



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 8, 2018

Cathy Moore
Superintendent
Wake County Public School System
5625 Dillard Drive
Cary, NC 27518

RE: OCR Complaint No. 11-18-1147
Resolution Letter

Dear Ms. Moore:

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 XXX against Wake County Public School System (the District). The Complainant filed the complaint on behalf of a student (the Student) at XXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability when it failed to timely evaluate the Student to determine whether she was eligible for regular or special education and related aids and services, XXX.

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.

During the investigation, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant. 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*. Following is a summary of the relevant legal standards and information obtained by OCR during the course of its investigation.

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. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, 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 possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. North Carolina state regulations require initial evaluations to be completed and placement determined within 90 days of receipt of a written referral (NC 1503-2.2(c)(1)).

Summary of Investigation

The Student is diagnosed with XXX. The Student was enrolled as a XXX student in the District at the beginning of the XXX school year. XXX the Complainant withdrew the Student on XXX.

In XXX, the Complainant went to the School to seek information about obtaining homebound instruction/services for the Student, XXX due to her disabilities. At the time, the Student was not enrolled in the District. Over the course of the next several weeks, the Complainant communicated with various District and School staff members regarding enrolling and transitioning the Student back into school, and obtaining special education and/or related aids and services for the Student, including XXX.

The District informed OCR that the Student was not officially enrolled in the School until XXX; however, the Student did not subsequently attend classes. The District asserted that on XXX, the Complainant submitted medical documentation to support a request to obtain XXX for the Student, and on XXX, the District denied the Complainant's request, in part because the Student had not yet been identified as a student with a disability under either the IDEA or Section 504.

Throughout the remainder of XXX, the Complainant continued to meet with District staff about her request, and the District began the special education referral process for the Student on XXX. The special education referral meeting was postponed a number of times and was ultimately held on XXX. At that meeting, the District initiated the evaluation process for the Student, and until the District made a determination regarding whether the Student should be identified as a Student with a disability, the District agreed to provide the Student with XXX services per week in XXX, which began in XXX. A meeting to discuss the Student's evaluation results was held on XXX, wherein the District determined that the Student was eligible as a student with a disability under the IDEA category of XXX. Thereafter, the District developed an IEP for the Student on XXX.

As stated above, before OCR completed its investigation, including receiving additional documentation from the District and conducting interviews with District or School staff, the District requested to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on June 8, 2018 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 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 has fulfilled the terms of the Agreement. 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 Shana Heller, the OCR attorney assigned to this complaint, at 202-453-6599 or Shana.Heller@ed.gov.

Sincerely,

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

Enclosure

cc: XXX