



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

*Via U.S. Mail and Email:* jkamras@rvaschools.net

Mr. Jason Kamras  
Superintendent  
Richmond City Public Schools  
301 North Ninth Street  
Richmond, Virginia 23219

Re: OCR Complaint No. 11-17-1051  
Letter of Finding

Dear Mr. Kamras:

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 XXXX against Richmond City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) who attended XXXX (the School). The Complainant alleged that the Division discriminated against the Student on the basis of disability and subjected her (the Complainant) to retaliation.

Specifically, the complaint alleged that:

1. The Division discriminated against the Student on the basis of her disability by:
  - a. Failing to provide the Student with homebound instruction as required by her Individualized Education Program (IEP), from XXXX;
  - b. Failing to provide the Student XXXX services, as required by her IEP, since the XXXX school year; and
  - c. Failing to conduct assessments for and then to provide appropriate and timely transition services, as required by her IEPs, during the XXXX school years.
2. The Division treated the Student differently from students without disabilities by:
  - a. Denying the Student participation in XXXX activities and counseling services routinely provided to other students throughout the XXXX school year;
  - b. Failing to provide the Student sufficient time to prepare for a XXXX test to be administered by XXXX, although the Student only had access to the online course beginning on XXXX; and
  - c. Failing to provide the Student with XXXX.

3. The Division retaliated against the Complainant (XXXX) for her disability-related advocacy on behalf of the Student by:
  - a. XXXX;
  - b. XXXX;
  - c. XXXX; and
  - d. XXXX.

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 Section 504 and Title II. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division, and interviewed the Complainant and Division faculty and staff. After carefully considering all of the information obtained during the investigation, OCR determined that there was sufficient evidence to substantiate a violation of Section 504 and Title II regarding Allegations 1(a) and 1(b), which the Division agreed to resolve through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR’s *Case Processing Manual*. However, OCR determined that there was insufficient evidence to substantiate Allegation 1(c), and Allegations 2 and 3. OCR’s findings and conclusions are discussed below.

### **Background**

During the XXXX school year, the Student was enrolled in the Grade XXXX at the School, XXXX school in the Division, which she had attended since XXXX.<sup>1</sup> During her enrollment in the Division, the Student was eligible to receive special education and related aids services pursuant to an IEP due to her disability (XXXX). In addition, through the XXXX school year, the Complainant was XXXX.<sup>2</sup>

### **Allegation 1: Disability Discrimination**

With respect to Allegation 1, the Complainant alleged that the Division discriminated against the Student on the basis of her disability by: (a) failing to provide the Student with homebound instruction as required by her IEP, from XXXX until XXXX; (b) failing to provide the Student XXXX services, as required by her IEP, since XXXX school year; and (c) failing to conduct

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<sup>1</sup> XXXX 2 SENTENCES REDACTED XXXX.

<sup>2</sup> XXXX SENTENCE REDACTED XXXX.

assessments for and then to provide appropriate and timely transition services, as required by her IEPs, during the XXXX and XXXX school years.

### Legal Standard

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.

### Allegation 1(a)

Regarding Allegation 1(a), the Complainant alleged that the Division discriminated against the Student on the basis of her disability by failing to provide the Student with homebound instruction as required by her IEP from XXXX until XXXX.<sup>3</sup>

The Division approved the Student to receive homebound instruction on XXXX, based on certification from XXXX. The Student was to receive XXXX hours a week of home instruction from XXXX through XXXX. Homebound instruction logs demonstrate that the Division did not begin to provide the Student with the required homebound instruction until XXXX for core academic classes. The Division provided multiple explanations for the delay. XXXX 3 SENTENCES REDACTED XXXX. Finally, the Division stated that the Student was compensated for the time missed when the Division extended the provision of homebound instruction from XXXX through XXXX.

The lack of availability of a homebound instructor does not absolve the Division of its obligations to provide services pursuant to the Student's IEP. Based on the approved homebound application forms, the Division was to provide XXXX hours of home instruction each of the XXXX weeks, excluding XXXX, preceding the date services began. Email correspondence confirms that the Complainant corresponded with the initial homebound instructor on XXXX, in order to coordinate the delivery of services; therefore, the evidence does not indicate that the Complainant's actions prevented the provision of homebound instruction as asserted by the Division.

Although the Division extended the provision of homebound instruction for XXXX additional weeks beyond the termination date, as noted on the homebound instruction forms, the Division concluded services XXXX. The Student did not return to the school setting as of XXXX; instead, homebound services continued in lieu of the regular school day. From XXXX through

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<sup>3</sup> The complaint alleged that the Division did not provide the Student with homebound instruction until XXXX; however, OCR learned that services actually commenced later, on XXXX.

XXXX, the Student did not receive extra homebound services in addition to those that substituted for her regular school day.<sup>4</sup> The Division provided no documentation regarding its decision to extend services; for instance, no changes were made to the homebound approval forms or to the termination date listed in the Student's IEP.

