



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

May 30, 2018

Dr. Andrea Lopresti
Principal
Iredell Charter Academy
251 Home Improvement Street
Troutman, North Carolina 28166

RE: OCR Complaint No. 11-18-1276
Resolution Letter

Dear Dr. Lopresti:

This letter advises 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 Iredell Charter Academy (the School). The complaint alleged that the School discriminated against the Student on the basis of disability by denying her a free, appropriate public education when it failed to evaluate her for Section 504 eligibility in a timely manner.

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 School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Background

The School is a public charter school XXX. The Student's parent (hereinafter "the Complainant") enrolled the Student at the School for XXX grade XXX.

Starting in XXX, the Student exhibited XXX at school. In XXX, the Complainant acquired the services of a XXX to work with the Student at home. The School allowed XXX. XXX. In XXX,

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

at the Complainant's request, the School started the process for evaluating the Student under Section 504. After gathering additional information on the Student, the School conducted a Section 504 meeting on XXX, found the Student eligible, and created a Section 504 accommodation plan for her. Subsequently, XXX.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires school districts and charter schools¹ to evaluate any student who needs or is believed to need special education or related services due to a disability. A district or charter school must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that school districts and charter schools draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

While the Section 504 regulation requires a school district or charter school 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 or school 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

¹ See: "Know Your Rights: Students with Disabilities in Charter Schools" (OCR and OSERS), available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf>; "Joint OCR-OSERS Dear Colleague Letter", (Dec. 28, 2016), available at <http://www.ed.gov/ocr/letters/colleague-201612-504-charter-school.pdf>; and "Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973" (OCR Dec. 28, 2016), available at <http://www.ed.gov/ocr/docs/dcl-faq-201612-504-charter-school.pdf>.

OCR reviewed documents provided by the Complainant and the School and interviewed a few witnesses. Before OCR completed its investigation, the School expressed a willingness to resolve the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual*, the School signed the enclosed Resolution Agreement on May 29, 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 School's implementation of the Agreement until the School 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 School'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 School 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 School's cooperation in the resolution of this complaint. If you have any questions, please contact Kristi Bleier, the OCR attorney assigned to this complaint, at 202-453-5901 or kristi.bleier@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team 1

Enclosure

cc: XXX