



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 12, 2021

Scott Brabrand, Ed.D.
Superintendent of Schools
Fairfax County Public Schools
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

sent via E-mail

Dear Superintendent Brabrand:

The United States Department of Education (Department), Office for Civil Rights (OCR), hereby informs you that it is initiating a directed investigation of the Fairfax County Public Schools (District) due to disturbing reports involving the District's provision of educational services to children with disabilities during the COVID-19 pandemic. For example, press reports indicate that while the District has declined to provide in-person instruction to students with disabilities, it nevertheless opened its schools to in-person child-care for general education students.¹ Accordingly, OCR is concerned that the District has failed to provide a "free appropriate public education" (FAPE) to each qualified student with a disability as required by federal law and denied students with disabilities equal access to education.

Pursuant to its regulatory authority set forth in 34 C.F.R. § 104.61², OCR will initiate an investigation whenever a report, complaint, or other information indicates a possible failure to comply with the laws and regulations enforced by OCR.³

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 prohibits discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities, including public elementary and secondary educational institutions.

OCR's directed investigation will examine whether the District has excluded qualified persons with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of the Section 504 and its implementing regulation at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130.

¹ See, e.g., <https://www.wusa9.com/article/features/producers-picks/special-ed-mom-will-bring-her-daughter-to-school-even-though-classes-are-virtual/65-0e78f2f4-66d5-422c-9fd9-3e0589df96cf>

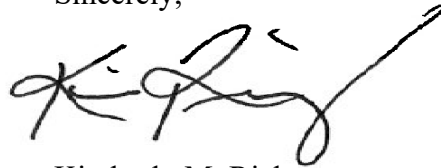
² Incorporating the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 found in 34 C.F.R. §§ 100.6-100.10 and 34 C.F.R. Part 101.

³ See also § 402 of OCR's *Case Processing Manual*: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

I emphasize that initiating a directed investigation in no way indicates that a violation exists.

The OCR Washington DC Metro regional office will conduct this directed investigation. OCR will contact District officials within a week of the date of this letter to arrange for the next steps in the investigation, including requesting access to data and personnel. Should you have any questions, please do not hesitate to contact JD Hsin, OCR Senior Counsel, at (202)-453-7901 or jd.hsin@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly M. Richey', with a long, sweeping flourish extending to the right.

Kimberly M. Richey
Acting Assistant Secretary for Civil Rights

cc:

Dr. James F. Lane
Superintendent of Public Instruction
Virginia Department of Education
James Monroe Building
101 North 14th Street
Richmond, Virginia 23219