



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

April 12, 2021

Sent Via Email

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

Re: OCR Complaint No. 11-20-1029
Notification/Data Request Letter

Dear Superintendent Brabrand:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received a complaint on October 15, 2019 against Fairfax County Public Schools (the Division). The Complainant filed the complaint on behalf of students with disabilities accessing College Board Approved Accommodations for the PSAT NMSQT examination administered at South County High School (the School) on October 16, 2019. The complaint alleges that the Division discriminated against students accessing accommodations on this examination on the basis of disability by failing to provide these students with bus transportation home despite providing bus transportation for students without disabilities requiring testing accommodations.

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 from the Department. 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 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.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation. Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainant, the Division, and other sources, as appropriate. OCR will ensure that its

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

investigation is legally sufficient and fully responds to the allegation in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.pdf>. Also, in accordance with the *Case Processing Manual*, OCR will provide a copy of the complaint to the Division under separate cover. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Our goal is the prompt, appropriate resolution of the complaint. While we are proceeding with an investigation, there are other approaches that can achieve this goal. Information on OCR's complaint processing procedures is available at <http://www.ed.gov/ocr/complaints-how.html>.

Please note the section on resolution agreements reached during an investigation. If the Division expresses an interest in resolving the complaint and OCR determines that resolution of the complaint prior to the completion of the investigation is appropriate, OCR may attempt to negotiate an agreement with the Division pursuant to Section 302 of the *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. OCR requests that the Division submit this information within 15 calendar days of the date of this letter (i.e., by April 27, 2021). We prefer that you submit information electronically, if feasible.¹ If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact us as provided below prior to the expiration of the 15-day period.² Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

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 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.

¹ If your submission cannot be sent via email, OCR can set up a secure site for you to upload your submission. You may contact us for more information about this option.

² OCR understands that the COVID-19 virus may be impacting your institution's operations and your ability to produce the requested data by the deadline. If this is the case, please contact us as soon as possible so that we may work with you to establish a feasible timeframe for the data response. We also invite you to access the Department's COVID-19 information and resources for schools and school personnel, available at <https://www.ed.gov/coronavirus>. Please let us know if you need any assistance from the Department or OCR.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-453-6978 or megan.rok@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team I
District of Columbia Office
Office for Civil Rights

**Fairfax County Public Schools
OCR Complaint No. 11-20-1029**

Data Request

School: South County High School

Please provide the following data by April 27, 2021. The Department’s regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(c), which is incorporated by reference in the Section 504 regulation at 34 C.F.R. § 104.61, gives OCR the authority to request this information.³ OCR hereby notifies the Division that OCR will consider the Division’s response to this data request to be its full and complete response pursuant to OCR’s right of access to information under the regulations cited above, unless the Division notifies OCR otherwise. If the Division obtains any additional information or documents responsive to this data request or otherwise relevant to the allegation in this case, the Division must promptly inform OCR of its existence and supplement the data response within 15 days of its discovery. OCR reminds the Division that a failure to provide requested information may be considered a denial of access in violation of the regulations cited above.

1. The name and contact information of the individual who will serve as OCR’s contact person during the investigation of this complaint.
2. The Division’s narrative response to the allegations and all documents or records referenced in the narrative response.
3. The Division’s Section 504 grievance procedures and notices of non-discrimination. Additionally, please indicate where the grievance procedures and notices of non-discrimination are published.
4. The name and contact information of the Division’s Section 504 Coordinator.
5. Any additional information that the Division believes may be helpful in resolving this complaint.

³ Please note that OCR has the right of access to records that are necessary for OCR’s investigation, even if those records contain names or other personally identifiable information. *See* 20 U.S.C. §§ 1232g(b)(1) and 1232g(b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act; *see also* 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii). However, please remove any social security numbers from responsive records due to the sensitive nature of this information.