



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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April 13, 2016

Dr. Ember Conley  
Superintendent  
Park City School District  
2700 Kearns Blvd  
Park City, UT 84060

Re: Park City School District  
OCR Case Number: 08-16-1016 & 08-16-1094

Dear Dr. Conley:

On November 19, 2015, we opened for investigation a complaint to determine whether the District failed to implement the Student's accommodation plan at Parley's Park Elementary School regarding her insulin since the start of the school year and whether the District treated the Student differently based on her disability when the Complainant was required to attend field trips in order for the Student to participate.

On January 15, 2016, we opened a second case for investigation to determine whether the District retaliated against the Complainant for her filing a complaint with this Office by cancelling a fieldtrip at the Student's afterschool program on December 16, 2015.

We initiated an investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability, in programs or activities that receive Federal financial assistance from the Department and, respectively, public entities. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. As a recipient of Federal financial assistance and a public entity, the District is subject to these laws and regulations.

During the investigation, we carefully reviewed documentation provided by the District and Complainant. We interviewed the Complainant and relevant District staff.

The Student is a person with a disability and has received services from the District prior to this school year in the District's preschool program. During the 2015-16 school year (SY), the Student attended the District's morning Kindergarten class and afternoon XXXX class. XXXX. The Student was to receive accommodations according to her 504 Plan throughout the day in both programs.

**Factual Findings - Failure to Implement Allegation**

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

While in the preschool program, a Section 504 meeting was held in May 2015 to discuss changes to the Student's Section 504 Plan for kindergarten the following school year. Following this meeting and prior to the start of the SY 2015-16, the Principal decided to assign the Student to a different kindergarten teacher, so another meeting was held in August. In attendance at the August meeting were the Principal, Kindergarten Teacher, both parents, and the Nurse. While some participants, including the parents and several District staff members, thought the meeting was a Section 504 meeting, no Section 504 Plan was produced from the meeting. It appears the purpose of the meeting was to have the parents discuss the Student's needs and familiarize people with the Student's equipment for diabetes management.

Following the meeting, the Complainant was concerned with the Student's Section 504 Plan and started emailing the School staff about her concerns. The Counselor responded and suggested a Section 504 meeting. A meeting was held on September 21, 2015. In attendance were the Kindergarten Teacher, both parents, the Nurse, the XXXX Teacher, a XXXX Aide, and the Counselor. A 504 Plan was created at this meeting and contained seven accommodations. In early October, the Complainant contacted the Counselor and notified her that she was unhappy with the 504 Plan created on September 21, 2015. She requested changes in language and two additional accommodations. Without a meeting, the Counselor created another 504 Plan on October 8, 2015. Before completing the revisions, the Complainant emailed the 504 team and requested an additional accommodation. An email chain demonstrates that all members of the 504 Team agreed to add a tenth accommodation. Consequently, the ten item 504 Plan, which was back-dated to September 21, 2015, was put in place. The Counselor stated she provided the new ten item plan to all of the Student's teachers. The XXXX staff stated that the Counselor brought them the new plan, and they signed a new signature page with an October date. The October signature page has not been provided by the District even though it was requested by OCR during the site visit. Although the Counselor states she provided the ten item 504 Plan to all the teachers, two of the Special Education Teachers only received the seven item 504 Plan. The Nurse, Counselor, Kindergarten Teacher, XXXX staff, and the Complainant all stated that the ten item 504 Plan is the plan that was supposed to be implemented.

The majority of the 504 Team stated that the ten item 504 Plan was the one to be implemented, therefore, we reviewed the implementation of the ten item 504 Plan. Specifically, the accommodations at issue in this complaint are items number 2 and 6 of the 504 Plan. Those provisions state:

2. A back up staff person, [School Aide] will also be given this training by 9/22/15. [School Aide] will be paged in an emergency to assist.
6. If teachers check in between pre-identified times and [the Student]'s numbers are high or low they will follow the classroom flow-chart for food, and call nurse for insulin, call parents for extreme highs or lows.

### **Analysis - Failure to Implement Allegation**

We reviewed whether the District failed to implement the Student's accommodation plan regarding her insulin since the start of the 2015-16 school year. To determine if the District

failed to implement the Student's 504 Plan, we determine whether the Student is a person with a disability, whether the Student has a 504 Plan, what accommodations are in the Student 504 Plan, and whether the accommodations were implemented.

