



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

Dr. Aaron Spence
Superintendent
Virginia Beach City Public Schools
P.O. Box 6038
Virginia Beach, Virginia 23456-0038

RE: OCR Complaint No. 11-17-1254
Resolution Letter

Dear Dr. Spence:

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 Virginia Beach City Public Schools (the District). The Complainant filed the complaint on behalf of her son, a student (the Student) at XXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability during the XXXX year when it failed to evaluate the Student for special education or related services 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.

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.

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. § 104.35(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.

Factual Background

During the XXXX academic year, the Student was enrolled in the XXXX grade at XXXX school within the District. On or about XXXX. XXXX 3 SENTENCES REDACTED XXXX. The District determined on XXXX that the Student was eligible for special education services based on XXXX as a primary disability and a Specific Learning Disability in XXXX as a secondary disability, and subsequently developed an Individualized Education Program (IEP) for the Student. In an interview, the Complainant informed OCR that the District did not formulate the Student's IEP timely so that the Student could XXXX. While the record contains the Student's IEP bearing the Complainant's signature on XXXX, it is unclear when the Student XXXX and on what date that the Student began receiving services in accordance with the IEP.

The Complainant asserts that School officials were aware long before XXXX that the Student had XXXX but had refused to evaluate him for special education or related services despite multiple requests. According to the Complainant, the District had previously XXXX. XXXX SENTENCE REDACTED XXXX. Among other conditions XXXX, the Student was not permitted to XXXX. He was not permitted to receive after-school tutoring, despite performing poorly in XXXX and requesting tutoring.

The Complainant informed OCR that she had requested special education or related services for the Student on multiple occasions at the School and School 2, including on or around XXXX, when the District informed her that the Student XXXX.

Information Obtained During the Investigation

During the investigation, OCR interviewed the Complainant and Student and reviewed documents provided by the Complainant and the District. Among other documents, OCR reviewed the Student's education records, which contain several historic documents identifying

the Student's XXXX issues and recommending an evaluation of the Student. XXXX 3 SENTENCES REDACTED XXXX.

XXXX PARAGRAPH REDACTED XXXX

OCR also reviewed documentation compiled in XXXX in which the Student's teachers describe the XXXX difficulties that the Student experienced in the school environment. XXXX SENTENCE REDACTED XXXX

Based on the information gathered during the investigation, OCR has concerns that the District knew or should have known that the Student had a disability and that its failure to evaluate him for special education or related services may have denied him FAPE for the XXXX academic year. Before OCR completed its investigation, the District expressed on XXXX a willingness to resolve the complaint by agreement.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on January 16, 2018 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.

We appreciate the District'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.

Sincerely,

/s/

Ralph A. Suris, Chief Attorney
Acting Team Leader, Team V
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Danielle Hall-McIvor, Esq. (via email)