



**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

June 9, 2023

By email only to superintendent@doe.virginia.gov

Dr. Lisa Coons
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond VA, 23218

Re: Case No. 11-23-4004
Virginia Department of Education

Dear Dr. Coons:

The U.S. Department of Education, Office for Civil Rights (OCR) received a complaint on October 24, 2022 against the Virginia Department of Education (VDOE). The Complainant alleged that the VDOE discriminated against students with disabilities in Virginia on the basis of disability by denying them a free appropriate public education (FAPE) when it issued guidance—beginning in at least the Spring of 2021—permitting school divisions to offer special education services and supports during the COVID-19 pandemic that fell short of providing those students FAPE so long as the services were reasonable in light of the circumstances.

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. 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. Because VDOE receives federal financial assistance from the Department of Education 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 following legal issue for investigation:

Whether the VDOE's guidance regarding the provision of special education and related services during the COVID-19 pandemic led school divisions to deny FAPE to students with disabilities.

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-

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finder, collecting and analyzing relevant evidence from the Complainant, the VDOE, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegations in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.pdf>. More information about OCR's complaint processing procedures can be found at <http://www.ed.gov/ocr/complaints-how.html>.

When appropriate, a complaint may be resolved before the conclusion of an investigation if the agency expresses an interest to OCR in resolving the allegation(s) and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In such cases, OCR obtains a resolution agreement signed by the agency. This agreement must be supported by the evidence obtained during the investigation, and it must be consistent with the applicable statute(s) and regulation(s). Additional information about this voluntary process may be found in OCR's *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. OCR requests that the VDOE submit this information within 20 calendar days of the date of this letter (i.e., by June 29, 2023). 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 20-day period. 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 VDOE 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 against the VDOE 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, OCR 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 personal privacy.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Alex Ussia, the OCR attorney assigned to this complaint, at 202-987-1288 or alex.ussia@ed.gov.

Sincerely,

JENNIFER
BARMON

Digitally signed by
JENNIFER BARMON
Date: 2023.06.09
08:01:50 -04'00'

Jennifer Barmon
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

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.

**Virginia Department of Education
OCR Case No. 11-23-4004**

Data Request

Complainant: [REDACTED]

Please provide the following data by June 29, 2023. The Department of Education’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.² OCR may request supplemental data and documents that are relevant to the allegation under investigation. If the VDOE obtains any additional information or documents responsive to this data request or otherwise relevant to the allegations in this case, the VDOE must promptly inform OCR of its existence and supplement the data response within 15 days of its discovery. OCR reminds the VDOE that a failure to provide requested information may be considered a denial of access in violation of the regulations cited above. Please ensure that VDOE employees preserve all data and documents that are relevant to the allegation under investigation until OCR closes this case.

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 VDOE’s narrative response to the allegations and all documents or records referenced in the narrative response.
3. The VDOE’s guidance, policies, and training materials relating to the provision of a free appropriate public education issued, in effect, or made public since March 2020, including but not limited to guidance, policies, and training materials pertaining to the provision of “recovery services” and compensatory services for students with disabilities.
4. Any additional information that the VDOE believes may be helpful in resolving this complaint.

² 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.