



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 24, 2019

Dr. Craig Witherspoon
Superintendent
1616 Richland Street
Columbia, South Carolina 29201

RE: OCR Complaint No. 11-17-1205
Resolution Letter

Dear Dr. Witherspoon:

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 January 23, 2017, against Richland County School District One (the District). The Student alleges that the District discriminated against her on the basis of disability when it failed to evaluate her for special education and related aids and services following 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 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.

During the investigation, OCR interviewed the Student and reviewed documents provided by the Student and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on March 21, 2019. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the 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.

During the 2016-2017 school year, the Student was enrolled in XXXX (the School). Contemporaneous documentation indicates that on numerous occasions in the XXXX, the Student's classmates and teachers observed and reported to School administrators that the Student XXXX. In response, School personnel engaged the School's XXXX. School administrators XXXX placed the Student on temporary homebound services XXXX.

XXXX. Separately, the School Social Worker recommended that a Response to Intervention (RTI) Team (including XXXX) meet to consider whether the Student needed homebound services, and if not, to develop a system for XXXX. In the interim, on XXXX, School personnel met with the Student's mother to develop a XXXX system with guidance staff to ensure XXXX. Following the meeting, the Student returned, utilizing the XXXX system, as well as a XXXX.

The School convened the RTI Team meeting on XXXX, including the Student, her mother, teachers, and administrators, to discuss the Student's XXXX and the supportive services being provided to her. Documentation from the meeting states that the Student had XXXX¹. Meeting notes also indicate that the consensus of the RTI Team was that the Student continue XXXX, and that the Student continue to XXXX.

The Student's XXXX continued to occur. On XXXX, the Student told the School Social Worker XXXX. She reported, in part, that XXXX. The Guidance Counselor XXXX.

Later XXXX, the Student was hospitalized, and was discharged XXXX. On XXXX, the Social Worker confirmed XXXX in an email to other School staff. The Student asserts that she was diagnosed with XXXX and informed the School upon her return. The District states that School personnel were not aware of the Student's XXXX diagnosis and otherwise had no reason to suspect that the Student had a disability. Accordingly, while the RTI Team's recommended supports remained in place, the District did not evaluate the Student for special education or related services at any point during the XXXX.

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. The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

Based on the above, OCR has concerns that the District's knowledge of the Student's XXXX behavior in XXXX triggered an obligation to evaluate the Student for special education or related services. On June 19, 2019, the District 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 District to provide mandatory training to School administrators and staff on the requirements of Section 504 and Title II. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

¹ XXXX.

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.

We appreciate the District's cooperation in the resolution of this complaint. 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 Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.Love@ed.gov.

Sincerely,

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

Enclosure

cc: Tiffany Butler, Esq. (by email)