



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

August 4, 2017

Dr. Christopher Lowder  
Superintendent  
Cabarrus County Schools  
4401 Old Airport Road  
Concord, North Carolina 28025

Re: OCR Complaint No. 11-17-1052  
Letter of Findings

Dear Dr. Lowder:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, against Cabarrus County Schools (the District). The complaint alleges that the District discriminated against XXXX (the Student) on the basis of disability. Specifically, the complaint alleges that:

1. The District failed to timely evaluate the Student under Section 504 despite the Complainant placing the District on notice, on or around XXXX, that the Student XXXX.
2. On or around XXXX, the District inappropriately secluded the Student XXXX.

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 District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff.

After carefully considering all of the information obtained during the investigation, OCR identified a compliance concern regarding Allegation #1, which the District agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support Allegation #2.

*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’s findings and conclusions are discussed below.

### **Background**<sup>1</sup>

The Student was referred for evaluation under Section 504 during the XXXX school year when she was enrolled in the XXXX grade at XXXX in the District. The eligibility determination form indicates that the Student was diagnosed with XXXX. The Student was found eligible for Section 504 services and a Section 504 Plan was put in place on XXXX. The accommodations listed on the 504 Plan were as follows.

- XXXX SENTENCE REDACTED XXXX

This 504 Plan was in place for the remainder of the XXXX school year and was reviewed during the XXXX school year and substantially left unchanged. During the XXXX school year, when the Student was in XXXX grade, the Student XXXX. On XXXX, the Complainant had a telephone conversation with the guidance counselor at the Student’s school to let the school know XXXX. OCR determined that the Complainant re-enrolled the Student at the XXXX school on XXXX, but then chose to dis-enroll her again on XXXX. According to the Complainant, this dis-enrollment stemmed from the fact that the Student was often absent due to XXXX, and he was concerned that truancy charges would be filed against him or his wife. The Student was home schooled for the remainder of the XXXX school year.<sup>2</sup>

OCR determined that during the fall of XXXX, the Student attended XXXX in the District – XXXX (School 1), XXXX (School 2), and XXXX (School 3). The Complainant asserts that he ultimately withdrew the Student from each XXXX school, in part, because the District failed to timely evaluate the Student, resulting in a failure to address the Student’s XXXX and other XXXX. The Student was again pulled from the District and home schooled on XXXX.

### **Legal Standards and Analysis**

**Allegation 1: The District failed to timely-evaluate the Student under Section 504 despite the Complainant placing the District on notice, on or around XXXX, that the Student XXXX.**

#### ***Legal Standards***

---

<sup>1</sup> OCR includes the information in this section to provide context for our findings. OCR did not investigate events occurring more than 180 days before the Complainant filed with OCR on XXXX. Thus, OCR’s findings apply to events occurring between XXXX, 180 days before the Complainant filed with OCR, and XXXX, the date on which the Complainant XXXX.

<sup>2</sup> The District provided OCR with the minutes from the Student’s Section 504 meeting held on XXXX, which stated: XXXX 3 SENTENCES REDACTED XXXX OCR determined that at no time did a group of individuals knowledgeable about the Student and her disability convene and determine that the Student was no longer eligible for a Section 504 plan. OCR notes that Section 504 plans do not have an expiration date, but that a District has a responsibility to periodically re-evaluate students who receive services under Section 504.

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 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 a FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades, behavior, or attendance, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's IEP/Section 504 Plan or placement are necessary.

While the Section 504 regulation requires 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 regulation does 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. Additionally, if the school district suspects that the student's needs have changed after the student has been found eligible for a Section 504 Plan/IEP, Section 504 requires that any needed changes be made promptly in order to ensure the continued provision of FAPE to that student. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities.

### *Analysis*

The Complainant alleged that the District failed to timely evaluate the Student under Section 504 despite the Complainant placing the District on notice, on or around XXXX, that the Student XXXX. The Complainant noted that this failure to evaluate resulted in the Student not receiving modifications that were necessary for the Student's success at the various schools she attended. As stated in the Background Section above, the Student received services for XXXX under a Section 504 Plan that the District initially put in place for her in XXXX school, during the XXXX school year. Although the Student was disenrolled from the District for part of the XXXX school year, she was not found ineligible under Section 504. Consequently, OCR finds that the District had an obligation under Section 504 to reevaluate the Student and her 504 Plan, dated XXXX, upon the Student's return to the District in XXXX. OCR finds the District failed

to do so before the Student was again disenrolled from the District on XXXX. Our finding is further explained below.

XXXX

OCR determined that during the XXXX, the Student applied and was accepted into XXXX (School 1) in the District, XXXX.

