



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

December 12, 2018

Jason Kamras  
Superintendent  
Richmond City Public Schools  
301 North Ninth Street  
Richmond, VA 23219

Re: OCR Complaint No. 11-18-1382  
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 June 4, 2018 against Richmond City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXXX (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability (XXXXX). Specifically, the complaint alleges the following:

1. The Division failed to conduct a Functional Behavior Assessment (FBA) of the Student after the Complainant requested it and provided her consent on December 5, 2017.
2. The Division delayed in scheduling an Individualized Education Program (IEP) meeting for the Student that the Complainant requested on January 11, 2018, until March 6, 2018.
3. During the 2017-2018 school year, the Student was subjected to a hostile environment, when the Division failed to promptly and equitably respond to incidents wherein other students subjected the Student to disability-based harassment and bullying, including by physically assaulting the Student.

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.

During the investigation, OCR reviewed documents provided by the Complainant and the Division, and interviewed the Complainant. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegations stated above, pursuant to Section 302 of OCR's *Case Processing Manual*, by taking the steps set out in the enclosed Resolution Agreement, dated December 12, 2018. Following is a summary of the relevant legal standards and evidence obtained by OCR during the investigation to date.

### **Background**

The Student was enrolled in XXXXX at the School during the 2017-2018 school year. XXXXX

### **Allegation 1**

The Division discriminated against the Student on the basis of his disability, when it failed to conduct an FBA of the Student after the Complainant requested it and provided her consent on December 5, 2017. The Complainant informed OCR that she requested the FBA to address the Student's XXXXX

### **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 (IDEA) 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. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP or BIP or placement are necessary.

### **Analysis to Date**

On November 13, 2017, the Complainant sent an email to the School's principal (the Principal), in which she XXXXX. In the XXXXX letter, the Complainant requested to schedule an IEP meeting and "develop a Behavior Intervention Plan FIP/BIP." On December 1, 2017, the School convened an IEP meeting to discuss the Student's "present level and behaviors." OCR reviewed the minutes from the meeting, which indicate that the Division would begin collecting data after obtaining consent, and that the consent form would be sent home at a later date because the online IEP software was unavailable at the time due to software updates. Further, OCR reviewed a document titled "Timeline of communication with parent for [the Student]" (the Timeline),

which indicates that the Division held the meeting on December 1, 2017 to discuss the Complainant's "XXXXXX letter which stated that she wanted a FBA/BIP. Mom called the meeting." The Timeline reflects that "data collection (for the FBA) would begin after consent was obtained due to IEP Online issues."

The Complainant provided OCR with a copy of a consent form that she reportedly signed and returned to the Division for the purposes of the FBA. The consent form was electronically completed, presumably by Division staff. The "Areas of Evaluation" section of the consent form include an "Other" field that lists "Functional Behavior Assessment" next to it, and was electronically checked off. The Complainant manually signed and dated the form, and also wrote XXXXX next to that section of the form.<sup>1</sup> The Complainant explained to OCR that the Student's Case Manager sent the consent form home to her via the Student, and after signing the form on December 5, 2017, she sent it back to the Case Manager with the Student in the envelope she received it in. The Complainant reported that the Case Manager acknowledged receiving the signed consent form both on the phone and in person; that they discussed that the Complainant had handwritten the XXXXX on it; and that while the Division would move forward with the FBA, the Case Manager said that a Child Study Team (CST) would have to convene to approve of the XXXXX. The CST meeting was held on January 10, 2018, and according to the Timeline, the Complainant called the Director of Exceptional Children (the Director) during the course of the meeting "due to thinking that she had signed consent for XXXXX (mom hand wrote this request on her consent document; only FBA was checked)."

As stated above, prior to OCR completing the investigation of the allegation, the Division requested to resolve the allegation, pursuant to Section 302 of OCR's *Case Processing Manual*.

## **Allegation 2**

The Division discriminated against the Student on the basis of his disability, when it delayed in scheduling an IEP meeting for the Student that the Complainant requested on January 11, 2018, until March 6, 2018.

## **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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 IEP developed in accordance with the IDEA is one means of meeting this standard.

## **Analysis to Date**

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<sup>1</sup> The Complainant added in the ADOS test because she asserts that she and the Division agreed upon both an ADOS test and an FBA at the December 1, 2017 meeting, and she thought the consent was missing a reference to the test in error.

On January 11, 2018, the Complainant emailed the Director, the Assistant Principal, and XXXXX requesting that an IEP meeting be held “as soon as possible.” The Complainant specified that she wanted an XXXXX teacher in the Division that had previously worked with the Student (the XXXXX) to be invited to the meeting. On January 25, 2018, the Complainant sent another email, writing that it was her second attempt to schedule an IEP meeting, and that she wanted the Director to attend the meeting. The Case Manager responded that day that she would identify some days that would work for everyone for the meeting.

