



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

September 25, 2014

Dr. Vashti K. Washington  
Superintendent  
Jasper County Public Schools  
10942 North Jacob-Smart Blvd.  
P.O. Box 848  
Ridgeland, South Carolina 29936

Re: OCR Complaint No. 11-14-1141  
Letter of Findings

Dear Dr. Washington:

This letter is to inform you of the determination of the above-referenced complaint that was filed on February 28, 2014, with the District of Columbia Office for Civil Rights (OCR) within the U.S. Department of Education (the Department) against Jasper County Public Schools (the District). The complaint was filed by a parent (the Complainant) on behalf of her son (the Student), who previously attended the XXXX School (the School) within the District. The specific allegations that OCR investigated follow:

**Allegations Investigated**

**Allegation 1:** During the spring of 2014, the District discriminated against the Student by treating the Student differently based on disability, when XXXX.

**Allegation 2:** The District discriminated against the Student based on disability and denied the Student a free appropriate public education (FAPE), XXXX.

During its investigation of the complaint, OCR considered information that the Complainant provided during an interview with OCR staff on March 20, 2014 and information that the Complainant provided via e-mail on March 31, 2014. OCR also considered information that was provided by the District including an Incident Report; the Student's most recent Individualized Education Program (IEP); the District's procedures for discipline of students with disabilities; the Code; witness statements; and other relevant information. OCR also interviewed District personnel, including two teachers who witnessed portions of the fight and one of two School Resource Officers (SROs), who are employed by the County and arrested the Student.

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

After thorough consideration of the investigative information, OCR finds that the evidence is insufficient to conclude that the District discriminated against the student by treating the Student differently based on disability, as to Allegation 1. As to Allegation 2, OCR found sufficient evidence to find that the District failed to comply with the requirements of Section 504 and Title II and their implementing regulations with regard to the provision of a FAPE. Below is information on OCR's responsibilities, background information on the complaint and the basis for OCR's complaint determination.

### **OCR's Responsibilities**

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.

### **Background Information**

<XXXX THREE PARAGRAPHS REDACTED XXXX>

#### **Allegation 1: Analysis and Conclusions**

The Complainant alleged that the District discriminated against the Student based on disability as to XXXX. Allegation 1 raised the issue of whether the District discriminated against the Student by treating the Student differently based on disability than similarly-situated students without disabilities, as to the arrest.

When investigating an allegation of different treatment based on disability, OCR reviews the investigative information to determine if a student (the Student) has been treated differently or less favorably than similarly-situated students without disabilities. If evidence of any difference in treatment is found, this establishes a *prima facie*, or initial case, of disability discrimination. Then, OCR provides the recipient (here the District) an opportunity to provide a rationale or justification for the difference in treatment. OCR then examines the recipient's rationale/justification for evidence of pretext, or an excuse for discrimination.

<XXXX TWO PARAGRAPHS REDACTED XXXX>

Based on the investigative evidence, OCR finds that the evidence is insufficient to conclude that the District discriminated against the Student based on disability, as to Allegation 1.

#### **Allegation 2: Analysis and Conclusions**

The Complainant alleged that the District discriminated against the Student based on disability and denied the Student a FAPE by XXXX, without conducting a manifestation determination review (MDR). Allegation 2 raised the issue of whether the District denied the Student a FAPE by XXXX.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance from the Department. The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires that recipients of federal financial assistance from the Department provide a FAPE to all students with disabilities who are within the recipient's jurisdiction. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. § 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. OCR interprets the Title II regulation to require districts to provide a FAPE to the same extent required under the Section 504 regulation.

With regard to the provision of a FAPE, the Section 504 implementing also provides, at 34 C.F.R. § 104.35(a), that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation (in accordance with the procedural requirements of this part referenced above) of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education, and any subsequent significant change in placement. In the disciplinary context, when an exclusion of a child with a disability is permanent (i.e., expulsion) or for an indefinite period or more than 10 consecutive school days, the exclusion constitutes a significant change in placement.

Under Section 504 and Title II, if it is determined that disciplinary action involving a student with a disability constitutes a significant change in placement, the recipient must conduct a reevaluation of the student pursuant to 34 C.F.R. § 104.36. In the disciplinary context, the reevaluation consists of a determination of whether the misconduct that gave rise to the discipline action is related to the student's disability. This determination must be made during the 10-day period of the disciplinary removal by a group of persons knowledgeable about the student, the meaning of evaluation data, and the placement options. If during the MDR it is determined that the conduct that gave rise to the discipline action was a manifestation of the student's disability, the student may not be excluded from school for more than 10 consecutive days and the student's IEP or Section 504 team should convene and review the student's plan to determine whether the student is receiving an appropriate instructional program and related aids and services, and whether behavioral intervention strategies should be implemented for the student. OCR interprets the regulation implementing Title II as imposing substantially similar requirements to that of Section 504.

<XXXX TWO PARAGRAPHS REDACTED XXXX>

The District has procedures in place for the discipline of students with special needs (Discipline Procedures). The Discipline Procedures are incorporated at pages 34-35 of the Code. The Code states in pertinent part as follows: “Removal of a student with disabilities outside of the school personnel’s authority for more than 10 consecutive days and/or for long-term removals which constitute a Change of Placement will be addressed by the MDR Team.” It further states that, when a student with disabilities is recommended for long-term removal, the MDT must convene a meeting within 10 days of the action and make a determination as to whether the conduct that gave rise to the disciplinary action was a manifestation of the Student’s disabling condition.

<XXXX PARAGRAPH REDACTED XXXX>

Based on the investigative information, OCR finds that the District failed to comply with the requirements of Section 504 and its implementing regulation and denied the Student a FAPE, as alleged. To address this compliance concern, on September 24, 2014, OCR entered into an agreement with the District pursuant to Section 303 of OCR's *Case Processing Manual*. A copy of the Agreement is attached hereto. When fully implemented, the District will be in compliance with Section 504 and Title II and the regulations implementing these laws, as to the issue raised by the allegation.

<XXXX PARAGRAPH REDACTED XXXX>

### **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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We are required to inform the District that no person is permitted to intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint with or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Also, under the Freedom of Information Act, it may be necessary to release this document and other related correspondence and records upon request. In the event we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions or concerns regarding OCR's complaint determination, you may contact Lorraine Chatman or Duane Scott, the attorneys assigned to the complaint, at 202-453-

5904, or 202-453-6596, respectively. You may also contact them via e-mail, at [lorraine.chatman@ed.gov](mailto:lorraine.chatman@ed.gov) or [duane.scott@ed.gov](mailto:duane.scott@ed.gov).

Sincerely,

/s/

Alessandro Terenzoni  
Team Leader, Team II  
District of Columbia Office  
Office for Civil Rights

Enclosure