The Guidance Counselor at School 1 (Guidance Counselor 1), who also serves as the Section 504 Coordinator for School 1, told OCR that she received the Student’s Section 504 file, including the Section 504 Plan, dated XXXX, during the week of XXXX. The Student enrolled in School 1 on XXXX, and on the same date, the Complainant signed a Section 504 referral and consent for initial provision of services. The referral form noted that the Complainant was referring the Student for evaluation under Section 504, and that the Student XXXX. The concerns were stated as XXXX. Guidance Counselor 1 told OCR that she received a current medical diagnosis of the Student’s disability on or about the week of XXXX.

According to Guidance Counselor 1, a Section 504 meeting was scheduled for XXXX, but at the last minute, the Complainant called and stated that he could not attend the meeting. The Counselor told OCR that neither she nor the Complainant rescheduled the meeting. The Complainant denied that he was notified of a Section 504 meeting to be held on XXXX, and denied calling Guidance Counselor 1 and saying that he was unable to attend. Regardless, School 1 did not convene or reschedule a Section 504 meeting for the Student. Guidance Counselor 1 further informed OCR that the School had all the information that it needed in order to put a Section 504 Plan in place for the Student, had a meeting been convened.<sup>3</sup>

In an interview, Guidance Counselor 1 informed OCR that during the time that the Student attended the school, School 1 staff followed “parts of” the Student’s previous Section 504 plan for XXXX. She said that she believed that teachers had a copy of the Student’s prior Section 504 plan, but she wasn’t sure if she gave copies to the Student’s teachers and may have just showed them a copy at a meeting. In response to OCR asking whether she instructed teachers to implement the previous 504 plan, Guidance Counselor 1 said she had not done so.

OCR determined that the Complainant withdrew the Student from School 1 on XXXX. The Complainant told OCR that he made the decision to transfer the Student to a different school because he had several conversations with the Principal and Guidance Counselor 1 in which they stated that the XXXX, a school in the District for students that have trouble succeeding at a traditional school, would be a “better fit” for the Student due to her absences.<sup>4</sup> In separate interviews with OCR, both the Principal and Guidance Counselor 1 confirmed that they spoke to the Complainant about alternative school options within the District, including the XXXX.

---

<sup>3</sup> Although it is best practice to include a parent/guardian in such a meeting, the Section 504 regulation does not require the parent’s presence, and the meeting could have been held as long as a meeting was otherwise held in compliance with 34 C.F.R § 104.35.

<sup>4</sup> Documentation shows that the Student was enrolled at School 1 from XXXX through XXX, and was absent for XXXX of these days.

Guidance Counselor 1 further told OCR that she was aware that the Student’s absences may have been related to her “XXXX.”

XXXX SENTENCE REDACTED XXXX

OCR determined that the Student enrolled at the XXXX (School 2) on XXXX. School 2 is a XXXX school geared toward students who are not succeeding in a traditional school setting. The Complainant told OCR that the District did not follow a written Section 504 plan during the time she was enrolled at School 2, and OCR confirmed that there was no meeting regarding reevaluating the Student for services or putting a plan in place until an Exceptional Children’s referral meeting was held on XXXX.

OCR determined that the Student was enrolled at School 2 from XXXX to XXXX. According to the District, the Student was absent for XXXX days. Guidance Counselor 2 informed OCR that when the Student did attend school, she was provided with informal services, including: (1) XXXX; (2) XXXX; (3) XXXX; and (4) XXXX. She added that School 2 attempted to implement the Student’s prior Section 504 plan from XXXX “as much as possible.” However, the District conceded that none of these services were established formally and that, on at least one occasion, staff was unavailable to XXXX.

OCR found that at a XXXX Exceptional Children’s referral meeting, the Team determined that it needed XXXX before it could make an eligibility determination. Documentation provided by the District showed that the vision and hearing screening was conducted on XXXX,<sup>5</sup> and the parent questionnaire on social/developmental history was completed on XXXX. In addition, the District provided OCR with copies of several emails from the Section 504 Coordinator for the District to the Complainant and District staff stating that the District needed a complete copy of a privately conducted XXXX evaluation initiated by the Complainant. In an email to the Complainant, dated XXXX, the Section 504 Coordinator for the District said she was “checking in” about the XXXX testing. The Complainant replied via email stating that he has not been able to get the full XXXX evaluation. In a separate email, the Complainant stated that he had an appointment for a private XXXX evaluation scheduled for XXXX.

