



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 21, 2019

Joseph Pye
Superintendent
Dorchester County School District Two
115 Devon Road
Summerville, SC 29483

RE: OCR Complaint No. 11-19-1074
Resolution Letter

Dear Dr. Pye:

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 November 8, 2018 against Dorchester County School District Two (the District) in Summerville, SC. The Complainant filed the complaint on behalf of a student (the Student) at XXXX (the School). The Complainant alleges that the District discriminated against the Student on the basis of disability (XXXX) when the Extended Day Program at the School (the afterschool program) precluded her from attending the afterschool program during the 2018-19 school year.

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 District 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 District; interviewed the Complainant; and had several communications with District counsel.¹ Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on February 19, 2019. XXXX.

¹ The District initially represented to OCR that the Extended Day Program was separate from the District such that it was not governed by Section 504 or Title II with respect to students with disabilities. OCR asked for any supporting documentation for this position, including MOUs, contracts, facility payments, etc. as part of the data request. The District responded that no such documentation exists. The Extended Day Program is supervised by District staff, held at District school facilities, and the individuals running the program are paid through the District although allegedly with funds provided by parents for enrollment. As such, OCR determined that the Extended Day Program is either a District program, or at the least, run with significant assistance by the District.

XXXX.² Given the ongoing concerns about the District’s policies and practices regarding students with disabilities in the Extended Day Program, OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual*. The following is a summary of the evidence obtained by OCR during the investigation to date and a statement of the applicable legal standards.

Facts

XXXX. As alleged by the Complainant, the District, citing its policy that all participants must be XXXX, refused to admit the Student into the program because the Student, as a result of her disabilities, requires XXXX. Eventually, in XXXX, the District agreed to provide the Student with a four-day “trial period” in the program; at the end of this period, the District precluded the Student from any further participation because of the severity and nature of the Student’s disabling conditions.

As a result of this experience, the Complainant did not initially sign up the Student to participate in the 2018-19 Extended Day Program. The Complainant maintains to OCR that she believed the Student was unwelcome on the basis of her disabling conditions, XXXX. However, sometime in XXXX 2018 (after the open enrollment deadline for the program), the Complainant reinitiated her requests that the Student be allowed to participate in the Extended Day Program with any needed accommodations provided by the District.

The District maintains to OCR that the Extended Day Program was full by the time the Complainant sought to enroll the Student for the 2018-19 school year. As such, the Student was placed on the waitlist, along with other students, until a space opened up. The Complainant states that even then the District informed her it would require a further assessment of the Student’s “eligibility” before granting the Student admission along with her non-disabled peers.

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. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities. Furthermore, school districts must ensure that students with disabilities participate

² Unfortunately, at this point, both OCR and the District are unable to establish further communication with the Complainant. Both OCR and District counsel have made outreach to the Complainant via email and phone in hopes of transitioning the Student into the Extended Day Program; the Complainant has remained non-responsive.

in nonacademic and extracurricular services and activities with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. A school district that offers physical education courses or athletics must provide students with disabilities an equal opportunity to participate. OCR interprets the Title II regulation to provide the same protections as Section 504.

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 school district 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 district's program or activity. In determining whether a district is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the district and the other entity, including financial support by the district, and whether the other entity's activities relate so closely to the district's program or activity that they fairly should be considered activities of the district itself. If a district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the district must take steps to obtain compliance from the outside entity or terminate its assistance.

Conclusion

On May 17, 2019, the District signed the enclosed Resolution Agreement (the 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 District to provide (1) offer admission to the Student in the Extended Day Program with any needed disability-related accommodations, including assistance with XXXX, should the Complainant opt to enroll the Student in the Program; (2) modify the Extended Day Program's policies and practices to clarify the program's compliance with the applicable laws and regulations for students with disabilities, and (3) provide related regular training to staff responsible for overseeing the Extended Day Program, including admissions. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District'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 District 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 District'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.

Sincerely,

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

Enclosure

cc: Christy Graham, Counsel for District, chrisgraham@dorchester2.k12.sc.us