



**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

November 21, 2022

By Email: info@lenoir.k12.nc.us

Brent Williams
Superintendent
Lenoir County Public Schools
2017 West Vernon Avenue
Kinston, North Carolina 20584

Re: OCR Complaint No. 11-22-1263
Lenoir County Public Schools

Dear Mr. Williams:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of Lenoir County Public Schools, which we will refer to as the District. OCR investigated the District after receiving a complaint filed on behalf of a student (the Student) previously enrolled in XXXXX (the School).

The Complainant alleged that the District discriminated against the Student, who is XXXXX, on the basis of race when it XXXXX, the first in XXXXX (Allegation 1) and the second in XXXXX (Allegation 2), while not disciplining the other students involved in the underlying incidents, all of whom are white. The Complainant also alleged that the District discriminated against the Student based on disability when it failed to evaluate him to determine his eligibility for special education and related services, despite the Complainant's requests that he be evaluated beginning in XXXXX (Allegation 3).

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department of Education. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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. The District receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Title VI, Section 504, and Title II.

During its investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff.

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

www.ed.gov

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegations 1 and 2. With regard to Allegation 3, OCR found sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement. OCR’s findings and conclusions are provided below.

Facts

The Student was enrolled in the XXXXX grade at the School for the 2021-2022 school year. This was his XXXXX year in the School. In XXXXX, the Student’s family XXXXX, and the Student transferred to XXXXX, another XXXXX school in the District. The Student is XXXXX.

The Complainant told OCR that she had observed the Student getting angry at home anytime someone bothered him. Out of concern for how this would play out in school, she said that she went to speak to the Student’s classroom teacher at the start of the school year. The Complainant reported to OCR that she told the classroom teacher that, “XXXXX.”

The Student was referred for discipline XXXXX times while he attended the School during the 2021-2022 school year. The referrals were for acts of verbal and/or physical aggression towards staff and/or students. The first XXXXX referrals resulted in verbal warnings and a parent conference.¹ The XXXXX referrals resulted in suspensions and are the subject of Allegations 1 and 2.²

The XXXXX referral, dated XXXXX, states that the Student XXXXX. This incident occurred in the hallway of the School at the end of the school day. The student received a two-day out-of-school suspension (OSS). The XXXXX student, who is white, was not referred for discipline. The Complainant alleged that the XXXXX student had been hitting the Student prior to the incident. The principal, who handles all disciplinary referrals for the School, told OCR that she investigated the incident the following day by speaking with the classroom teacher, who made the referral, and other students who witnessed the incident, though she did not document her investigation. She concluded from her investigation that the XXXXX student did not do anything to prompt the Student’s aggression. The District informed OCR that the XXXXX student had no disciplinary history.

The classroom teacher told OCR that the XXXXX student sits next to the Student in class. The classroom teacher told OCR that anytime another student accidentally bumps or touches the Student, he XXXXX. The classroom teacher explained that she kept the Student close to her in the classroom, at a table next to her desk. The XXXXX student and a friend of the Student’s, who she explained works well with the Student, sat with the Student at this table. The classroom teacher told OCR that the XXXXX student is XXXXX. The classroom teacher did not witness the Student

¹ The Student’s behavior resulting in these referrals included XXXXX.

² The District’s disciplinary policy (Student Code of Conduct or Code) in place during the time period relevant to this complaint assigns a default range of consequences for listed offenses but also allows administrators discretion to consider aggravating and mitigating circumstance, including the student’s age and disciplinary history. Fighting and disruptive behavior are listed as level one offenses, which the Code provides should generally result in in-school consequences or short-term suspension. See <https://go.boarddocs.com/nc/lenoir/Board.nsf> (Policy 4300) (last visited, August 8, 2022).

hit the XXXXX student in the hallway on XXXXX; however, she found the XXXXX student XXXXX shortly after the incident. When she spoke to the XXXXX student, the student reported that the Student had XXXXX, and other students nearby confirmed that was what happened. The classroom teacher then brought the XXXXX student to the principal and told her what happened. The classroom teacher explained that she spoke to the Student the next day, and he told her that the reason he XXXXX student is that she would not help him with his work. He did not say anything about her XXXXX.

The XXXXX referral, dated XXXXX, states that the Student XXXXX after numerous warnings. This incident occurred XXXXX at the end of the school day. The teacher who reported the fight noted that the Student XXXXX. The Student received five days of OSS for the incident. The other student, a white XXXXX, was not disciplined and had no prior disciplinary referrals. The Complainant did not contest that the Student was aggressive; when she filed the complaint, she told OCR that the Student XXXXX. However, she alleged that she learned from other students who live in the neighborhood that the other student instigated the fight by pushing the Student.

The principal reported to OCR that she investigated the incident the following day by speaking with the teachers involved, student witnesses, the other student involved, and the Student. The principal said that, although the Student XXXXX, all other witnesses stated that the other boy had not done anything to instigate the fight; rather, he was XXXXX. The principal noted that the Student XXXXX the other boy and XXXXX as they were separated.

