



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, D.C.

February 20, 2014

Dr. Marc Sosne  
Superintendent  
Clover School District  
604 Bethel Street  
Clover, South Carolina 29710

Re: OCR Complaint No. 11-13-1303  
Letter of Findings

Dear Dr. Sosne:

This letter is to inform you of the disposition of the complaint that was filed with the U.S. Department of Education (the Department), District of Columbia Office for Civil Rights (OCR) on August 20, 2013, against the Clover School District, in particular XXXX on behalf of the Student. The Complainants alleged that during the 2012-2013 school year, the School denied the Student a free appropriate public education (FAPE) by failing to timely evaluate him for related aids and services.

OCR conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and their implementing regulations at 34 C.F.R. Part 104; and 28 C.F.R. Part 35, respectively, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education and by public entities. Because the District is a recipient of Federal financial assistance from the Department and is a public entity, it is subject to the provisions of Section 504 and Title II.

In investigating this complaint, OCR reviewed data responses from the District, and conducted interviews with District/School personnel and the Complainants. As discussed below, OCR's investigation substantiated the Complainants' allegation, and the District entered into the enclosed Resolution Agreement to resolve the identified compliance concern. OCR will monitor the implementation of the Agreement.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to each qualified individual with a disability in the school district's jurisdiction, regardless of the nature or severity of the individual's disability. The provision of an appropriate education is

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

the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and are based upon adherence to the procedural requirements of Section 504 pertaining to the educational setting, evaluation and placement, and the provision of procedural safeguards. OCR interprets the regulation implementing Title II as imposing substantially similar requirements to those found in the regulation governing Section 504. The Section 504 regulation, at 34 C.F.R. § 104.35, requires a school district to evaluate a student who because of disability needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement.

While Section 504 regulations require a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulations do not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. However, an unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational services provided to students without disabilities.

### **Discussion**

The Student enrolled in the District during the XXXX school year as a XXXX grader XXXX. According to School personnel and to communication records between the Student's parent and School personnel, the Student's parent (the Parent) notified School personnel of the Student's diagnoses of XXXX and XXXX in January 2013. In a January 12, 2013 e-mail, the Parent informed one of his teachers (Teacher A) that "XXXX he will never be normal and if that is a condition of passing then he can not do it." In a January 29, 2013 e-mail from the Parent to a different teacher (Teacher B), she stated that the Student "is XXXX and XXXX. . . XXXX but [he] has not doing well in school this year so far." In another e-mail to a third teacher, on January 29, 2013, the Parent stated: "I wanted to make you aware that [the Student] is XXXX and XXXX. I have tried to get help for him but have not been very successful."

Through e-mail communications with the Parent and interviews with OCR personnel, the Student's teachers overwhelmingly reported that the Student struggled academically and performed poorly during the 2012-2013 school year. As an example, Teacher A informed OCR that until the Parent informed her of the Student's medical diagnoses "he had been struggling. I attributed [the struggling] to lack of effort" and transition XXXX to the School. She interpreted the report of the Student's diagnoses as an "excuse" because the Student was failing her course. Teacher B informed OCR that though the Student earned a 77 in her course, "his capability was higher than a 77."

School personnel also informed OCR that they observed the Student exhibit behavior that was similar to other students with XXXX. Teachers A and B informed OCR that the Student was disorganized; he often forgot his paper or pencil and had trouble locating his assignments. Teacher A acknowledged to OCR that these behaviors were similar to other students with XXXX, but failed to attribute this to the Student because she thought those behaviors were

because he was transitioning from the home school environment. Though Teacher B informed OCR that she did not believe the Student had a disability, she moved his seat up front during the class because he was distracted in his previous seat. She clarified that the Student also needed “extra time to get everything out and ready for class.” Like Teacher A, Teacher B attributed these concerns to the Student’s transition to the School XXXX and to the Student “not wanting to learn.”

Despite the diagnostic information that the Parent provided to School personnel, the Student’s academic performance, and the teachers’ observations that the Student’s behavior was similar to other students with XXXX, the District did not initiate the evaluation process until May 9, 2013. During a June 5 meeting, the Student was found eligible under Section 504 as an individual with XXXX.

OCR considered the information that the Complainant provided to School personnel along with School personnel’s perception of the Student’s academic performance and behavior and determined that there was sufficient evidence for School personnel to believe that he may have a disability in January 2013. While OCR acknowledges that the teachers attributed the Student’s XXXX behavior and academic struggles to XXXX, this determination must be made by a group of knowledgeable persons who draw upon information from a variety of sources where the Student’s parent is provided with notice of her due process rights (i.e., in accordance with the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35, and 104.36). Because there was a significant delay from when the School learned of the Student’s diagnosis and observed his disability-related behavior to when the School conducted an evaluation, OCR found that the School failed to timely evaluate the Student.

The District voluntarily entered into the enclosed Resolution Agreement, which addresses the compliance concerned discussed above. OCR is closing its investigation of this complaint effective the date of this letter, but will monitor implementation of the Resolution Agreement.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against them because they filed a complaint or participated in the complaint resolution process. If this happens, they may file another complaint alleging such treatment. Also, 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, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We appreciate the District's cooperation during the resolution of this complaint, and particularly the assistance of Meredith Seibert. If you have any questions, feel free to contact, Kay Bhagat at 202-453-6598 or via e-mail at [Kay.Bhagat@ed.gov](mailto:Kay.Bhagat@ed.gov) or Martha Russo at 214-661-9622 or [Martha.Russo@ed.gov](mailto:Martha.Russo@ed.gov).

Sincerely,

/S/

Dale Rhines  
Acting Team Leader  
District of Columbia Office  
Office for Civil Rights

Enclosure