



**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

October 6, 2023

By email only to [redacted content]

[redacted content]  
Superintendent  
[redacted content]  
[redacted content]  
[redacted content], Virginia [redacted content]

Re: Case No. 11-23-1396  
[redacted content]

Dear [redacted content]:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against [redacted content]. The Complainant alleged that the Division discriminated against the Student on the basis of disability during the [redacted content] school year when it repeatedly disciplined him for behavior related to his disability, in the form of suspensions and early school pickups.

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 Division 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.

During its investigation to date, OCR reviewed information provided by the Complainant and the Division; interviewed the Complainant; and gathered written statements from Division staff. Before OCR completed its investigation, the Division 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 school 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.

*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)

Evidence Obtained to Date

The Student began the [redacted content] school year enrolled as a [redacted content] student at [redacted content] (School A). On [redacted content], the Student began attending another school, [redacted content] (School B), but remained within the same Division. His Individualized Education Program (IEP), dated [redacted content] and in place at the start of the school year, classified him as [redacted content]. The IEP included annual goals related to [redacted content] and [redacted content]. The IEP also noted that he would require adult assistance “for [redacted content].”

OCR determined that during the [redacted content] school year, the Student had at least [redacted content] full-day absences and [redacted content] tardies ranging from [redacted content] minutes. OCR reviewed evidence indicating that the majority of these absences stemmed from [redacted content] issues. For example, on [redacted content], the Complainant shared with School A’s Attendance Secretary that the Student was experiencing [redacted content] problems that resulted in his tardies and absences, and that she anticipated he would continue to experience them due to his medical condition. During these conversations, the Attendance Secretary and Principal relayed information about the Division’s policy that students who are experiencing [redacted content] stay home from school for 48 hours. Contemporaneous documentation from absences in [redacted content] also specified that the reasons for the absences stemmed from [redacted content] issues.

The Complainant also alleged to OCR that she or another family member were required to pick up the Student early for behavioral incidents throughout the [redacted content] school year, but that many of these incidents were never recorded as exclusions by the Division.<sup>1</sup> The Complainant informed OCR that this most often occurred on days when the Principal was in the Division office, and therefore not present to approve a suspension. OCR reviewed contemporaneous documentation reflecting the fact that on multiple occasions, Division staff had concerns with the Student’s behavior. OCR also reviewed School A’s Early Dismissal Log, which indicates that there were several dates on which the Student was picked up early for which the reason for the dismissal is left blank. These dates were [redacted content]; [redacted content]; [redacted content]; [redacted content]; and [redacted content]. The Complainant further recalled picking the Student up early due to his behavior on [redacted content] and [redacted content], but could not recall the specific time of pickup. Finally, text messages between the Complainant and various teachers indicate that the Student was picked up early on [redacted content]; [redacted content]; on or about [redacted content]; and [redacted content]. The Complainant informed OCR that each of these early pickups was due to the Student’s behavior.

OCR also determined that the Student received multiple out-of-school suspensions for behavioral issues. Specifically, at School A, OCR determined that on [redacted content], the Student received a two-day out-of-school suspension. Moreover, OCR determined that at School B, the student received a two-day out-of-school suspension on [redacted content], and a two-day out-of-school suspension on [redacted content], with the suspension beginning when he was sent home two hours early on [redacted content].

---

<sup>1</sup> OCR determined that School A’s school day goes from [redacted content] and School B’s school day goes from [redacted content].

OCR did not find evidence to date to indicate that a group of knowledgeable people convened prior to [redacted content]. On that date, an IEP meeting occurred, during which the Complainant signed her consent for the School to conduct a [redacted content]. During the meeting, the Complainant expressed concerns about being contacted multiple times in regards to the Student's behavior, which was described to include [redacted content]. Documentation from that meeting does not indicate that the Student's attendance concerns were discussed.

OCR determined that the IEP team met again on [redacted content]. At this meeting, the IEP team discussed [redacted content] for the Student, which the Complainant rejected at least until the [redacted content] was completed, and a [redacted content] was created. The Complainant also signed her consent for [redacted content]. OCR does not have evidence to date to indicate that the IEP team considered or discussed the Student's attendance concerns.

On [redacted content], the IEP team met to conduct an [redacted content]. The team reviewed the completed [redacted content], and agreed to transition the Student to a new school. In the interim, the team agreed that the Student would receive [redacted content]. Again, OCR has not found evidence to date to indicate that the IEP team considered or discussed the Student's attendance concerns.

On [redacted content], the IEP team met to conduct its [redacted content] of the Student's IEP, and to update the Student's present levels of performance and IEP goals. On [redacted content], an IEP meeting invitation was issued for a [redacted content] meeting to discuss the Complainant's request for [redacted content]. To date, OCR lacks evidence to indicate that these meetings included a discussion or consideration of the Student's attendance concerns.

### Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. 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. 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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the behavior which resulted in the exclusion(s) (also referred to as a manifestation determination). That determination should be made by a group

of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Lastly, the Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP or placement are necessary.

### Analysis

Based on the foregoing, OCR is concerned that the Student was excluded from the Division's programs for his behavior in the form of suspensions and early school pickups without the Division conducting a manifestation determination review to assess whether these behaviors resulted from the Student's disability. OCR found evidence, including disciplinary files, dismissal logs, and text messages, indicating that the Student was excluded from class for at least [redacted content] days, and that these exclusions may have stemmed from behavioral concerns. Moreover, OCR learned of [redacted content] additional instances of early pickups for which specific time missed was not readily available. OCR is therefore concerned that the Student may have been excluded due to behavior for more than 10 school days, which would constitute a significant change in placement. OCR did not review any evidence to date to indicate that the Division conducted a manifestation determination hearing during the [redacted content] school year. OCR is also concerned that the Division's record-keeping practices and failure to record early school pickups as disciplinary incidents, or to accurately record missed instructional time on student attendance records, may have resulted in a denial of FAPE by denying the IEP team necessary information to determine the appropriate educational program or placement for the Student and/or to determine whether a manifestation determination was warranted.

During the course of the investigation, OCR also found multiple instances where the Student was unable to attend school, or was late to school, as a result of [redacted content] issues stemming from his disability, and that Division staff were aware of these issues. Although the IEP team met

multiple times throughout the school year, the evidence to date fails to indicate that the IEP team considered whether these absences implicated a need for new or additional special education or related aids and services.

### Conclusion

Before OCR completed its investigation of the complaint, the Division expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On October 5, 2023, the Division agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the Division's implementation of the agreement until the Division is in compliance with the terms of the agreement and the statute and regulations at issue.

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. 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 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 against the Division 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact Katharine Bohrs, the OCR attorney assigned to this complaint, at [Katharine.Bohrs@ed.gov](mailto:Katharine.Bohrs@ed.gov).

Sincerely,

Jasmine Gibbs  
Team Leader, Team II  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc (By email only): [redacted content]