



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

Dr. Melinda J. Boone
Superintendent
Norfolk Public Schools
800 East City Hall Avenue
Norfolk, Virginia 23510

RE: OCR Complaint No. 11-18-1194
Resolution Letter

Dear Dr. Boone:

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 Norfolk Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the Division failed to timely evaluate the Student to determine if he is eligible for special education or related aids and services.

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 and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Background

The Student is XXXX years old and in the XXXX grade. He has been diagnosed with XXXX. The Student was placed on homebound for the XXXX school year based on certification from a medical provider that the student's medical issues prevented him from attending school on a daily basis. He has been on homebound since the beginning of the current school year as well. The Division first evaluated the Student to determine his eligibility for special education or related services on XXXX, and the Division determined him eligible under the Individuals with Disabilities Education Act (IDEA).

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

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.

Resolution

OCR notified the Division of allegation 1 on XXXX. The Division and OCR discussed resolution options, and the Division expressed a willingness to resolve the issue. Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on May 4, 2018 which, when fully implemented, will resolve allegation 1. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information obtained from the Division, 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. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's consideration 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 Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or sara.clash-drexler@ed.gov.

Sincerely,

/s/

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Derek Mungo, Deputy City Attorney