OCR determined that the Complainant withdrew the Student from School 2 on or about XXXX and enrolled her in School 3.<sup>6</sup>

XXXX SENTENCE REDACTED XXXX

OCR determined that the Student attended School 3 between XXXX and XXXX. The Guidance Counselor at School 3 told OCR that she informed the Student that she could contact her, the EC

---

<sup>5</sup> Also on XXXX, the XXXX held a meeting at School 2 to discuss the fact that the Student had XXXX days of unexcused absences. According to the XXXX, North Carolina truancy law mandates that, if the Student were to continue to be absent from school, the XXXX must file for truancy. At the meeting, the XXXX proposed that she file truancy charges against the Student as a way of holding her accountable for not coming to school. The XXXX filed a petition for truancy against the Student with the Department of Juvenile Justice (DJJ) on XXXX.

<sup>6</sup>Both the Complainant and the XXXX at School 2 believe that the Student no longer wanted to attend School 2 because of the aforementioned truancy filing.

Coordinator for School 3, or the XXXX Advisor, if the Student needed anything. She noted, however, that she never received a copy of the Student’s prior Section 504 plan from School 2.

According to contemporaneous emails, the Student again had XXXX.<sup>7</sup> OCR determined that the Complainant withdrew the Student from School 3 on XXXX and decided to home school her instead.

Based on the above, OCR finds that the Student, who was identified as a student with a disability in XXXX and received various related aids and services through a Section 504 plan during XXXX school, had a significant change in circumstance when she re-enrolled in the District to attend School 1, a District high school XXXX.<sup>8</sup> This significant change in circumstances triggered the District’s obligation to re-evaluate the Student. Further support for the District’s obligation to reevaluate the Student can be found in the District’s awareness of the Student’s previous history as a student with a disability and a 504 Plan in the District. Evidence of this knowledge is apparent by the fact that when the Student was admitted to School 1 in the XXXX, in anticipation of her reenrollment in the District, School 1 called the Section 504 Coordinator on XXXX to ask about strategies that worked for the Student. Based on this information, the District’s Section 504 Coordinator emailed the Student’s former XXXX school counselor the same day to inquire about strategies that had been successful for the Student. Thus, when the Complainant requested a Section 504 Plan in early XXXX, the District, and School 1 in particular, already had reason to know of the Student’s disability, her previous Section 504 Plan, and its obligation to reevaluate the Student.

Subsequently, the Student was absent from school on multiple occasions.<sup>9</sup> In addition to the significant change in circumstances discussed above, a significant decline in attendance is also enough to trigger a district’s obligation to reevaluate a student. OCR determined that despite being on notice of the Student’s disability and her prior Section 504 plan, her XXXX, and the Complainant’s request to reconvene the Section 504 team to address these concerns in XXXX, the District failed to reconvene a Section 504 team to assess whether any changes to the Student’s Section 504 plan were appropriate, despite the Student’s multiple absences. OCR finds that these factors were sufficient to suggest that the Student’s educational program may not have been meeting her individual needs, thus triggering the District’s obligation to reevaluate the Student. Moreover, Guidance Counselor 1 conceded that School 1 had all of the information that it needed in order to put a Section 504 Plan in place for the Student – had a meeting been convened – as early as XXXX. However, OCR found that the District failed to reconvene the Student’s Section 504 team.

OCR also found that once the District convened a group of people knowledgeable about the student, in the form of an IEP referral meeting on XXXX, the District still did not promptly re-evaluate the Student. Instead, the group agreed that it needed further information to determine

---

<sup>7</sup> In an XXXX email from the Section 504 Coordinator to the XXXX and the XXXX at School 3, the Section 504 Coordinator acknowledged a potential link between the Student’s XXXX. Specifically, she noted that: XXXX 3 SENTENCES REDACTED XXXX

<sup>8</sup> The District’s Section 504 Procedures state that “a change in placement that triggers the need for a reevaluation” includes “[a] change from one type of program to another.”

<sup>9</sup> OCR notes that pursuant to the District’s Section 504 Procedures, a student should be referred to the Section 504 team “if the student is chronically absent due to medical/health issues.”

