



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 8, 2019

Dr. Eric Williams  
Superintendent  
Loudoun County Public Schools  
102 North Street NW  
Leesburg, Virginia 20176

RE: OCR Complaint No. 11-18-1450  
Resolution Letter

Dear Dr. Williams:

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 20, 2018 against Loudoun County Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) at XXXX School (the School). The Complainant alleges that the Division discriminated against the Student on the basis of disability (XXXX allergies). Specifically, the complaint alleges that the Division denied the Student a free appropriate public education (FAPE) when the Division failed to consistently implement the Student's Section 504 Plan from XXXX, 2018 until XXXX, 2018.

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 information provided by the Complainant and the Division. Before OCR completed its investigation, the Division expressed a willingness to resolve the allegation 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.

### **Background**

During the 2017-18 school year, the Student was XXXX and in XXXX grade. The Division held an initial eligibility meeting regarding the Student's reported allergies on XXXX, 2018, following a classroom evaluation and a teacher evaluation report. The Student was determined to have allergies to XXXX that impaired the major life activities of eating and breathing. Subsequent to this eligibility determination, the Section 504 team convened a meeting on XXXX, 2018 and developed a thorough Section 504 plan for the Student outlining the required accommodations to address her XXXX allergies. The Student's Section 504 plan incorporates an Individual Health Care Plan by reference; the Division also developed an Allergy Action Plan for the Student. The Complainant identified several areas of concerns with respect to the implementation of these disability-based plans during the remainder of the 2017-18 school year after the plans went into effect. OCR opened an investigation into whether the Division failed to consistently implement the Student's Section 504 Plan in a manner or to the extent that the Division denied the Student a free appropriate public education (FAPE).

### **Legal Standard**

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.

In addition to the requirement to provide FAPE, the Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation, at 28 C.F.R. § 35.130(b)(7), also requires school districts to make reasonable modifications to policies, procedures, or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

OCR interprets the above provisions to require that school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities. As the vast majority of students without disabilities do not face a significant possibility of experiencing serious or even life-threatening reactions to their environment while they attend school, Section 504 and Title II require that school districts provide students with serious medical conditions (including allergy-related disabilities) with a medically safe environment in which they do not face the possibility of serious or life-threatening reactions to their environment.

To provide FAPE to a student with an allergy-related disability and meet the standards referenced above, a school district must have a plan to meet the student's individualized needs. The plan must be based on an individualized consideration of the student's needs and should take into account procedures that limit or prevent the risk of exposure to the allergens in each type of school program or activity in which the student participates, including programs taking place in

classrooms and common areas, the gymnasium, the cafeteria, and hallways, and during recess, extracurricular activities, field trips, and school-related activities. The plan should also set out procedures to follow when the student is exposed to allergens. A health care plan may comply with the provisions of Section 504, provided that the school district complies with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards.

### **Analysis**

While reviewing the documentation provided by both parties, OCR identified several potential areas where the Student's 504 plan may not have been followed consistently. For example, XXXX. Remainder of paragraph XXXX.

OCR also identified concerns that the School and the Complainant diverged in what certain provisions, as written, were required to meet the Student's disability needs and to ensure the Student had equal access and equal opportunity to participate in the Division's academic and extracurricular programs. For example, XXXX. Remainder of paragraph XXXX.

Prior to OCR completing its investigation into whether the Division denied the Student a free appropriate public education (FAPE) by failing to consistently implement the Student's Section 504 plan, the Division agreed to resolve this allegation.

On February 5, 2019, the Division signed the enclosed Resolution 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 meeting of the Student's Section 504 team, including appropriate Division staff, and the Student's parents to address any areas of the Student's disability-based accommodations where there is concern or need for further clarification. The Student's parents will be afforded all procedural protections of Section 504 with respect to this meeting, including the provision of the Division's due process procedures for any substantive disagreements over what the Student requires to access a free appropriate public education (FAPE). 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, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-453-6978 or [megan.rok@ed.gov](mailto:megan.rok@ed.gov).

Sincerely,

Michael Hing  
Team Leader, Team I  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: XXXX, Counsel for Division