Two teachers involved XXXXX told OCR what they observed. The first, another XXXXX teacher, told OCR XXXXX. By the time she turned around, “XXXXX.” She went over and stood between the two XXXXX. She told OCR that XXXXX was on the ground and could hardly speak, but the Student XXXXX. She asked the Student what happened, and he claimed that the other student XXXXX. The teacher explained that the Student then XXXXX. At that point, the XXXXX teacher came over to assist her with the situation.

The XXXXX teacher, who XXXXX, told OCR that he heard the Student yell, “XXXXX,” and saw him XXXXX. He did not observe what happened before this occurred, but when he heard the Student and saw him XXXXX, the XXXXX teacher XXXXX. At that point, another staff member offered to escort the Student inside, and the XXXXX teacher returned to his duties. The classroom teacher was not outside during the incident. However, she reported to OCR that the other XXXXX teacher told her that the Student “XXXXX” another student.

Both XXXXX were escorted into the office immediately following the incident. The other student was not disciplined.³

On XXXXX, before he XXXXX, the Student received another two-day suspension for a disciplinary incident that involved verbal and physical aggression towards XXXXX.

³ During a phone call with OCR on XXXXX, the Complainant asked OCR to view video footage of this incident. OCR first became aware that there had been video footage that may have captured the incident during an interview with the classroom teacher in XXXXX. OCR requested the opportunity to view the video footage at that time. However, the District explained that the system had been upgraded over the summer and that all prior video was erased in the process.

OCR reviewed data reflecting all disciplinary referrals at the School for XXXXX during the 2021-2022 school year.⁴ There were a total of XXXXX referrals. In each instance, one or both students involved XXXXX received ISS, OSS, or a bus suspension. For the instances in which only one of the two students involved received a disciplinary consequence, the disciplinary referrals OCR reviewed reflected that the student disciplined had been XXXXX. This was true irrespective of the race of the students involved. For example, in one instance involving a XXXXX and a XXXXX, the XXXXX was the sole aggressor and received an OSS, while the XXXXX was not disciplined. In another instance involving a XXXXX and a XXXXX, the XXXXX was the sole aggressor and received an OSS, while the XXXXX was not disciplined.

In XXXXX, the Student was referred to the District's Multi-Tiered System Support Team (MTSS Team) for instructional support. MTSS records reflect that the Student was performing significantly below grade level in reading and below grade level in Math throughout the 2021-2022 school year. The MTSS Team met several times during the school year to discuss interventions and supports for the Student; however, the records do not reflect improvement in these areas, and by XXXXX, note that the Student also was experiencing significant behavioral issues. The Student's quarterly grades in Math and English were predominantly XXXXX. He also received XXXXX grades for some quarters in other core subjects. According to the District, the Student XXXXX.

The Complainant alleged that she asked the School for assistance for the Student on multiple occasions, including multiple requests to evaluate him to determine his eligibility for special education or related services based on a disability. The Complainant explained that she made these requests because of his behavior issues and because he was and continued to be behind in reading and math. She told OCR that she asked both the Student's classroom teacher and the principal about an evaluation as early as XXXXX. The Complainant also reported to OCR that she took the Student to XXXXX, at which time he began receiving XXXXX. She explained that she told the principal about the XXXXX, but that the principal continued to assert that there was no reason to refer the Student for an evaluation because his issues were purely behavioral, which would not entitle him to special education or related services.

The principal denied that the Complainant requested a referral for an evaluation or that she told the Complainant that the Student's behavioral issues would not warrant a referral. She did confirm that the Complainant reported to her in XXXXX that the student had been XXXXX. She told OCR that she responded by telling the Complainant that they could coordinate with this same service to provide support to the Student during the school day. The principal said that during this same conversation, the Complainant reported that XXXXX and therefore that the Student would be transferring to a different XXXXX school. The principal said she had no further contact with the Complainant after that discussion. As noted above, the Student transferred to a different XXXXX school in the District XXXXX.

OCR notified the District of the OCR complaint on XXXXX. The District provided OCR with a memorandum dated XXXXX, stating that the District's Exceptional Children's Department was

⁴ The District represented that there were no disciplinary referrals for XXXXX at the School during the 2020-2021 school year, when school remained largely virtual.

not previously aware of any requests for a referral to evaluate the Student; however, it further stated that, “we now have knowledge to suspect the [Student] may have a disability. At this point, the EC Department will proceed with the referral process.” On XXXXX, the Division provided the following update:

An EC referral meeting was held on XXXXX, and the team decided to conduct testing so they could consider eligibility in XXXXX categories: XXXXX. The parent was in agreement and provided her consent. She also reported that she had received private diagnoses of XXXXX and agreed to provide written diagnoses to the team.

On XXXXX, after conducting additional testing and gathering medical information, the District completed an evaluation of the Student and determined him eligible for special education based on the designation XXXXX. The same day, the team developed an Individualized Education Program (IEP) that provides for XXXXX. The IEP also calls for XXXXX. Additionally, the team developed a behavioral intervention plan that accompanies the IEP.

Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Sections 100.3(b)(1)(i)-(vi) further state, in relevant part, that a school may not, on the ground of race, color or national origin, deny an individual any service or benefit provided under the program; provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also provides that a school may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

OCR investigates alleged discrimination in a school’s application of student discipline consistent with federal statutory authority, the Department of Education’s regulations, and pertinent case law. Disciplinary policies and practices can result in unlawful discrimination based on race in two ways: first, if a school intentionally subjects students to *different treatment* on account of their race, color or national origin; and second, if a school’s policy or practice is neutral on its face with respect to race, color, and national origin, but has a disproportionate adverse and unjustified *effect* on student(s) of a particular race, color, or national origin, this constitutes *disparate impact discrimination*.

Title VI protects students even if a school contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school's student safety or student discipline program. Schools cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on school resource officers, school district police officers, contracted law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

Title VI prohibits schools from intentionally disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. Typically, OCR conducts the following three-part inquiry to determine if the school engaged in discriminatory different treatment:

- 1) Did the school limit or deny educational services, benefits, or opportunities to a student or group of students of a particular race by treating them differently from a similarly situated student or group of students of another race in the disciplinary process?
- 2) Can the school articulate a legitimate, nondiscriminatory reason for the different treatment?
- 3) Is the reason articulated a pretext for discrimination?

Intentional discrimination in the administration of student discipline can take many forms, however, and can be proven even without the existence of a similarly situated student who was disciplined less harshly. Thus, for example, a school's adoption of a facially neutral discipline policy with an invidious intent to punish students of a certain race is prohibited intentional discrimination under Title VI.

OCR considers both direct and circumstantial evidence of racially discriminatory intent. Direct evidence includes remarks, statements, testimony, or other admissions that reflect racially discriminatory motives by school officials. Circumstantial evidence is evidence that creates an inference of discriminatory intent from the facts of the investigation as a whole or from the totality of the circumstances. Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular discipline incident or series of incidents.

With regard to disability, 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. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Analysis

Regarding both disciplinary incidents, OCR determined that there is insufficient evidence of different treatment. The evidence does not support a finding that the Student was similarly situated to the other students involved. It is undisputed that the Student acted XXXXX on both occasions; however, there is insufficient evidence that the other student involved in each of the incidents acted

XXXXX. In the XXXXX incident, in which the Student XXXXX, the principal told OCR that student and staff witnesses reported that the Student's behavior was XXXXX. The classroom teacher's account of the incident was similar. Further, the Student told the classroom teacher the next day that he XXXXX because she XXXXX.

In the XXXXX incident, the Student XXXXX the other student. While the Complainant alleged that the other student XXXXX, the principal reported that her investigation revealed that the other student XXXXX. Additionally, according to the XXXXX teacher who intervened, the Student XXXXX when she was trying to determine what had occurred, to the point that he XXXXX.

OCR also determined that the Student had multiple prior disciplinary referrals, but each of the other students had no prior discipline.

For other disciplinary incidents at the School during the 2021-2022 school year in which one student XXXXX, OCR found that the School similarly disciplined the XXXXX but not the other student involved, irrespective of the students' races. OCR also found that the discipline issued to the Student and to other students was consistent with the District's Student Code of Conduct.

Based on the above, OCR found insufficient evidence that the District discriminated on the basis of race in issuing discipline to the Student.

OCR found, however, that the District discriminated against the Student based on disability when it failed to evaluate him to determine his eligibility for special education and related services. Although there is a dispute of fact as to whether the Complainant requested an evaluation, the District was aware that the Student was significantly behind academically in the areas of reading and math throughout the 2020-2021 school year, and that he was exhibiting a pattern of behavioral issues that was apparent even before XXXXX. Additionally, in XXXXX, the Complainant notified the principal that the Student was being evaluated for XXXXX, and the principal responded by stating that support services during the school day could be arranged but failed to refer the Student for an evaluation. According to the District, District-level staff first became aware of the Student's academic and disciplinary record after OCR notified the District of the complaint on XXXXX. Once District-level staff became aware, the District promptly initiated the referral process and an evaluation meeting was held on XXXXX. On XXXXX, the District determined the Student was eligible for special education and related services. The District acknowledged to OCR that based on their review of the records, the Student should have been referred for an evaluation earlier in the school year.

On XXXXX, the District agreed to implement the enclosed Resolution Agreement. The provisions of the agreement are aligned with the violation identified during OCR's investigation and are consistent with the applicable law and regulation. OCR will monitor the District's implementation of the agreement until the District has fulfilled the terms of the agreement.

Conclusion

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. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination regarding Allegations 1 and 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit, to OCR, a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-202-987-1386 or sara.clash-drexler@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team I
Office for Civil Rights
District of Columbia Office

Enclosure

cc (via email): XXXXXX