We determined that the Student is a person with a disability: diabetes. The District has had a 504 Plan for the Student since she was in pre-school.

We first reviewed the development of the Student's 504 Plan for SY 2015-16. While a 504 Plan was drafted as a result of the 504 team meeting on September 21, 2015, the 504 Plan was altered without an additional meeting. The Complainant states that the modifications were requested because the seven item 504 Plan did not accurately reflect what was decided at the September 21, 2015 meeting. We did not find any evidence to support the Complainant's statement. As a result of the Complainant's requested changes, the Counselor developed a new 504 Plan was created with nine items on October 8, 2015. A tenth item was subsequently added by the 504 Team via email. Consequently, the ten item 504 Plan was created without the 504 Team providing input on two items and modified language of seven items. Additionally, although the Counselor reports that she brought the ten item 504 Plan to all of the Student's teachers and had them sign the signature page, we found at least two teachers that did not receive the ten item 504 Plan. The District did not provide the signature page that several District staff members stated that they signed in October. The Section 504 regulation requires that "the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options." The regulations states that the placement decision is to be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, 34 C.F.R. § 104.35(c)(3). We find District did not develop the ten item 504 Plan with a group of persons knowledgeable when the Counselor and the Complainant modified the seven item 504 Plan into the nine items.

Additionally, Section 504 applies the procedural requirements, requiring maintenance of records in 34 C.F.R. § 104.61 as it incorporates 34 C.F.R. § 100.6(b). Title VI regulation at 34 C.F.R. § 100.6(b) requires recipients to maintain such records and submit for our review complete and accurate compliance reports in such form and containing such information as may be necessary to allow OCR to ascertain whether the recipient has complied or is complying with Title VI. The District did not maintain records regarding the development of the 504 Plan in violation of the procedural requirements in 34 C.F.R. § 104.61.

Although the District did not develop the 504 Plan in accordance with the requirements, the 504 team members that attended the September 21, 2015 504 meeting all agreed in our interviews that that the ten item 504 Plan are the accommodations staff were to be implemented. The Complainant alleges that the District called her to go to the school to give the Student insulin several times during the fall semester and then again on February 22, 2016. The Section 504 Plan states that the Nurse is to give the Student insulin when indicated by the Student's numbers in accordance with item 6 in the Student's 504 Plan. The Student's Kindergarten Teacher and XXXX Aide confirm that the Complainant was called to give the Student insulin between twelve and sixteen times during the fall semester when the Nurse was not available. OCR learned that the Nurse was not scheduled to start her work day until an hour and half after the start of the school day and not scheduled to work on Fridays during the fall semester. The calls to the

complainant to come to School and give insulin occurred during the time the Nurse was not scheduled to be working.

The District expanded the Nurse's schedule to include the entire school day starting in January, making it unnecessary for the Complainant to come to school and to give the Student insulin during the school day. However, the Nurse was out sick on February 22, 2016, and the District did not schedule a substitute nurse. The District called the Complainant to give the Student insulin on that date. We find that the District was not implementing the Student's 504 Plan with respect to the provision regarding the Student's insulin.

Additionally, OCR found that a staff member identified in Item 2 could not implement the Section 504 Plan because she did not know she was in the 504 Plan and was not familiar with the needs of the Student.

OCR finds that the District failed to implement the Student's 504 Plan in violation of 34 C.F.R. § 104.33; failed to develop the ten item 504 Plan with a group of persons knowledgeable about the Student in violation of 34 C.F.R. § 104.35; and failed to maintain records in violation of 34 C.F.R. § 104.61. The District entered into a Resolution Agreement to resolve these concerns.

### **Factual Findings - Different Treatment Field Trips**

The Complainant alleged that she was required to attend field trips to provide her daughter accommodations since a nurse was not available. The District does not have a written policy requiring parents to attend field trips. During SY 2015-16, the Student's XXXX class attended one field trip. The field trip was scheduled for the first day that the Student's family returned from a vacation. The XXXX Teacher texted the Complainant on the morning of the field trip and asked if the Complainant could attend and to obtain a signed permission slip. The field trip was to XXXX grocery store and the students were going to sample food in each department. In order for the Student to participate, she may need insulin because the consumption of food was involved. The Complainant told the XXXX Teacher that she had a doctor's appointment, but would see if she could attend. The XXXX Teacher had no other plan for the Student to receive insulin during the field trip and had not considered a nurse to attend. The Complainant rearranged her schedule and met the class at XXXX grocery store so the Student could participate. A second field trip was scheduled in December but was cancelled.<sup>1</sup>

