



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 22, 2017 (corrected version 8/23/17)

Dr. William T. Wright, Jr.  
Superintendent  
Hertford County Public Schools  
701 North Martin Street  
Winston, North Carolina 27986

Re: OCR Complaint No. 11-17-1469  
Letter of Findings

Dear Dr. Wright:

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, against the Hertford County Public Schools (the District). The Complainant alleges that the District discriminated against the Student on the basis of disability XXXX. Specifically, the complaint alleges that the District failed to implement the Student's Section 504 Plan during the XXXX school year when he was enrolled in XXXX grade at 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.

In reaching a determination, OCR interviewed the Complainant and District staff.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

## **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. 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.

## **Analysis**

OCR spoke with the District's Coordinator for XXXX, who also serves as the XXXX Coordinator. The XXXX Coordinator explained that the District had been implementing a Section 504 Plan for the Student during the XXXX school year at the XXXX school, but she learned that it had not been implemented at XXXX during the XXXX school year, the Student's first year there. She stated she had attempted to locate a copy of the Student's XXXX Section 504 Plan and the Student's Section 504 file, but had been unsuccessful. Thus, the XXXX Coordinator confirmed the Complainant's allegation that the District failed to implement the Student's Section 504 Plan during the XXXX school year.

## **Conclusion**

On August 16, 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 noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) 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 noncompliance (pursuant to Section 303(b)). 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 by the District on August 16, 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, 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 regarding this letter, please contact Samantha Shofar, the OCR attorney assigned to this complaint, at 202-453-5929 or [samantha.shofar@ed.gov](mailto:samantha.shofar@ed.gov).

Sincerely,

/s/

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

Enclosure

cc: XXXX