



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

March 22, 2016

Mr. Douglas Ray Rogers  
Superintendent  
Dillon School District Four  
1738 Highway 301 North  
Dillon, SC 29536

Re: OCR Complaint No. 11-15-1398  
Letter of Findings

Dear Mr. Rogers:

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 September 30, 2015 against Dillon School District Four (the District). The Complainant filed the complaint on behalf of a student (the Student) at the XXXX School (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the District failed to evaluate the Student for disability-related services despite being placed on notice of his disability in 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. The District agreed to resolve the concern through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

*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 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.

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.

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. 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. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. South Carolina state regulations, like the federal IDEA regulation, require that school districts conduct initial evaluations within 60 days of receiving parental consent (SC State Board of Education Regulation 43-243(IV)(B)(1)(c)(1)).

The Student has attended District schools since first grade, and is currently in the seventh grade.<sup>1</sup> The Complainant informed OCR that when the Student was in second grade, his teacher

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<sup>1</sup> The Student attended an elementary school in Dillon School District Two for first grade and the beginning of second grade. Dillon School District Two has since merged with Dillon School District Four.

recommended that the Complainant take the Student to his pediatrician so that he could be evaluated for XXXX. The pediatrician referred the Student for a XXXX Assessment, which was conducted in September 2010. The Student was subsequently diagnosed with an XXXX. The Complainant stated that she gave the evaluation report to the Student's initial second grade teacher. However, she stated that the District did not evaluate the Student at that time, despite being placed on notice of the diagnosis. The Complainant added that she did not give the evaluation report to any of the Student's subsequent teachers because she thought it was part of the Student's record.

The District informed OCR that it reviewed the Student's school records and did not find a copy of the 2010 evaluation. OCR was unable to confirm that the Complainant gave the Student's initial second grade teacher the 2010 evaluation, or that either this teacher,<sup>2</sup> the Student's subsequent second grade teacher, or his third grade teacher had any knowledge of the 2010 evaluation,<sup>3</sup> or were otherwise aware of the Student's disability.

However, OCR determined that when the Student was in 4<sup>th</sup> grade, the Complainant wrote on a registration update, initialed by the school nurse, that the Student had XXXX. The school nurse for that year (the Nurse) confirmed to OCR that the Complainant informed her that the Student had XXXX. Moreover, OCR determined that on December 8, 2014, when the Student was in 6<sup>th</sup> grade, the Complainant submitted a "Medication Prescriptive Form" to the Nurse stating that the Student takes the medication Adderall for "XXXX – XXXX." Additionally, the Student's middle school principal reported to OCR that the Nurse told him that the Student was taking medication for XXXX "on a daily basis." Lastly, both the Student's 4<sup>th</sup> and 5<sup>th</sup> grade teachers stated that they knew the Student took medication, and that when he was on this medication, his behavior improved. Given this information, OCR determined that there is sufficient evidence to indicate that various District staff members had either actual or constructive notice as early as the 4<sup>th</sup> grade (the 2012-2013 school year) of the fact that the Student was diagnosed with XXXX.

OCR further determined that during the time period at issue, the Student had sufficient behavioral and academic problems that, coupled with its awareness of the Student's diagnosis, should have given it reason to believe that the Student potentially needed special education and related services. Specifically, during this time period, the Student received eight disciplinary referrals, and was suspended for a total of 17 days for behavior ranging from fighting and pushing an administrator to disrupting class. In fact, the Student's behavior became so problematic that, on January 6, 2015, the District transferred the Student to an alternative school for the remainder of the 6<sup>th</sup> grade. OCR further determined that after another incident in September 2015, the District again transferred the Student to an alternative school on September 17, 2015 for the remainder of his 7<sup>th</sup> grade school year.<sup>4</sup> Furthermore, as discussed above, the Student's 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grade teachers, as well as the middle school principal, reported that the

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<sup>2</sup> The Student's initial second grade teacher is no longer working for the District. OCR attempted to contact the teacher by using contact information provided by the District, but was unsuccessful. Both the Student's subsequent 2<sup>nd</sup> grade teacher and his 3<sup>rd</sup> grade teacher denied having any knowledge or reason to believe that the Student had a disability warranting an evaluation.

<sup>3</sup> According to the District, it first received information regarding the 2010 evaluation when the Complainant wrote a letter to the Superintendent in September 2015 to appeal the Student's placement at an alternative school.

<sup>4</sup> On December 1, 2015, however, an IEP team determined that the Student should return to his regular middle school in order to receive appropriate special education services in a resource setting.

Student had behavior problems in his classes beginning in fourth grade and continuing through seventh grade. Finally, during this time period, the Student struggled academically. Specifically, the Student's 4th grade teacher asserted that the Student received grades ranging from Cs to Fs, and District records indicate that his basal reader score was not on grade level. As a result, he did not meet the criteria for promotion; however, because of his chronological age, physical, and social/emotional maturity, he was promoted anyway. Similarly, in fifth grade the student did not maintain a 70% average or above in Math or Social Studies, which is required to advance to the next grade. His basal reader was also not on grade level. However, he was promoted again because of his maturity difference with the incoming fifth graders. Additionally, the Student did not meet the performance levels in any subject matters in the standardized tests administered in his fourth and fifth grade years.

OCR determined that the District met with the Complainant to conduct an evaluation planning meeting on October 28, 2015, and that it evaluated the Student for special education services and determined he was eligible for an IEP and Behavior Intervention Program (BIP) on December 1, 2015. The District classified the Student as Other Health Impaired

Based on aforementioned, OCR found sufficient evidence to conclude that the District was in need of special education or related services as early as the 2012-2013 school year. OCR found that the District failed to begin the process of evaluating the Student for special education services until October 28, 2015, approximately three years later.

On March 22, 2016, 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 date, 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, 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Jennifer Barmon, the OCR attorney assigned to this complaint, at (202) 453-6751 or [Jennifer.Barmon@ed.gov](mailto:Jennifer.Barmon@ed.gov).

Sincerely,

/S/

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