Based on the above, OCR determined that the extension of homebound instruction from XXXX through XXXX, was not designed to compensate for the missed homebound instruction that was to have been provided between XXXX and XXXX; rather, the extension constituted a continuation of regular instruction provided in the homebound setting. Therefore, OCR determined that the Division failed to properly evaluate the Student to determine what compensatory education, if any, was required based on its initial failure to provide homebound instruction from XXXX through XXXX. As such, OCR determined that there was sufficient evidence to substantiate that the Division violated Section 504 and Title II, when it failed to provide the Student with the required homebound instruction from XXXX through XXXX.

Moreover, during the course of OCR's investigation, OCR determined that the Division failed to convene an IEP meeting to discuss the services necessary for the Student to receive FAPE while receiving instruction in the homebound setting during the XXXX school year. As discussed below with respect to Allegation 1(b), the Student did not receive XXXX services during the period of homebound instruction. In addition, the homebound instructor told OCR in an interview that she did not receive a copy of the Student's IEP. Based on multiple interviews with Division staff and documentation submitted by the Division, OCR also determined that the Division did not provide special education and/or related aids and services to the Student while she received homebound services during the XXXX school year, in violation of Section 504 and Title II.

As stated above, the Division agreed to resolve the violations identified with respect to Allegation 1(a) through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*.

#### Allegation 1(b)

With respect to Allegation 1(b), the Complainant alleged that the Division discriminated against the Student on the basis of her disability, by failing to provide the Student with XXXX services, as required by her IEP, since the beginning of the XXXX school year.

The Student's IEP that was effective at the time stated that the Student was required to receive XXXX therapy each month. The Division acknowledged that the Student did not receive XXXX services beyond XXXX during the XXXX school year, and a XXXX therapist was not provided to the Student for the XXXX school year until XXXX.

As stated above, the Division acknowledged that it failed to provide the Student with the required XXXX services from XXXX until XXXX. According to the Division, the XXXX who provided services to the Student during the XXXX school year was under the impression that the Student was absent from the School beginning XXXX; however, this was not supported by the

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<sup>4</sup> XXXX SENTENCE REDACTED XXXX.

Student's attendance records. The Division also did not provide XXXX services during the period the Student was XXXX. According to the Division, the Student's parents told the case manager and XXXX therapist that they did not want the Student to receive services during the XXXX. However, the Complainant denied the Division's assertions, and the Division was unable to provide OCR with documentation to support its position.

Further, the Division attributes the failure to provide these services in the XXXX school year on a staffing shortage. OCR notes that a staffing shortage does not excuse the Division from its obligation to provide the Student, or any student, with required special education and/or related aids and services. The Division further explained that it had scheduled to provide XXXX hours of compensatory XXXX services for the Student by the end of the XXXX school year. The Division noted to OCR its intent to provide XXXX hours of compensatory XXXX services to the Student; however, the Division appears to have miscalculated the number of hours of missed services for the XXXX school year. The Division initiated XXXX services on XXXX, and provided XXXX of XXXX minutes of service; the Division asserted that it did not have to provide the remaining XXXX minutes of service for the month of XXXX because the Division was closed XXXX. However, initiating services in the middle of the month before a school vacation does not absolve the Division of responsibility to provide the full amount of services required for the month by the Student's IEP, particularly given that school was in session for XXXX (the day on which the Student was scheduled to receive services) during the month of XXXX. As a result, the Division's calculation of owing XXXX minutes of "make up" services is short by XXXX minutes. Moreover, the Division did not meet to discuss whether the Student had regressed or otherwise needed different or additional services as a result of the XXXX delay in initiating services during the XXXX school year. The Division also failed to evaluate what compensatory XXXX services were due based on the lack of services from XXXX until the first XXXX. As such, OCR finds sufficient evidence the Division violated Title II and Section 504 when it failed to provide XXXX services from XXXX until XXXX, during the XXXX and XXXX school years.

As stated above, the Division agreed to resolve this allegation through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*.

#### Allegation 1(c)

Regarding Allegation 1(c), the Complainant alleged that the Division discriminated against the Student on the basis of her disability by failing to conduct assessments for, and then to provide, appropriate and timely transition services, as required by her IEPs, during the XXXX and XXXX school years.

XXXX PARAGRAPH REDACTED XXXX.<sup>5</sup>

OCR's investigation determined that, in accordance with the Student's IEP, the Division did administer the XXXX program on XXXX occasions during XXXX and XXXX school years to assess her interests, assisted the student in applying to the XXXX, invited the Student to the

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<sup>5</sup> As a result of the involvement of the community agency, the Division did not directly support this daily living skills goal.

XXXX. Division personnel also asserted that the Student received the required services toward increasing daily living skills through the outside agency, in accordance with her IEP. OCR also did not find any evidence to indicate that such services were not provided.

Therefore, based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division failed to provide the Student with appropriate transition services as required by the Student's IEP. Accordingly, OCR will take no further action regarding Allegation 1(c).

