



U.S. DEPARTMENT OF EDUCATION

P.O. BOX 14620

WASHINGTON, DC 20044-4620

Telephone (202) 786-0500 Facsimile (202) 208-7797 TDD (877) 521-2172

e-mail: OCR.DC@ed.gov

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, South Carolina, Virginia

September 11, 2008

Dr. Michael McIntosh
P.O. Box 62
Seaboard, NC 27876

Re: OCR Complaint No. 11-08-1259
Notification Letter

Dear Dr. McIntosh:

This letter concerns the disability and race discrimination complaint that you filed on June 24, 2008 with the District of Columbia Office for Civil Rights (OCR) of the U.S. Department of Education (the Department), against Norfolk City Public Schools (the Division). You filed the complaint alleging that the Division discriminates against students based on their disability and race (African-American) and that the Division retaliated against you and others for bringing this discrimination to the attention of Division administrators. We have completed our evaluation of the complaint and decided to open it for investigation. More information about OCR's responsibilities, our complaint procedures, and the specific allegations that we are investigating, is provided below.

OCR'S RESPONSIBILITIES AND PROCEDURES

OCR is responsible for enforcing certain Federal civil rights statutes, including Title VI of the Civil Rights Act of 1964 (Title VI) and Section 504 of the Rehabilitation Act of 1973 (Section 504) and their implementing regulations. These laws prohibit discrimination on the basis of race and disability in programs and activities that receive Federal financial assistance (FFA) from the Department. OCR also is a designated agency with the authority to enforce Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation, which prohibit discrimination on the basis of disability by public entities, including public education systems and institutions, regardless of whether they receive FFA from the Department. Because the Division receives FFA from the Department and is a public education system, we have jurisdiction over it pursuant to these laws.

OCR also determined that it has subject matter jurisdiction over the complaint and that the allegations captured below were timely filed, and opened it to investigate the allegations identified below. Please note that opening the allegations below for investigation in no way implies that

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

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 complainant, the recipient (in this case the Division), and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of our *Case Processing Manual* (available at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>).

COMPLAINT ALLEGATIONS

Based on information provided in the complaint and its supporting documentation and gathered during a telephone conversation with you on August 13, 2008, OCR accepted the following complaint allegations for investigation:

Allegation 1: During the 2007-08 School Year (SY), the Division denied students with disabilities, who were assigned to Madison Alternative School (the School), a free appropriate public education (FAPE) by:

- (a) Failing to provide sufficient and timely information and documentation about students with disabilities (e.g., incomplete documentation, expired Individualized Education Programs/IEPs or Section 504 Plans) to the School when they were assigned to it;
- (b) Inappropriately re-classifying students' disability categories when they were at the School;
- (c) Inappropriately assigning students to the School when a more restrictive placement was warranted; and,
- (d) Failing to implement students' IEPs and/or Section 504 Plans they were assigned to the School.

Allegation 2: During the 2007-08 SY, the Division discriminated against African-American students with disabilities who attended the School on the basis of their race by not granting their requests for private day placements while granting such requests for Caucasian students with disabilities.

Allegation 3: During the 2007-08 SY, the Division discriminated against students who attended the School on the basis of race (African-American - 83% of the Alternative School's population) and disability (approximately 40% of the Alternative School's population) because the School's facilities and services are inadequate (e.g. there are few books and other instructional materials, there is no school nurse or school psychologist).

Allegation 4: During the 2007-08 SY, the Division discriminated against African-American students on the basis of their race by disciplining them more harshly than Caucasian students by:

- (a) Giving disproportionately long periods of long-term suspensions (LTS) to African-American students;
- (b) Not allowing African-American students to return to their home schools after serving their LTS at the School; and

- (c) Using "Code 15A", which denotes repeated violations, more frequently when disciplining African-American students for fewer violations than used in disciplining Caucasian students.

Allegation 5: In the Spring of 2008, the Northside Middle School discriminated against two students (Student A and Student B) on the basis of their disabilities when it treated them differently than similarly situated non-disabled students by refusing to allow them to return to Northside at the conclusion of their suspensions.

Allegation 6: The Division retaliated against staff at the School for bringing complaints/concerns about discrimination against students on the bases of disability and race to the attention of Division administrators (e.g., suspended the former Principal of the School in April 2008).

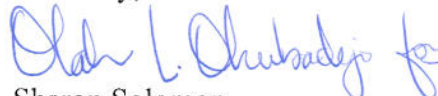
We have notified the Division that we are investigating this complaint. We have also reminded Division personnel that no person is permitted to intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint with or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we 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 will contact you soon to keep you informed of our investigative and/or other resolution activities. We will also contact you if we need additional information from you.

We look forward to your continued cooperation during our investigation of your complaint. If you have any questions or concerns about your complaint, please contact Rachel Glickman, Attorney, at 202-786-0522, or via e-mail at rachel.glickman@ed.gov.

Sincerely,



Sharon Solomon

Team Leader

District of Columbia Office