



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

June 20, 2019

Dr. Tony Baldwin
Superintendent
Buncombe County Schools
175 Bingham Road
Asheville, NC 28806

RE: OCR Complaint No. 11-18-1087
Resolution Letter

Dear Dr. Baldwin:

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 December 12, 2017 against Buncombe County Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX. The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged that XXXXX.

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.

During the investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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

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

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.

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. While the regulation does not impose a specific timeline for completion of the evaluation, optimally, as little time as possible should pass between the time when the student's need for evaluation is recognized and the district's conducting the evaluation.

XXXXX.

On June 12, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to convene a group of persons knowledgeable about the Student, making all reasonable efforts to include the parent/guardian, to discuss the provision of compensatory and/or remedial services to the Student for the time period when it was alleged that the Student did not receive special education or related services for the 2017-2018 school year. If appropriate, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond December 1, 2019. The District will also issue a memorandum reminding School staff of its obligations under Section 504 XXXXX.

Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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 Jennifer Barmon, the OCR attorney assigned to this complaint, at (202) 453-6751 or Jennifer.barmon@ed.gov.

Sincerely,

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

Enclosure

cc: XXXXX