### **Allegation 2: Different Treatment on the Basis of Disability**

Regarding Allegation 2, the Complainant alleged that the Division treated the Student differently from students without disabilities by: (a) denying the Student participation in XXXX related activities and XXXX services routinely provided to other students throughout the XXXX school year; (b) failing to provide the Student sufficient time to prepare for XXXX test to be administered by XXXX, although the Student only had access to the online course beginning on XXXX; and (c) failing to provide the Student with XXXX.

### **Legal Standards**

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 Division'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 Division treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the Division had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the Division is a pretext, or excuse, for unlawful discrimination.

### **Allegation 2(a)**

With respect to Allegation 2(a), the Complainant alleged that the Division treated the Student differently from students without disabilities by denying the Student participation in XXXX related activities and XXXX services routinely provided to other students at the School throughout the XXXX school year.

XXXX 3 PARAGRAPHS REDACTED XXXX

Therefore, based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division denied the Student participation in XXXX related activities and XXXX services routinely provided to other students, or otherwise treated the Student differently from students without disabilities throughout the XXXX school year. Accordingly, OCR will take no further action regarding Allegation 2(a).

Allegations 2(b) and 2(c)

Regarding Allegations 2(b) and 2(c), the Complainant alleged that the Division treated the Student differently from students without disabilities by: failing to provide the Student sufficient time to prepare for XXXX test to be administered by XXXX, although the Student only had access to the online course beginning on XXXX; and failing to provide the Student with XXXX.

XXXX 3 PARAGRAPHS REDACTED XXXX

Based on the foregoing, OCR determined that there was insufficient evidence to demonstrate that the Division discriminated against the Student on the basis of her disability as alleged. Specifically, despite any delay in providing the Student's homebound instructors with XXXX, OCR determined that the Student did not seek to access the online course until XXXX.

Further, the Division provided evidence that the course was self-paced and that other students had enrolled in courses at different times through the academic year. The Student's only constraint for completing the course was the administration of the XXXX, from which the Division ultimately excused her. Accordingly, OCR will take no further actions regarding Allegations 2(b) and 2(c).

**Allegation 3: Retaliation**

The Complainant alleged that the Division retaliated against her (XXXX) for her disability-related advocacy on behalf of the Student by: (a) XXXX; (b) XXXX; (c) XXXX; and (d) XXXX.

Legal Standards

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 consider: 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 recipient 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 recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

Analysis

The Complainant advocated on the Student’s behalf throughout the XXXX school year, including through a disability-related complaint against the Division with the XXXX. Therefore, OCR determined that the Complainant engaged in a protected activity of which the Division was aware. Next, OCR considered whether the Division took adverse actions against the Complainant.

Allegation 3(a) and 3(b)

With respect to Allegations 3(a) and 3(b), the Complainant alleged that the Division retaliated by: XXXX; and XXXX.

XXXX PARAGRAPH REDACTED XXXX

XXXX 3 SENTENCES REDACTED XXXX. Based on the foregoing, namely that the Division XXXX, OCR determined that there was insufficient evidence to substantiate that the Complainant was XXXX, as she alleged. Therefore, OCR determined that there was insufficient evidence that the Division took an adverse action against the Complainant. In the absence of an adverse action, OCR will not continue with its retaliation analysis. Accordingly, OCR will take no further action regarding Allegation 3(b).

Allegation 3(c)

Regarding Allegation 3(c), the Complainant alleged that the Division retaliated by XXXX. XXXX 2 SENTENCES REDACTED XXXX

XXXX 2 PARAGRAPHS REDACTED XXXX

XXXX 3 SENTENCES REDACTED XXXX. Therefore, OCR determined that there was insufficient evidence to substantiate that the Division retaliated against the Complainant as alleged. Accordingly, OCR will take no further action regarding Allegation 3(c).

Allegation 3(d)

With respect to Allegation 3(d), the Complainant alleged that the Division retaliated when it XXXX. XXXX SENTENCE REDACTED XXXX.

XXXX SENTENCE REDACTED XXXX

XXXX 2 PARAGRAPHS REDACTED XXXX



Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Division's stated legitimate non-retaliatory reason for XXXX. XXXX SENTENCE REDACTED XXXX. Therefore, OCR determined that there was insufficient evidence to substantiate that the Division retaliated against the Complainant as alleged. Accordingly, OCR will take no further action regarding Allegation 3(d).

### **Conclusion**

On February 21, 2018, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance as discussed in Allegations 1(a) and 1(b). Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the Division'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 Division 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 Division on February 21, 2018, if the Division 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 Division 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 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 regarding this letter, please contact Amy Williams or Dwayne Bensing, the OCR attorneys assigned to this complaint, at [Amy.Williams2@ed.gov](mailto:Amy.Williams2@ed.gov) or 202-453-5933 and [Dwayne.Bensing@ed.gov](mailto:Dwayne.Bensing@ed.gov) or 202-453-6910.

Sincerely,

/s/

Letisha Morgan  
Team Leader, Team II  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Nicole M. Thompson, Esq., via email  
Associate Attorney  
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