



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 20, 2021

Via Email: superintendent@doe.virginia.gov

Dr. James F. Lane
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

Re: OCR Complaint No. 11-21-4005
Notification/Data Request Letter

Dear Dr. Lane:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received the above-referenced complaint filed against the Virginia Department of Education (the VDOE) on (b)(6); (b)(7)(A); (b)(7)(C). The Complainant alleged that the VDOE discriminated against her on the basis of disability¹ with respect to (b)(6); (b)(7)(A); (b)(7)(C) when the (b)(6); (b)(7)(A); (b)(7)(C) denied her requests for reasonable modifications on (b)(6); (b)(7)(A); (b)(7)(C); namely, (b)(6); (b)(7)(A); (b)(7)(C) (b)(6); (b)(7)(A); (b)(7)(C)

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 VDOE 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

¹ The Complainant informed OCR that she had (b)(6); (b)(7)(A); (b)(7)(C)

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 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 VDOE under separate cover. A 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>. In particular, please note the section on Facilitated Resolution Between the Parties (FRBP). Under this voluntary, informal approach, similar to mediation, OCR helps facilitate settlement discussions between the Complainant and the VDOE. If you believe FRBP can be useful in this case, please contact the OCR staff person identified below as soon as possible. Please note that OCR will not facilitate in-person mediation sessions at this time but may facilitate mediation using teleconferences or video.

Please also note the section on resolution agreements reached during an investigation. If the VDOE 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 VDOE pursuant to Section 302 of the *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. OCR requests that the VDOE submit this information within 15 calendar days of the date of this letter (i.e., by **May 5, 2021**). We prefer that you submit information electronically, if feasible.² 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. 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 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.

² 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.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Betsy Trice, the OCR attorney assigned to this complaint, at betsy.trice@ed.gov.

Sincerely,

(b)(6); (b)(7)(A);
(b)(7)(C)

Letisha Morgan-
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Letisha Morgan-Cosic
Team Leader, Team II
District of Columbia Office
Office for Civil Rights



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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

September 13, 2022

By email only to: superintendent@doe.virginia.gov

Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

Re: Case No. 11-22-4042
Virginia Department of Education

Dear Ms. Balow:

The U.S. Department of Education, Office for Civil Rights (OCR) received a complaint on (b)(6); (b)(7)(A); (b)(7)(C) against the Virginia Department of Education, which we will refer to as the VDOE. The Complainant alleged that the VDOE discriminated against her on the basis of disability when in (b)(6); (b)(7)(A); (b)(7)(C) it denied her requests for reasonable modifications, namely, (b)(6); (b)(7)(A); (b)(7)(C) (b)(6); (b)(7)(A); (b)(7)(C).

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 the 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.

Based on the above, OCR is opening the following legal issue for investigation:

- Whether the VDOE made reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

Because OCR determined that it has jurisdiction and that the allegations were timely filed, OCR is opening the allegations for investigation. Please note that opening the allegations for investigation in no way implies that OCR has made a determination on the merits of the allegations. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, 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.html>.

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

When appropriate, a complaint may be resolved before the conclusion of an investigation after the VDOE expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the VDOE. This agreement must be aligned with the complaint allegations and the information obtained during the investigation, and it must be consistent with applicable regulations. Additional information about this voluntary resolution 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 15 calendar days of the date of this letter (i.e., by September 28, 2022). 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. 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 Rhonda Porter, the OCR attorney assigned to this complaint, at (202) 245-7271 or Rhonda.Porter@ed.gov.

Sincerely,

CHENELLE LOVE

Digitally signed by CHENELLE
LOVE
Date: 2022.09.13 14:53:30 -04'00'

Chenelle Love
Team Leader, Team V
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.



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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-

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

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
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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.