



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 28, 2018

Dr. Steven L. Walts
Superintendent of Schools
Prince William County Public Schools
P.O. Box 389
Manassas, Virginia 20108

Re: OCR Complaint No. 11-18-1409
Resolution Letter

Dear Dr. Walts:

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 May 1, 2018 against Prince William County Public Schools (the Division). The Complainant filed the complaint on behalf of XXXX (the Student) who attends XXXX (the School). The Complainant alleged that the Division provides significant assistance to XXXX, a before and after school care and summer day camp program at the School, which discriminated against the Student on the basis of disability. Specifically, the complaint alleged that during the 2017-2018 school year and during the summer of 2018, the Division discriminated against the Student based on her disability when it excluded the Student from participation in the XXXX aftercare and summer day camp programs because she required a 1:1 aide.

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 publicly available information about the Division's relationship with the before- and aftercare program on the Division's website. After receiving notice OCR had opened this complaint, the Division expressed a willingness to resolve the complaint, pursuant to Section 302 of OCR's *Case Processing Manual*.

Background

During the 2017-2018 school year, the Student was a XXXX student who attended the School. The Student is a student with a disability, diagnosed with XXXX. The Division determined that the Student requires a 1:1 aide to receive free and appropriate public education (FAPE) during the school day. The role of the 1:1 aide is XXXX.

At the beginning of the 2017-2018 school year, the Complainant attempted to enroll the Student in the XXXX before- and aftercare program (Program), which provides before- and after-care at the School pursuant to a contract with the Division. The Program stated to the Complainant on August 25, 2017 that it could not provide adult support for the Student and, therefore, the Student could not be enrolled. On September 20, 2017, the Complainant received an email from the School Age Child Care (SACC) manager, who stated that the Program can accommodate students with disabilities such as the Student; however, she stated that the Program at the School was full and the Student would be placed on the waitlist. The Complainant made a follow-up request in February 2018 and eventually confirmed that the Student was on the waitlist for the Program; however, the manger also told the Complainant that she would have to pay for an aide to assist the Student during attendance at the Program. On April 3, 2018, the Complainant attempted to enroll the Student in the Program's summer day camp; however, after accepting the Student's application, the Program denied the Student's admission on April 19, 2018, stating that, due to the financial burden on the Program, a 1:1 aide is not a reasonable accommodation and will not be provided for the Student.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the recipient's programs or activities on the basis of disability.

Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(v), a recipient may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity. In determining whether a recipient is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. If a recipient provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the recipient must take steps to obtain compliance from the outside entity or terminate its assistance.

After determining whether a recipient provides significant assistance to an agency or organization, OCR investigates an allegation of different treatment by determining whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically,

OCR determines whether the agency or organization treated the individual less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the agency or organization had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the agency or organization is a pretext, or excuse, for unlawful discrimination.

Analysis

OCR determined that the Division contracted with the Program to provide before- and aftercare services to students in the Division. The Division publicized the Program through fliers, on its website, and in the School handbook. Accordingly, OCR found that the Division provides significant assistance to the Program, and the Program provided aid, benefits and services to the beneficiaries of the Division's program. Accordingly, the Division was responsible for ensuring that the Program did not discriminate on the basis of disability or any other protected basis.

Before OCR completed its investigation as to whether the Program discriminated against the Student on the basis of disability by excluding her from the Program, the Division expressed interest in resolving the complaint under Section 302 of OCR's *Case Processing Manual*.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on September 28, 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 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 Deborah Kelly, the OCR investigator assigned to this complaint, at 202-453-5909 or deborah.kelly@ed.gov, or Amy Williams, the OCR attorney assigned to this complaint, at 202-453-5933 or amy.williams2@ed.gov.

Sincerely,

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

Enclosure

cc: Brad King, Esq. (via email)