



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

September 17, 2018

Via U.S. Mail and Fax (434-985-4686)

Dr. Andrea Whitmarsh  
Superintendent  
Greene County Public Schools  
P.O. Box 1140  
Stanardsville, Virginia 22973

RE: OCR Complaint No. 11-17-1568  
Resolution Letter

Dear Dr. Whitmarsh:

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 September 5, 2017 against Greene County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) who attends XXXX (the School). The complaint alleged that the Division discriminated against the Student on the basis of his disability (XXXX) by denying the Student admission into the School's afterschool program.

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 Division receives Federal financial assistance from the Department, 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, pursuant to Section 302 of OCR's *Case Processing Manual*. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

### **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 the 2017-2018 school year, the Student was a XXXX student who attended the School. The Student is a student with a disability, diagnosed with XXXX. The Student takes medication XXXX, which he has infrequently. XXXX.

At the beginning of the 2017-2018 school year, the Complainant attempted to enroll the Student in the XXXX (Program), which provides before and after care at the School. The Program accepted the Student's application, including application fee and first week's payment. Upon registration, the Program provided forms to the Complainant to authorize administration of medication, which the Complainant returned to the Program signed by the Student's doctor. According to the Complainant, Program staff confirmed that it could administer emergency medication such as an XXXX; however, Program staff then told the Complainant it could not administer XXXX to the Student on an emergency basis because it was not allowed to administer "that type" of medication, i.e., XXXX. The Program stated that the Student could not attend aftercare. The Program provided the Division with information stating that its day care operation license did not allow it to administer medication to students.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, 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 recipient's programs or activities on the basis of disability.

Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(v), a recipient may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity. In determining whether a recipient is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. If a recipient provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the recipient must take steps to obtain compliance from the outside entity or terminate its assistance.

After determining whether a recipient provides significant assistance to an agency or organization, OCR investigates an allegation of different treatment by determining whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the agency or organization treated the individual less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the agency or organization had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the agency or organization is a pretext, or excuse, for unlawful discrimination.

### **Analysis**

OCR reviewed the Division's data response and interviewed the School's Principal as well as reviewed information provided by the Complainant.

OCR determined that the Program was publicized through a flier distributed by the School, and was represented alongside other School clubs and activities at back-to-school night. Although the School did not collect applications for the Program directly, it did maintain applications in the School office and distributed them to families interested in the Program for before or after care. Additionally, OCR determined that the Program was open to children attending school in the Division only. Moreover, the Program used the School facility on a daily basis, including the cafeteria, gymnasium, restrooms, and outdoor blacktop surface between 3:00 p.m. and 6:30 p.m., free of charge by the Division. While we note that other groups also used the School free of charge, albeit less frequently, and that the Program employed its own staff and administered its program, the evidence on the whole establishes a substantial relationship between the Program and the Division.<sup>1</sup> Accordingly, OCR found that the Division provides significant assistance to the Program, and the Program provided aid, benefits and services to the beneficiaries of the Division's program. Accordingly, the Division was responsible for ensuring that the Program did not discriminate on the basis of disability or any other protected basis.

Before OCR completed its investigation as to whether the Program discriminated against the Student on the basis of disability by excluding him from the Program, the Division expressed interest in resolving the complaint under Section 302 of OCR's *Case Processing Manual*.

### **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on September 14, 2018 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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

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<sup>1</sup> Moreover, the Program provides an important and necessary service to the Division in that, according to the Division, it offers affordable afterschool care to students in a rural area where few afterschool care options are available.

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 Amy S. Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or [amy.williams2@ed.gov](mailto:amy.williams2@ed.gov).

Sincerely,

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

Enclosure

cc: Ms. Mandi Smith, Esq. (via email)