the Student's initial eligibility for services under the IDEA. OCR acknowledges that, had the initial IDEA evaluation been conducted more promptly (for example, earlier in the school year), it may have sufficed to meet the requirement of a periodic re-evaluation required under Section 504. OCR makes no determination as to whether the District needed further information to make a determination about the Student's eligibility for an IEP. Rather, OCR finds that simply commencing an evaluation under the IDEA does not relieve the District of its obligation to promptly re-evaluate a student with a preexisting Section 504 Plan from the District. This is especially true given that in this case, District staff knew that the Student's absences could have been related to her disability. The Complainant informed OCR that he told school administrators that the Student's absences were due to XXXX. Additionally, District staff members, including Guidance Counselor 1 and the Section 504 Coordinator, acknowledged to OCR or via contemporaneous documentation that they believed that the Student's absences may have been the result of the Student's disability. Given this awareness, and that the Student was missing meaningful education opportunities as a result, OCR finds that the length of time it took to reevaluate the Student was unreasonable. The District argues that it had 90 days under its Section 504 policies and procedures to complete an evaluation, and that 90 days from XXXX is XXXX. The District points out that the Student was withdrawn from the District on XXXX. While OCR may use a state's IDEA time frames as a guide for what would be a reasonably prompt time frame for an evaluation, Section 504 is not bound by these time frames; rather, it requires that an evaluation be completed in a reasonable period of time based on the particular circumstances surrounding the evaluation. Given the facts in this case, and for the reasons stated above, OCR finds that 85 days is not a reasonably prompt time frame for a re-evaluation. Moreover, as discussed above, the District was on notice long before the Complainant's request for a Section 504 Plan on XXXX of the Student's significant change in circumstances, warranting a reevaluation. Accordingly, OCR finds that the timeframe for reevaluation of the Student was not sufficiently prompt and thus constituted a denial of FAPE. As a result of these concerns, OCR finds that the District is not in compliance with 34 C.F.R. §104.35(a) and §104.35(d).

In addition to finding that the District failed to timely reevaluate the Student, in the course of our investigation, OCR found that the District failed to implement the Student's previous Section 504 Plan. As stated in footnote 2 above, the Student had a preexisting Section 504 Plan, dated XXXX, and at no time since then had the Student been found ineligible for Services under Section 504. The facts discussed above further indicate that Schools 1, 2, and 3 failed to implement the Student's previous Section 504 plan while she was enrolled in the District. Instead, OCR determined that the various schools the Student attended attempted to provide informal services to the Student. These informal services, however, were not put in place by a group of persons knowledgeable about the Student or her disability, were not implemented on a consistent basis, and the placement options changed depending on the school the Student attended. Accordingly, OCR determined that while the District was aware of the Student's disability, it failed to implement her previous Section 504 Plan in violation with 34 C.F.R. 104.33(b).

**Allegation 2: On or around XXXX, the District inappropriately secluded the Student for XXXX.**

*Legal Standards*

The Section 504 regulation, at 34 C.F.R. § 104.4, provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination in a school district's programs and activities. The regulation further provides that a public school district may not otherwise limit an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II, at 28 C.F.R. § 35.130, contains similar provisions. OCR interprets these provisions to require that public school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities.

As previously noted, 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 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 a FAPE to the same extent required under the Section 504 regulation.

The repeated use of restraint or seclusion, in the absence of individualized assessments, may deny students with disabilities a FAPE. The frequent use of these restrictive interventions may suggest that these strategies are not effective at changing or minimizing the problematic behavior and that the student's current educational placement is not appropriate. Moreover, students who are removed from the educational setting to be restrained or secluded are effectively denied educational instruction or access to the curriculum for the duration of the removal. If a school district has reason to believe that a student's placement is not appropriate, including because of the frequent use of restraint or seclusion, it should convene a group of knowledgeable persons to examine whether additional evaluation and/or a change of placement (including a change in services) is needed, as required by Section 504.

*Analysis*

The Complainant alleges that on or about XXXX, the District discriminated against the Student when it placed her in a small room in the XXXX for most of a day because of XXXX, and threatened to suspend her if she left the room. The Complainant told OCR that he had no independent knowledge of what occurred on that day at School 2, but made the allegation based on his understanding of what the Student and staff told him.

XXXX 2 PARAGRAPHS REDACTED XXXX.

After reviewing documentation provided by the Complainant and the District and interviewing staff from School 2 and the XXXX School, OCR found, by a preponderance of the evidence, insufficient evidence to show that the District discriminated against the Student by secluding her. Specifically, OCR found insufficient evidence to indicate that the Student was subjected to seclusion.<sup>10</sup>

XXXX 7 SENTENCES REDACTED XXXX Accordingly, based on a preponderance of the evidence, OCR finds insufficient evidence to conclude that the District secluded the Student on or around XXXX. Therefore, OCR will take no further action with respect to Allegation 2.

### **Conclusion**

On August 3, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the District on August 3, 2017, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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

---

<sup>10</sup> Seclusion generally refers to an involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Eugene Sowa, the OCR attorney assigned to this complaint, at 202-453-6869 or [eugene.sowa@ed.gov](mailto:eugene.sowa@ed.gov), or Samantha Shofar, the other OCR attorney assigned to this complaint, at 202-453-5929, or [samantha.shofar@ed.gov](mailto:samantha.shofar@ed.gov).

Sincerely,

/s/

Alice Wender  
Director  
Metro Regional Office  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Rachel Hitch, Schwartz & Shaw, P.L.L.C.