



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

June 1, 2017

Via email to Bert.LHomme@dpsnc.net

Dr. Bert L'Homme
Superintendent
Durham Public Schools
P.O. Box 30002
Durham, North Carolina 27702

Re: OCR Complaint No. 11-17-1196
Resolution Letter

Dear Dr. L'Homme:

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 Durham Public School District (the District). The Complainant filed on behalf of a student (the Student) who attended XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the District failed to provide the Student with a free appropriate public education (FAPE) when the District failed to evaluate the Student after receiving notice on XXXX that the Complainant believed that the Student was in need of services under Section 504.

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.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Background

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

The Student is currently in Grade XXXX and attends XXXX. XXXX 2 SENTENCES REDACTED XXXX.

While attending XXXX for Grade XXXX, the Student was found eligible for special education services based on diagnoses of XXXX. His 504 team created a Section 504 plan at an eligibility meeting held on XXXX. The accommodations decided upon during this meeting included XXXX.

On XXXX, the Complainant emailed a counselor at the School (the Counselor) asking if the Student's 504 plan had arrived from the school he attended for the XXXX school year, XXXX. At that time, the Complainant also requested a 504 team meeting to discuss the plan. The Complainant spoke with an EC teacher regarding the Student's 504 plan on XXXX, and was directed to the Counselor by the EC Facilitator. On XXXX, the Assistant Principal of the school stated in an email to the EC Facilitator and the Counselor, among other District staff, that the Complainant told him that the Student previously had a 504 plan but that it was not currently in effect. XXXX SENTENCE REDACTED XXXX.¹

In the District's data response, it acknowledged that it discovered the Student had been given a Section 504 plan while enrolled in the District in XXXX. The District also provided that the Student XXXX. The District also acknowledged that it did not find evidence that a Section 504 Team meeting was held in response to the Complainant's request and that a Section 504 plan for the Student was not in effect.

Analysis

Based on the above information, OCR has concerns that the District failed to convene a 504 team meeting following the Complainant's request and despite awareness that the Student had previously been evaluated and determined 504-eligible while enrolled in the District. The Complainant requested that a 504 meeting be held on more than one occasion to multiple members of District staff, but the Division asserted that it had no evidence that a 504 team meeting, with or without the Complainant's presence, was held following the Complainant's requests.

Additionally, OCR has concerns that the District failed to implement the Student's plan that the District had previously developed and implemented. As stated above, the District was aware that the Student had previously had 504 Plan in place in the District. The Assistant Principal, in an email on XXXX, confirmed that the District was aware that the Student had previously had a 504 plan and that it was not in effect at that time.

As part of OCR's investigation, OCR had scheduled interviews with the EC Facilitator and counselor who responded to the Complainant's emails regarding 504 services to corroborate the information exchanged in emails and inquire about additional actions not recorded in the email communications. Further, OCR intended to review additional information to determine what, if

¹ XXXX SENTENCE REDACTED XXXX.

any, communication had occurred between School staff and the Student's XXXX regarding the Student's 504 plan.

Prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On May 31, 2017, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the District has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary determine whether the University has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings 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 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.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on May 31, 2017 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. 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 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, 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.

If you have any questions, please contact Megan Ballard, the OCR attorney assigned to this complaint, at 202-453-6739 or Megan.Ballard@ed.gov.

Sincerely,

/s/

Dale Rhines
Acting Team Leader, Team V
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Elizabeth V. J. Shearer, M.Ed
Executive Director, Student Support Services