



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

July 21, 2016

Dr. Rebecca Gates
Superintendent
Northumberland County Schools
2172 Northumberland Highway
Lottsburg, Virginia 22511

RE: OCR Complaint No. 11-16-1313
Resolution Letter

Dear Dr. Gates:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 29, 2016 against Northumberland County Schools (the Division). The Complainant alleged that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the Division failed to implement the Student's Section 504 plan when, in a three week period during February to March 2016, the Student did not receive any reading enrichment services.

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 Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

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

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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. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

Factual Background

The Student was in the XXXX (the School) during the 2015-2016 school year. A prior written notice, dated September 18, 2015 indicated that the Student's Section 504 team agreed that the Student would "receive assistance with his reading and comprehension from a XXXX

The Division conceded that there was a three to four week period, during February and March 2016, in which no reading and comprehension assistance was provided to the Student, due to a staffing issue.

Conclusion

Section 207 of OCR's *Case Processing Manual* allows for rapid resolution of substantive areas determined by OCR to be appropriate for such resolution when a recipient has indicated that it is willing to take action in the future to resolve the complaint. In these circumstances, the complaint may be resolved by obtaining a resolution agreement, the implementation of which OCR will monitor.

On July 20, 2016, the Division signed the enclosed Resolution Agreement which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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. 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 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, or participates in an OCR proceeding. 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact Todd Rubin, the OCR attorney assigned to this complaint, at 202-453-5923 or todd.rubin@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Bradford A. King, Esq.