### **Analysis - Different Treatment Field Trips**

We reviewed whether the District treated the Student differently when it required the Complainant to attend a field trip to provide services in the Student's Section 504 Plan. To determine whether the District treated the Student differently based on her disability, OCR reviews what action the District took against the alleged injured party, whether the District followed its policies and procedures for taking such action, and whether similarly situated non-disabled individuals were treated differently. If the alleged injured party was treated differently,

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<sup>1</sup> The Complainant filed a second complaint (OCR case number 08-16-1094), where she has alleged retaliation for cancelling this field trip. The investigation of that retaliation allegation is addressed below.

we determine whether the recipient has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for discrimination.

The Complainant alleged that parents of students with diabetes are required to attend field trips with their students or else the students are not able to participate. We first determined what action the recipient took against the alleged injured party. We found that for the first field trip, the XXXX staff asked the Complainant to attend and the Complainant rearranged her schedule so that she could attend. The XXXX staff had no other alternatives for implementing the Student's 504 Plan during the field trip other than having the Complainant attend in order to give the Student insulin as necessary. For the second field trip, the Complainant was also asked to attend, and again the XXXX staff were relying upon the Complainant to provide insulin to the Student during the field trip. While no District staff told the Complainant she was required to attend the field trip in order for the Student to participate, the Complainant was asked to attend the field trip and the District had no other plans for implementing the Student's 504 Plan regarding delivery of insulin during the field trip.

Next, we determined whether the District followed its policies and procedures for taking such action. The District has no written policies or procedures regarding parents of students with diabetes needing to attend field trips. Several District staff reported that when they previously had students with diabetes in their classes, they would call the parent to see if the parent wanted to attend any field trip and that the parents have generally attended. District staff also relayed stories that in the past, students with diabetes may have stayed at school in the nurse's office if their parent could not attend the field trip and that some parents have expressed frustration with being asked to attend all field trips. District staff also stated that parents of students with disabilities that are not diabetic are not called to attend field trips, and typically the regularly assigned aide or the teacher is able to accommodate those students. However, the teachers cannot give insulin, so teachers could not accommodate students with diabetes during field trips. While there is no written policy or procedure, we find that there is an expectation that parents of students with diabetes will attend each scheduled field trips in order to implement that student's educational plans regarding insulin during the field trip.

We looked at whether similarly situated parents of non-disabled, non-diabetic individuals were treated differently. We found that only parents of students with diabetes are called to see if they will attend field trips. We also found that all parents are welcome to attend field trips, however, no other parents attended the XXXX field trip.

Finally, since the parents of students with diabetes are treated differently, we determine whether the District has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for discrimination. The District states that there is no policy that parents of students with diabetes are required to attend field trips, that the Complainant was called because the Student did not have a signed permission slip, and that the XXXX staff wanted to make sure the Student could receive insulin if she needed it during the field trip. The Complainant stated to OCR that she does what she can to ensure that she can attend field trips because she does want the Student to be included in field trips and wants the Student to be safe during field trips. The District's rationale that they wanted to make sure the Student received insulin when the nurse could not attend a field trip reflects a certain, practical

logic. However, as a legal matter, this rationale is not a legitimate, non-discriminatory reason since it relies on the Complainant to provide the Student's Section 504 accommodations, which is ultimately a legal responsibility of the District. Therefore, we find the District is treating the Complainant and other parents of students with diabetes differently because it is expected that they will attend field trips to provide their students insulin.

Upon learning of the complaint, the District began to take action to ensure that parents will not have to attend field trips to provide students insulin. The District developed a policy for field trips that requires principals to check with their school nurse to see if a student needs a nurse during a field trip. The District also began to hire substitute nurses to provide services in field trips and when nurses are sick.

We find that the District treats students with diabetes differently because parents are expected to attend field trips to provide accommodations in violation of 34 C.F.R. § 104.37. The District entered into a Resolution Agreement to resolve these concerns.

### **Factual Findings – Alleged Retaliation**

During the 2015-16 school year (SY), the Student attended the District's morning Kindergarten class and afternoon XXXX class. The Student was to receive accommodations according to her 504 Plan throughout the day in both programs.

