



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

*Via Facsimile* (803) 547-4696

Dr. James Epps, Jr.  
Superintendent  
Fort Mill School District  
2233 Deerfield Drive  
Fort Mill, South Carolina 29715

Re: OCR Complaint No. 11-19-1467  
Resolution Letter

Dear Dr. Epps:

This letter is to advise you of the outcome of the complaint the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on August 15, 2019, against Fort Mill School (the District). The Complainant filed the complaint on behalf of a student (the Student) previously enrolled at XXXX (the School). The complainant alleges that the District discriminated against the Student based on disability when it failed to evaluate the Student to determine her eligibility for special education and related aids or services under Section 504 during the XXXX 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 information provided by the Complainant and the District. Before OCR completed its investigation, the District 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 recipient 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

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

The Student was enrolled in the School during the XXXX school year. As outlined in the complaint, the Student has been diagnosed with a XXXX allergy with a risk of anaphylactic shock. The complaint also states that the Student suffers from XXXX. The School put in place an individualized health plan (IHP) for the Student related to her allergy.

The Complainant alleged that the School was aware of the Student's XXXX, as well as her allergy. She told OCR that the Student visited the nurse on multiple occasions with a headache or a stomachache and sometimes left the School crying. The Complainant also reported that she reached out to School staff on numerous occasions seeking support for the Student's XXXX. When the School failed to evaluate the Student, the Complainant sought a private evaluation, which resulted in a diagnosis of XXXX in XXXX.

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 is one means of meeting this standard.

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 initially placing the student in regular or special education and before any subsequent significant change in placement.

The District told OCR that it was aware of the Student's severe XXXX allergy; however, the District asserted that it had no knowledge or documentation of the Student's XXXX. Nonetheless, the District acknowledged that it had already begun the process of considering whether there was a need to evaluate all students with an IHP to determine eligibility under Section 504. The Student is no longer enrolled in the District.

The District also shared with OCR that it had already begun training for District staff on the duty to evaluate any student where there is a reason to believe the student might have a disability, focusing particularly on students with an IHP. Specifically, the District revised its Section 504 Operational Guidelines used as a training guide for new school psychologists/Section 504 facilitators responsible for the referral and evaluation process at the school level to state as follows:

[S]tudents with physical or mental impairments whose needs are addressed through early intervention, Rti, or health plans will not be excluded from consideration for possible Section 504 referrals, even when current interventions, services or health plans successfully address their impairment-related needs.

The psychologist and the Section 504 facilitator for the School were both trained as recently as September 25, 2019, regarding the duty to evaluate students with an IHP.

The District also has trained all school nurses regarding the relationship between IHPs and Section 504, including that a student with an IHP must be evaluated under Section 504. The most recent training occurred on October 8, 2019, and the current nurse at the School attended the training. Additionally, the District recently revised its “Child Find Training,” given annually by school psychologists to all school staff to make clear that the legal obligation to evaluate a student under Section 504 is triggered when a student requires an IHP.

On XXXX, the District sent the Complainant a letter offering to evaluate the Student to determine her eligibility under Section 504. The letter also stated that, if the Section 504 team determines that the Student is eligible for special education or related services under Section 504, the team would also consider whether the Student is entitled to compensatory educational services as a result of the failure to evaluate the Student during the XXXX school year.

The Complainant responded to the District’s letter, accepting the offer to evaluate the Student. The Section 504 team, including the Student’s parents, met on XXXX, to plan for the evaluation. At that time, the parties agreed to convene again on XXXX, to discuss the results of the evaluation and, if appropriate, compensatory services. The meeting was ultimately postponed at the request of the Complainant.

On February 4, 2020, the District 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 District to convene a group of people knowledgeable about the Student and the recent evaluation to determine the Student’s eligibility under Section 504, and if eligible, the consider whether the Student is entitled to compensatory services as a result of the delay in evaluating her. The District committed to holding the meeting by February 28, 2020. 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 regarding this letter, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or [sara.clash-drexler@ed.gov](mailto:sara.clash-drexler@ed.gov).

Sincerely,

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

cc (via email): Amy Maziarz, Executive Director of Special Services