



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

August 31, 2017

Tim Kinlaw
Interim Superintendent
Cumberland County Public Schools
2465 Gillespie Street
Fayetteville, NC 28306

Re: OCR Complaint No. 11-17-1268
Resolution Letter

Dear Mr. Kinlaw:

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, filed against the Cumberland County Public School District (the District), XXXX (the School). The Complainant alleged that the School discriminated against her on the basis of her disability, by: not permitting her to use an accessible ramp to gain access to the School building on or about XXXX (Allegation 1); and, informing her that her children could not accompany her on the accessible ramp, beginning on or around XXXX through the end of the XXXX school year (Allegation 2).

Jurisdiction

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 education institution, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In its investigation, OCR reviewed information and documentation submitted by the Complainant and the District. During the course of its investigation, the District expressed willingness to resolve this complaint prior to the conclusion of OCR's investigation, pursuant to Section 302 of OCR's *Case Processing Manual*.

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.

During school year XXXX, the Complainant had XXXX children enrolled in the School; XXXX. The Complainant informed OCR that she has been diagnosed with XXXX.

With respect to Allegation 1, the Complainant alleged that on XXXX, she attempted to access a ramp near the entrance to the School while bringing her children to the School in the morning (morning drop-off). However, the Complainant explained that a School staff member prevented her from using the ramp because she had not provided documentation of a disability that enabled her to use the ramp. Thereafter, the Complainant stated that on XXXX, she provided the District's Board of Education with documentation of her disability.

Regarding Allegation 2, the Complainant alleged that the District informed her that her children could not accompany her on the accessible ramp, beginning on or around XXXX through the end of the XXXX school year. The Complainant explained that after submitting documentation of her disability on XXXX, on that same date, she received a letter from the School's Principal informing her that she was able to use the ramp during the morning drop-off and afternoon pick-up periods, but that because her children were not identified as having disabilities, they would be required to use their designated crosswalk beginning the next school day (XXXX). The Complainant asserted that the District first denied her access to the accessible ramp, and that subsequently, in order to use the accessible ramp, she would therefore have to leave her children unattended while using the designated crosswalk, which she deemed to be unsafe and discriminatory.

In response to the Complainant's allegations, the District informed OCR that the transportation of students to and from the School varies, as some students ride a bus to school; parents drive other students; and some students walk. The District informed OCR that prior to XXXX, the Complainant walked her children from her home to the School every day about half a mile, which she did for the entire XXXX school year, and the portion of the XXXX school year up until XXXX. The District also stated that prior to XXXX, District staff were unaware that the Complainant was an individual with a disability, and they had not observed that the Complainant had any difficulty walking to the School, navigating sidewalks or curbs, or otherwise transporting her children to and from the School or accessing the School.

The District informed OCR that during the XXXX school year, a safety issue arose in the School's parking lot after numerous children and parents were observed darting between parked cars and cutting in front of other parent vehicles moving through the parking lot. As a result, the Principal sent a notice by mail to School parents on XXXX, informing them of the traffic and pedestrian procedure for morning drop-off and afternoon pick-up for parents driving their children to the School. The Principal also instituted a traffic control system in the parking lot. The District stated that the procedure required that parents wishing to drop off their children by vehicle needed to use a designated drop-off lane adjacent to the curb of the School; the lane included a barrier system that prevented pedestrians from crossing between moving cars. The District further stated that the procedure required that parents wishing to park or walk students into the School were diverted from the drop-off lane into a designated parking area.

Regarding the Complainant, the District explained that on the morning of XXXX, the Assistant Principal observed the Complainant cross in front of parent vehicles moving through the drop-off lane. The School's XXXX asked the Complainant to use the designated crosswalk. Thereafter, on XXXX, the Complainant again crossed in front of traffic in the drop-off lane. The Assistant Principal reminded the Complainant to use the designated crosswalk, to which the Complainant responded that she did not like the location of the crosswalk as she deemed it unsafe. On XXXX, the District informed OCR that the Complainant XXXX. XXXX 2 SENTENCES REDACTED XXXX. The Principal informed the Complainant that she would be able to use the ramp but that her children would need to use the designated crosswalk with the assistance of School staff to ensure their safety.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. § 104.4, and Title II, 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 District's programs or activities on the basis of disability. In addition, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(ii), prohibits affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that is unequal to the opportunity afforded others. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

Analysis

Based on the investigation to date, OCR has identified possible compliance concerns that the District initially denied the Complainant permission to access a ramp to enter the School building on XXXX, and subsequently informed her that her children could not accompany her on the accessible ramp, beginning on or around XXXX through the end of the XXXX school year. The District and the Complainant stated that the District has agreed to allow the Complainant to use the main entrance to enter the School with her children for the XXXX school year during morning drop-off and afternoon pick-up instead of the other entrance designated for those times; and the District has also agreed to review and revise its policies for individuals with disabilities seeking to access the School's building. However, before OCR completed its investigation with respect to the allegations, the District expressed an interest in voluntarily resolving this complaint. In order to complete its investigation, OCR would need to conduct interviews with relevant District personnel, review documentation pertaining to the Complainant's disability, and review the various accessible routes to the building.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In light of the District's willingness to address the concerns identified by OCR without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Conclusion

On August 30, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of concern. The Agreement entered into by the District is designed to resolve the issues of concern. Under Section 302 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of concern.

OCR will monitor closely the District'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 District 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 the by the District on August 30, 2017, if the District 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 District 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 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, or participates in an OCR proceeding. 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 regarding this letter, please contact Jeanette Tejada Bustos, the OCR attorney assigned to this complaint, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

/s/

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

Encl.

cc: David Phillips, Esq., davidp@ccs.k12.nc.us