



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 DATE REDACTED XXXX

Via U.S. Mail and Email to Willie.Boyd@darlington.k12.sc.us

Dr. Willie Boyd
Interim Superintendent
Darlington County School District
P.O. Box 1117
Darlington, South Carolina 29540

RE: OCR Complaint No. 11-17-1425
Resolution Letter

Dear Dr. Boyd:

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 Darlington County School District (the District). The Complainant filed the complaint on behalf of a student (the Student) who attended XXXX (the School) during the XXXX school year. The Complainant alleges that the District discriminated against the Student on the basis of disability status. Specifically, the complaint alleges that, on XXXX and ongoing, the Division failed to provide the Student with a Free Appropriate Public Education (FAPE) when the Division denied the Complainant's request to evaluate the Student to determine eligibility under Section 504 after the Complainant provided information that the Student may need special education or related services due to an impairment which substantially limits his ability to perform manual tasks (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 Division 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.

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

Background

During the XXXX school year, the Student was in Grade XXXX at the School. During the XXXX school year, the Student's grades ranged between XXXX. The Complainant withdrew the Student from the District for the XXXX school year. At the time of this letter, the Student was not enrolled as a student in the District.

Legal Standard

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.

Analysis

In XXXX, the Complainant requested a meeting to evaluate the Student for services to address the Student's XXXX. The Division held a meeting to "XXXX" of the Student on XXXX. At this meeting, it was determined that the Student did not qualify for an IEP under the IDEA. The team also considered that the Student has difficulties with XXXX, but the Division reported to OCR that "at this time a 504 was not discussed." However, the team determined that there was "no evidence of a disability or impact on education"¹ and therefore did not provide the Student with any accommodations or services.

On XXXX, the Complainant sent an email to a counselor at the school (the Counselor). The email stated that the Student had visited the doctor the day prior and had been "XXXX." The District asserted to OCR that the Counselor "advised the parent that a medical diagnosis would be required to begin this process."

The District provided OCR with a copy of a document titled "Summary of Events" dated XXXX from the Principal of the School. This document states:

¹ While not within the scope of OCR's investigation, OCR notes that under the Section 504 regulation, at 34 C.F.R. § 104.3(j)(2)(ii) defines a major life activity as "functions such as caring for one's self, *performing manual tasks*, walking, speaking, breathing, learning, and working." (emphasis added)

XXXX 3 SENTENCES REDACTED XXXX.

In the District’s narrative response, the District’s Section 504 Coordinator admitted that the District had not followed the District’s Section 504 procedures in regard to the Student.

Additionally, the District provided OCR with a copy of Section 504 training materials from a presentation given on XXXX. The materials included a document titled *Comparison of IDEA and Section 504*. One of the questions posed in the document was “who has responsibility to identify individuals with disability rights under this law?” Under Section 504 the document stated, “the individual with the disability must self-identify and provide appropriate documentation. The individual must pay for the cost of the evaluation.” OCR notes that this is an incorrect statement of the regulations under Section 504 for preschool, elementary, and secondary educational programs which receive federal funds. The Section 504 regulation, at 34 C.F.R. § 104.33(c)(1) states that a free education includes provision of educational and related services without cost to the person with a disability or to his or her parents or guardians.

OCR found evidence that the Division failed to properly evaluate the Student under Section 504 after receiving information that the Student may be in need of services. Additionally, the reported actions of the Principal and the Counselor causes concern with OCR about District staff’s understanding of the District’s obligations under Section 504. However, for OCR to complete its investigation into whether the District violated Section 504 as stated in the Complaint, OCR would need to conduct interviews with the Principal, the Counselor, the school psychologist, and the District’s Section 504 Coordinator.

Conclusion

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on November 27, 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 Division’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 Division 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 Division's cooperation in the resolution of this complaint. 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/

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

Enclosure

cc: Lynette Jordan, Director of Exceptional Education
Via Email to Lynette.Jordan@darlington.k12.sc.us