complainant and the Division. With respect to Allegation 1(i), that the Division failed to

implement the provision requiring the Division to provide the Student with audio texts in XXXX, XXXX, and XXXX, OCR reviewed documentation showing that the Complainant signed the Student’s IEP on XXXX following meetings to discuss the IEP in XXXX and XXXX. Additionally, OCR reviewed a number of emails concerning the accommodation concerning audio texts, including: an email from the Advocate to the School Principal dated XXXX, in which the Advocate forwards the Complainant’s concerns that the Student had not received certain accommodations, including audio texts; internal correspondence on XXXX, in which the School’s Special Education Coordinator contacted the XXXX concerning the availability of audio text for XXXX; and a XXXX email from the Special Education Director to the Complainant notifying her that the audio texts were available for the Student for XXXX and XXXX, and that a “reading pen” was available for XXXX.

Allegation 1(ii) states that the Student’s teachers failed to initial the Student’s agenda entries at the end of classes daily. In support of this allegation, the Complainant provided OCR with copies of agenda pages from XXXX to XXXX, some which contain missing entries. The Division argues that the Student inconsistently brought her agenda to class and that, when she did not have her agenda, her teachers remind her to write assignments on an alternative piece of paper and initial the entries daily “when she does so.” The Division also asserts that the teachers do not initial the agenda daily because the IEP requires initials only when the Student’s teachers assign homework or administer quizzes or tests, so they do not initial daily. OCR reviewed the relevant IEP provision, which states, “Teachers will initial [the Student’s] agenda entry at the end of class, after she has completed it (for all homework assignments, quizzes, and tests)” and a long-term goal stating, “By XXXX, given a daily agenda, [the Student] will write XXXX entries per day[], recording due dates for all assignments, projects, quizzes, and tests and have each teacher initial the entry with 90% compliance. ([The Student] will write “none” if no new assignments are given and have the teacher initial it.)”

Allegation 2 states that the Division retaliated against the Complainant for retaining an advocate to help her secure an IEP for the Student when Division staff required the Complainant’s written consent before exchanging information with her advocate via email, despite the advocate having attended XXXX meetings with the Complainant in XXXX and XXXX.

OCR reviewed documentation showing that the Complainant, along with her Advocate, attended meetings with Division staff on XXXX, and XXXX, to review the Student’s eligibility for special education services and develop her IEP. Following the second meeting, the School’s Special Education Coordinator and the Advocate exchanged substantive emails concerning amendments to the Student’s IEP, placement, and additional assessments. The Advocate requested another IEP meeting, which was subsequently noticed for XXXX. On XXXX, the Complainant emailed the Student’s Case Manager, stating that future communications should be in writing “to allow us to share with our advocate.” The Case Manager responded, stating that “all communication will cease until a release of records is signed allowing the school district to include your advocate in communications,” and further stating, “This hold includes our scheduled meeting on XXXX.” Later that day, the Division’s Director of Special Programs emailed the Division’s standard Consent to Exchange Information Form to the Complainant and the Advocate. While the Complainant signed the form on XXXX, the Complainant alleges that

the Division's refusal to communicate with the Advocate without signed consent constituted retaliation.

As stated above, on XXXX, the Division expressed a willingness to resolve the complaint before OCR completed its investigation.

Resolution

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on May 16, 2018 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement. 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, 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 Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryne.Love@ed.gov, or Sandra Gibson, the OCR investigator assigned to this complaint, at 202-453-5913 or Sandra.Gibson@ed.gov.

Sincerely,

/s/

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Bradford A. King, Esq.