



UNITED STATES DEPARTMENT OF
OFFICE FOR CIVIL RIGHTS
400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

February 8, 2016



Re: OCR Complaint No. 11-16-1048
Administrative Closure Letter

On November 4, 2015, the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received your complaint against North Carolina Department of Public Instruction (the NCDPI). You alleged that NCDPI discriminates against students with disabilities. Specifically, the complaint alleges that NCDPI's current policy of not providing feeding therapy to students denies a free appropriate public education to students who require feeding therapy.

Hereinafter, you will be referred to as "the Complainant."

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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) 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 NCDPI receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

When the Complainant's son started preschool services, her school district informed her that the NCDPI had a policy which prohibited the provision of feeding therapy. The Complainant contacted a Consultant to the NCDPI in the area of Speech-Language Pathology for further clarification who stated in an email to the Complainant dated October 28, 2015, that schools do not employ certified feeding therapists because schools do not work on swallowing which the NCDPI feels is a medical service. Additionally, the Consultant wrote that "advancing the swallow" is a medical issue and should be managed in a medical setting. Several staff from the NCDPI were also copied on this email. The Complainant filed this complaint with OCR because she was believed the Student was denied feeding therapy due to the NCDPI's policy against providing it.

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

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The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation. OCR interprets this FAPE regulation to require consideration of all possible related services, which would include consideration of feeding therapy. An IEP team in a district should make the determination as to whether a particular service is a medical service based on the needs of an individual student. The NCDPI is responsible for overseeing districts implementation of the IDEA.

On January 14, 2016, OCR spoke with an attorney at the NCDPI and explained the conflicting documentation. The NCDPI asserted, and OCR confirmed, that it does not have a policy prohibiting feeding therapy and that the statements made by the consultant were incorrect. During this call it was agreed that the NCDPI would issue a memo clarifying the misunderstanding. On January 27, 2016, the NCDPI issued a Feeding Policy Clarification Memo (the Memo) stating that it does not have a policy specifically addressing feeding therapy. The Memo also states that the NCDPI policies require that local education agencies consider the unique needs of students with disabilities when developing IEPs and an IEP Team may consider feeding therapy for a student based on their unique needs. The NCDPI disseminated the Memo to North Carolina Exceptional Children's (EC) Directors in traditional local education agencies, state operated programs and lead administrators of Charter Schools via a listserv maintained by the EC Division for statewide communication. A copy of the Memo will also be maintained in North Carolina Special Education Reference, which is a searchable database of statewide communication, maintained on the EC Division website.¹

Section 110 of OCR's *Case Processing Manual* states that OCR will close a complaint if we obtain credible information indicating that the allegations are resolved and there are no systemic allegations. Based on the NCDPI's issuance of the Memo on January 27, 2016, any concerns OCR may have had about North Carolina school districts' misunderstanding of NCDPI's policy regarding feeding therapy has been resolved. Accordingly, OCR is closing the complaint because it has been resolved.

For the reasons explained above, OCR is closing its investigation of the complaint as of the date of this letter and will take no further action on the complaint.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's

¹ OCR has confirmed the memo is located on a public website at http://downloads.microscribepub.com/nc/ncser/Memo_Feeding_Therapy_01_2016.pdf (Retrieved February 2, 2016).

formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the NCDPI 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, or participates in an OCR proceeding. 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.

OCR would like to thank Katie Cornetto for her assistance in resolving this complaint. If you have any questions, please contact Judith Risch, one of the OCR attorney assigned to this complaint, at 202-453-5925 or judith.risch@ed.gov or Jennifer Barmon the second OCR attorney assigned to this complaint, at 202-453-6751 or jennifer.barmon@ed.gov.

Sincerely,



David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights