



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 1, 2017

*Via Email, rliston@spartanburg4.org*

Dr. W. Rallie Liston  
Superintendent  
Spartanburg County School District 4  
118 McEdco Road  
Woodruff, South Carolina 29388

RE: OCR Complaint No. 11-17-1403  
Resolution Letter

Dear Dr. Liston:

This letter is to advise you of the outcome of the complaint against Spartanburg County School District 4 (the District) that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX via transfer from the U.S. Department of Justice. The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability (XXXX). Specifically, the complaint alleged that the District did not respond promptly and appropriately during the XXXX school year to the Complainant's reports that the Student's bus driver was harassing her on the basis of disability by 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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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. 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.

A district's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A district may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and services, regardless of whether the district had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

### **Factual Background**

The Student was a XXXX at the School for the XXXX school year. On XXXX, the School found the Student eligible for services under Section 504 as a student with a disability, namely XXXX, and provided with a Section 504 plan. The Section 504 plan included accommodations for the classroom, but did not include any accommodations that applied to her bus ride to or from school. There were no other Section 504 meetings during the school year after the initial one at the beginning of XXXX.

XXXX 2 PARAGRAPHS REDACTED XXXX

Although not in the Student's Section 504 plan, the bus driver took a number of actions to try to help the Student follow bus safety rules, including XXXX. The transportation director also assigned the Student a bus aide on XXXX and informed the Complainant, but this was not noted in the Student's Section 504 plan.

In XXXX, the Complainant told the principal about a concern that the bus driver had questioned the Student about XXXX on the bus, alleging that the bus driver was picking on the Student. The Complainant filed the current complaint a few days later.

### **Conclusion**

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. Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on July 25, 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Kristi Bleyer or Nicole Dooley, the OCR attorneys assigned to this

complaint, at 202-453-5901/kristi.bleyer@ed.gov or 202-453-5675/nicole.dooley@ed.gov respectively.

Sincerely,

/s/

Michael Hing  
Team Leader, Team 1  
District of Columbia Office  
Office for Civil Rights

Enclosure