



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

May 4, 2021

Via Email: suptbrabrand@fcps.edu

Scott Brabrand
Superintendent
Fairfax County Public Schools
Gatehouse Administration Center
8115 Gatehouse Road
Falls, Church, Virginia 22042

Re: OCR Directed Investigation, #11-21-5901
Initial Data Request Letter

Dear Superintendent Brabrand:

On January 12, 2021, the U.S. Department of Education, Office for Civil Rights (OCR), notified you that it has opened a directed investigation involving Fairfax County Public Schools (the Division). OCR's directed investigation will specifically examine what the Division has done to address the effects of any pandemic-related disruptions in services required to meet the individual educational needs of students with disabilities pursuant to 34 C.F.R. § 104.33.

OCR is responsible for enforcing 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 under any program or activity receiving 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. § 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities, including public education systems and institutions. 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.

Please note that opening this directed investigation in no way implies that OCR has made a determination with regard to its merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Division and other sources as appropriate.

Our goal is the prompt, appropriate resolution of the investigation consistent with Article III of OCR's Case Processing Manual, <http://www.ed.gov/ocr/complaints-how.html>. Please note that the Case Processing Manual includes a voluntary option to reach a resolution agreement prior to the completion of an investigation. If the Division expresses an interest in resolving the

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complaint in this way and OCR determines this form of resolution is appropriate, we will follow the steps set out in Section 302 of the Case Processing Manual.

Enclosed with this letter is an initial data request. The focus of the data request is what the Division has done to address any denial of free appropriate public education (FAPE) that has occurred for students with disabilities while the Division has offered remote learning in response to the pandemic. Please provide the information described in the data request within 15 calendar days of the date of this letter (i.e., by May 19, 2021). Please also provide the name and telephone number of the person you designate to respond. Please submit information electronically, if feasible. 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. Please be aware that OCR may need to make additional requests for information in the future.

The Department's regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(b) and (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.¹ If the Division obtains any additional information or documents responsive to this data request or otherwise relevant to the issue being investigated, the Division must promptly inform OCR of its existence and supplement the data response within 15 days of its discovery.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. If OCR receives such a request, it 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 privacy.

Your cooperation is appreciated. If you have any questions, please contact Sara Clash-Drexler, the OCR attorney assigned to this investigation, at 202-453-5906 or sara.clash-drexler@ed.gov.

Sincerely,



Alice Wender
Office Director
District of Columbia Office
Office for Civil Rights

¹ 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.

Fairfax County Public Schools
OCR Directed Investigation, No. 11-21-5109

Initial Data Request – Due by May 19, 2021

Please provide the following information, documents, and/or records developed, utilized, received, and/or disseminated during the period beginning when the Division first closed schools in March 2020 in response to the COVID-19 pandemic (the pandemic) to the present time:

1. The Division’s narrative response to the issue identified above—what the Division has done to address the effects of any pandemic-related disruptions in services required to meet the individual educational needs of students with disabilities pursuant to 34 C.F.R. § 104.33—and all documents or records referenced in the narrative response. Please include a timeline that provides all relevant dates, including: the date of initial school closure in March 2020; the date when the Division first began using remote learning in response to the pandemic; and any opportunities for in-person learning provided to students with and without disabilities during the pandemic;
2. The Division’s policies and procedures to ensure that students with disabilities received a FAPE while the Division has been offering remote learning in response to the pandemic, including evaluating and modifying, as appropriate, Individualized Education Programs (IEPs) and Section 504 plans while the Division has been offering remote learning, and developing contingency or temporary learning plans;
3. The Division’s policies and procedures pertaining to the provision of “recovery services” and compensatory services for students with disabilities while the Division has been offering remote learning in response to the pandemic, and the dates on which each policy/procedure came into effect;
4. Copies of all training materials presented and/or disseminated to Division staff concerning the definition of the term “recovery services” and the process for determining if and when such services are appropriate for students with disabilities;
5. All correspondence among Division staff concerning the definition of the term “recovery services” and the process for determining if and when such services are appropriate for students with disabilities, and how the Division determined what “recovery services” it would provide eligible students (e.g., individualized determinations for each student, standard programming provided to specific groups of students, etc.), excluding communications about any individual student;
6. All correspondence among Division staff concerning the provision of compensatory services and the process for determining if and when such compensatory services are appropriate for students with disabilities, excluding communications about any individual student;

7. If not already provided in response to the above, please provide any documentation, communications, and training materials explaining if and when students who have received “recovery services” could also receive compensatory services;
8. Copies of all communications and information disseminated to parents/guardians of students with disabilities pertaining to the provision of compensatory services and/or “recovery services,” excluding communications between a parent/guardian and a staff member about an individual student;
9. Please provide a narrative response and any related documentation explaining whether the Division has required students to receive “recovery services” and/or compensatory services in a particular format (e.g., in-person), and what occurs if the parent declines or refuses such services;
10. The name and contact information of the Division’s Section 504 Coordinator; and
11. Any additional information that the Division believes may be helpful in resolving this complaint.

Please note that OCR may request additional student records during the investigation. Therefore, we request that the Division preserve all existing records related to the issue identified for investigation while OCR’s investigation is pending.