



**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

June 27, 2023

By email only to XXXXX

XXXXX  
XXXXX  
XXXXX

Re: Case No. 11-22-1516  
XXXXX Public Schools

Dear XXXXX:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of the complaint against XXXXX Public Schools, which we will refer to as the District. The Complainant filed on behalf of her child (the Student), whom the District placed at an out-of-district school, XXXXX. OCR investigated whether the District discriminated against the Student on the basis of disability by failing to respond appropriately to complaints of disability discrimination that the Complainant made from XXXXX to XXXXX.

OCR 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. OCR also enforces 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 Section 504 and Title II.

Before OCR completed its investigation, the District expressed interest in resolving 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 concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date. OCR reviewed information provided by the Complainant and the District and interviewed the Director of the District's Comprehensive Alternative Resolutions & Equity (CARE) Team.

**Evidence Obtained 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.*

[www.ed.gov](http://www.ed.gov)

The Student has **XXXXXX**. Pursuant to an Individualized Education Program (IEP), the District placed the Student at **XXXXXX** (the School) beginning in the 2020-2021 school year.

On **XXXXXX**, the Complainant submitted a written complaint to the School detailing multiple incidents of alleged disability discrimination and harassment against the Student by School staff and students throughout the 2021-2022 school year. On **XXXXXX**, the School responded by summarizing in a letter the actions staff took in response to the Complainant's complaint. The letter did not reference disability discrimination or harassment, nor did it indicate whether, and to what extent, the School had conducted an investigation into the allegations. The letter copied an **XXXXXX** in the District.

The Complainant sent a letter to the School and the **XXXXXX**, dated **XXXXXX**, appealing the School's response.<sup>1</sup> The appeal explicitly referenced disability discrimination and harassment and stated that the School had failed to investigate appropriately the **XXXXXX** complaint.<sup>2</sup> The Complainant did not receive a response to her appeal.

The District's policy, Responses to Grievances Filed by Students and the General Public, states that all grievance filings alleging a civil rights allegation must be reported to the **XXXXXX** team, verbally or in writing, by the reporter or by the staff member who receives the grievance. The policy also states that the parties to the grievance will receive an acknowledgement of receipt via email from the District and that the District will then initiate and complete the investigative process within 30 calendar days.

The District told OCR that its **XXXXXX** for the School received the "complaint," and "deferred [it] to [School] staff for investigation and resolution." The District did not specify which of the Complainant's two letters it received. In an interview with OCR, the **XXXXXX** stated that someone in her office likely saw the **XXXXXX** appeal letter and sent it to the School since that is where the Student is placed. Additionally, the **XXXXXX** stated that the District did not investigate the complaint before sending the letter to the School.

## **Legal Standards**

Section 504 and Title II prohibit discrimination on the basis of disability. A district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a person with a disability the opportunity to participate in or benefit from an aid, benefit, or service.

Disability-based harassment that creates a hostile environment is a form of disability discrimination. A district's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A district may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits

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<sup>1</sup> The Complainant also sent the letter to the Office of the State Superintendent of Education (OSSE). However, the Complaint did not file with OCR a complaint against OSSE.

<sup>2</sup> The appeal noted, for example, that the School did not reference the policy or law at issue that formed the basis of its response, and that the investigation itself was inadequate.

and services, regardless of whether the district had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the district's programs, activities, or services.

When responding to harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the district, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

### **Analysis**

OCR is concerned that the District may have been on notice of alleged discrimination and harassment and did not take immediate and appropriate action to investigate or otherwise determine whether disability-based harassment occurred. The Complainant's **XXXXX**, complaint of alleged disability-based discrimination and harassment was copied to an Employee Representative in the District, and the District did not respond. In addition, the District acknowledged that it likely received the **XXXXX** letter of appeal, and instead of responding, deferred to the School to investigate and resolve the matter with no follow-up regarding if or how the School had done so. OCR is concerned that the District, and **XXXXX** staff in particular, are not aware of the District's obligation to respond to complaints of discrimination and harassment concerning students in out-of-district placements.

Before OCR completed its investigation of the complaint, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On June 26, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the District's implementation of the Resolution Agreement until the District is in compliance with the terms of the Resolution Agreement and the statutes and regulations at issue.

## 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.

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 **XXXXX** and **XXXXX**, the OCR attorneys assigned to this complaint, at **XXXXX** and **XXXXX**.

Sincerely,

**XXXXX**  
Team Leader, Team III  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: **XXXXX**  
**XXXXX**