



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

February 6, 2019

Dr. Jared A. Cotton
Superintendent
Chesapeake City Public Schools
312 Cedar Road
Chesapeake, Virginia 23322

Re: OCR Complaint No. 11-18-1445
Letter of Findings

Dear Dr. Cotton:

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 August 10, 2018 against Chesapeake City Public Schools (the Division). The complaint alleged that the Division discriminated against the Student on the basis of disability (XXXX) when, on or about July 9, 2018, the Division failed to consider medical information that the Complainant provided regarding the Student's disability before determining that the Student did not qualify for a waiver that would have allowed her to remain in her current school.

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 to date, OCR reviewed documents provided by the Complainant and the Division; and interviewed the Complainant and Division staff. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegations pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the Division expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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 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.

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 any significant change in placement. When there is information suggesting that a student's educational program is not meeting the student's individual needs, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan or placement are necessary.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires, in part, that a school district 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. The Section 504 regulation, at 34 C.F.R. § 104.36, also requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Summary of the Evidence Obtained to Date

The Student is identified as a student with a disability (XXXX) and receives the related aids and services of XXXX through a Section 504 Plan. During the 2017-2018 school year, the Student attended XXXX (School A); however, for the 2018-2019, the Student was rezoned to attend XXXX (School B) based on her residence.

On July 6, 2018, the Division received an Out-of-Zone/Residency Request from the Complainant. On the application, the Complainant wrote the word "medical" and attached a personal narrative statement and letters of support from the Student's treating physicians. The Complainant's narrative requests a "medical exemption to stay where she is." Additionally, both letters from physicians, dated January 31, 2018 and June 4, 2018 support a medical need for the Student to remain at School A. For instance, the January letter states that "XXXX." The June letter expands on this, noting that the Student XXXX. The physician continues that "XXXX."

On July 25, 2018, the Complainant's request was denied. The Complainant appealed the decision to the Director of Student Services, the Assistant Superintendent for Student Services,

and the Superintendent, all of whom denied the request. On August 27, 2018, the Complainant appealed to the School Board and her appeal was denied. Since the start of the 2018-2019 school year, the Student has attended School B.

OCR spoke with the Director of Student Services, the Assistant Superintendent for Student Services, and the Superintendent, each of whom made the denial decision. During the interviews, each explained that their decision to deny the request was based on the information provided by the Complainant. The Director of Student Services also indicated that, in addition to reviewing the information provided by the Complainant, he also spoke with the Assistant Principal of School B to ensure that the Student's needs could be met at the School. Email communication between the Director of Special Education and the Superintendent confirm Division staff assertions regarding their consideration of whether the Student's Section 504 Plan could be implemented in School B. Notwithstanding this consideration, Division staff confirmed that they did not speak with the Student's Section 504 team, nor did the Section 504 team convene about this issue, prior to making their determination regarding the Complainant's request even after the Complainant raised the appropriateness of the move in light of the Student's disability.

Conclusion

On February 5, 2019, the Division signed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to convene a group of persons knowledgeable about the Student to determine whether the Student was denied a FAPE and, if so, to determine whether to modify the Student's Section 504 Plan and/or provide the Student with compensatory and/or remedial services. Please review the enclosed Agreement for further details. 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 regarding this letter, please contact Kendra Riley, the OCR attorney assigned to this complaint, at 202-453-5905 or Kendra.Riley@ed.gov.

Sincerely,

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

Enclosure

cc: Wayne Martin
Director of Student Services