



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 14, 2018

Mr. Jason Kamras  
Superintendent  
Richmond Public Schools  
301 North Ninth Street  
Richmond VA 23219

RE: OCR Complaint No. 11-18-1236  
Resolution Letter

Dear Mr. Kamras:

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 March 15, 2018 against Richmond Public Schools (the Division). The Complainant alleged that the Division XXXXX retaliated against her for her advocacy for students who receive special education services. Specifically, the complaint alleged that the Division XXXXX retaliated against the Complainant XXXXX.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. 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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Title VI, Section 504, and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division; and interviewed the Complainant and Division faculty/staff.

After carefully considering all of the information obtained during the investigation, XXXXX. Before OCR completed its investigation, the Division expressed a willingness to resolve the

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by fostering educational excellence and ensuring equal access.*

allegation that the Division retaliated against the Complainant by taking the steps set out in the enclosed Resolution Agreement.

The following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

### **Background**

An Independent Educational Evaluation (IEE) is an evaluation that is done as part of the process to determine whether to classify a student as having a disability. It is done by an independent evaluator, at the Division's expense. A parent may request this evaluation when he or she disagrees with the Division's evaluation of his/her child.

XXXXXX

### **Retaliation Allegation**

#### **Legal Standard**

Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

When analyzing a claim of retaliation, OCR will look at: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the Division took an adverse action against the Complainant; and 3) whether there is a causal connection between the protected activity and the adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the Division has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the Division's reason for its action is a pretext, or excuse, for unlawful retaliation.

An individual engages in a protected activity if he/she asserts a right or privilege or opposes an act or policy that he/she reasonably believes is discriminatory or unlawful under one of the laws that OCR enforces, or makes a complaint, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing under one of the laws OCR enforces. An adverse action is something that could deter a reasonable person from engaging in further protected activity.

#### **Analysis**

As stated above, 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*, the Division signed the enclosed Resolution Agreement on September 13, 2018 which, when fully implemented, will resolve the retaliation 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 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 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 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 Jennifer Barmon, the OCR attorney assigned to this complaint, at 202-453-6751 or [jennifer.barmon@ed.gov](mailto:jennifer.barmon@ed.gov).

Sincerely,

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

Enclosure