According to the Timeline, the Case Manager texted the Complainant on January 26, 2018 regarding scheduling the meeting; the Complainant replied with three options in February 2018 as possible meeting dates. The Case Manager said she would work with the team to pick a date, and that she would call the Complainant to get more information regarding the Complainant’s concerns for the meeting. On January 31, 2018, the Case Manager notified the Complainant that the meeting could be held on February 21, 2018 and asked again about the Complainant’s concerns. On February 6, 2018, the Complainant texted the Case Manager to confirm that the meeting was set for February 21, 2018; the Case Manager replied that it was not yet confirmed because she needed to understand the Complainant’s concerns in order to schedule the appropriate meeting. The Complainant indicated that she would send along her concerns, but asked for confirmation of the meeting in order to take time off from her job. According to the Timeline, the Complainant and Case Manager exchanged additional correspondence regarding scheduling the meeting over the next few days.

Thereafter, on February 9, 2018, the Case Manager emailed the Complainant informing her that she would confirm the meeting once she had a better understanding of the type of meeting the Complainant was requesting, so that she would know whom to invite. The Complainant replied that she wanted an IEP meeting for the Student “regarding his needs” and that she previously shared her concerns. The Case Manager responded, apologizing for confusion and confirmed the meeting for February 21, 2018. On February 13, 2018, the Complainant again invited the Director to the meeting.

The Timeline reflects that that on February 21, 2018, as the meeting was just beginning, those who had arrived discussed whether the XXXXX would be invited, and the meeting was ultimately rescheduled for March 6, 2018. According to the Complainant, she had requested that both the XXXXX and the XXXXX be at the meeting, but when she arrived, neither of them were present. The Complainant was on the phone with XXXXX. Ultimately, the Division reconvened the meeting on March 6, 2018, and was attended by the Case Manager, a minute taker, a general education teacher, the Complainant, a XXXXX, the Assistant Principal, and XXXXX; another XXXXX attended part of the meeting.

As stated above, prior to OCR completing the investigation of the allegation, the Division requested to resolve the allegation, pursuant to Section 302 of OCR’s *Case Processing Manual*.

### **Allegation 3**

During the 2017-2018 school year, the Student was subjected to a hostile environment based on disability, when the Division failed to promptly and equitably respond to incidents wherein other

students subjected the Student to disability-based harassment and bullying, including by physically assaulting the Student.

### Legal Standards

A division's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the division's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a division must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a division must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

In addition, the harassment/bullying on *any* basis of a student with a disability may result in the denial of FAPE. The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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 IEP developed in accordance with the IDEA is one means of meeting this standard.

Under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives services under Section 504, and who is the target of harassment/bullying continues to receive FAPE, which is an obligation that exists regardless of why the student is being harassed/bullied. Accordingly, under Section 504, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team or the Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could

include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying. In addition, when considering a change of placement, schools must continue to ensure that Section 504 services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

### Analysis to Date

The Complainant told OCR that she believes the Student was being bullied, in part, because of his disability. She explained that some of the students who bullied the Student XXXXX. Finally, while she acknowledges that she never directly said to the Division that the Student was being bullied because of his disabilities, she did advise Division staff that the Student was an easy target XXXXX.

The Division asserted to OCR that neither the Complainant nor the Student reported, or that it otherwise received any indication that other students subjected the Student to disability-based harassment or bullying, as the Complainant alleged. The Division acknowledged that the Complainant reported various incidents involving the Student to the School's Assistant Principal; however, the Division asserted that its investigation of any such incidents were found to be meritless and did not constitute disability-based harassment/bullying, or otherwise meet the Virginia statutory definition of bullying.

Regarding incidents between the Student and other students, in which the Student was reportedly "the victim" of misconduct, the Division provided OCR with discipline documentation in the form of Conduct History Entries. Of the incidents, OCR reviewed the following: XXXXX.

On March 6, 2018, the Assistant Principal emailed School staff that they were XXXXX. On April 16, 2018, the Complainant emailed the Assistant Principal to request an emergency IEP meeting XXXXX. Based on the documentation provided, it appears that the Assistant Principal scheduled a meeting with the Counselor, the School Security Officer, and the Case Manager to discuss the concerns and develop with ways to support the Student. On April 19, 2018, the Assistant Principal emailed School staff again to XXXXX the Student, XXXXX. Subsequently in May 2018, the Complainant emailed Division staff regarding concerns that the Student XXXXX. Additionally, on June 6, 2018, the Complainant again emailed the Director that XXXXX.

As stated above, prior to OCR completing the investigation of the allegation, the Division requested to resolve the allegation, pursuant to Section 302 of OCR's *Case Processing Manual*.

### Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement (the Agreement) on December 12, 2018 which, when fully implemented,

will address the allegations stated above and investigated in this complaint. The provisions of the Agreement are aligned with these allegations 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.

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 Shana Heller, the OCR attorney assigned to this complaint, at 202-453-6599 or [Shana.Heller@ed.gov](mailto:Shana.Heller@ed.gov).

Sincerely,

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

Enclosure

cc: Nicole Thompson, Counsel for the Division