The Complainant filed her first complaint (08-16-1016) with OCR on October 16, 2015. We notified the District we were accepting two allegations for investigation on November 19, 2015. Upon receipt of the notification letters, the District contacted OCR. During the conversation, the District requested information regarding parents attending field trips. OCR conveyed to the District that they must implement students' educational plans while on field trips. If a student receives a service while at school, then that service must be provided by the District and not by a parent during the field trips. The District Representative (Associate Superintendent) stated that he will just cancel all field trips. OCR informed the District about the regulatory prohibition against retaliation and that such a broad action could be perceived as retaliatory.

In December 2015, the XXXX programs were asked to complete a service project. The XXXX decided to collect pet toys and make pet treats for the company XXXX. During the service project, the Complainant was at the School helping the XXXX staff, and they discussed that it would be fun for the students to deliver the collected items. The Complainant shared with them the days she would be able to attend. XXXX staff scheduled a field trip to deliver the items on December 16, 2015. On December 15, 2015, the Community Education Director learned of the field trip and asked the XXXX Teacher if she remembered the conversation about not having a field trip without a nurse and asked if a nurse was arranged. The XXXX Teacher responded that she had not arranged a nurse because the Complainant was attending. The XXXX Teacher was instructed to request a nurse, and so she contacted the Associate Superintendent. The Associate Superintendent informed them that there was not sufficient time to schedule a nurse and instructed the XXXX staff to cancel the field trip.

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### **Analysis – alleged Retaliation**

The Complainant asserts that this field trip was cancelled in retaliation for her first OCR complaint.

The District admits it lied to parents about why the field trip was cancelled, but that it did so in order to protect the Student's identity. The Associate Superintendent stated the field trip was cancelled because of the District's understanding that it was required to secure the needed medical personnel to attend the field trip with the Student and not rely upon the Complainant to implement the Student's 504 Plan. The District states that unfortunately, the XXXX teacher misunderstood the Community Education Director's earlier directive that all field trips were to be put on hold, even if the parent was able to attend, or did not realize that a nurse could only be secured with more than 24 hours of advance notice. Further, the District states that as a result, it appeared that the better option was to cancel the trip in its entirety, then to possibly fail to comply with Section 504. The District states that in no way was the District's intention behind the cancellation retaliation; rather, the intention was to avoid any further violations of the District's Section 504 obligations as explained to it by OCR.

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Section 504 and Title II. In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 and Title II of which the recipient had knowledge; the recipient took an adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

The Complainant participated in an activity protected by the Section 504 and Title II of the ADA when she filed her first complaint alleging disability discrimination against the District. The District had knowledge of the complaint on November 19, 2015, when OCR sent notification letters with the two accepted allegations. On December 16, 2015, the District cancelled a field trip the Student was scheduled to attend. Given the proximity in time between the notification of the first complaint and the cancellation of the field trip, a causal connection can be inferred.<sup>2</sup>

Next, we determined whether the District has a legitimate, non-retaliatory, non-pretextual reason for canceling the field trip. The District's reason provided to OCR for canceling the field trip was that they did not have a nurse available to provide the Student with services as required by her Section 504 Plan. The District told parents the field trip was canceled because the XXXX representative was not available. XXXX. The District states that the need for a nurse to attend to provide the Student services is the real reason for the cancellation.

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<sup>2</sup> OCR's investigation of the first allegation found that although there is no written policy requiring parental participation in field trips, but parents of students with diabetes are expected to attend field trips in order to provide their student insulin since teachers are not allowed to give student insulin. An agreement has been proposed to remedy the violation finding in 08-16-1016 regarding both allegations.

The Complainant and several District staff members state that the District's stated reason is not really the reason why the field trip was canceled. While OCR found some facts suggesting that the cancellation of the field trip may have been motivated in part by retaliation against the Complainant, the fact remains that had the District proceeded with the field trip without a nurse present, the District was on notice that they would be in further violation of Section 504 of the Rehabilitation Act. The field trip was almost a month after OCR notified the District of the OCR Case 08-16-1016 and had a discussion with the Associate Superintendent about the requirements of Section 504 and implementation of students' educational plans during field trips. While the stated reason for the cancellation of the field trip was not true, we find it reasonable, if not laudable, that the District ultimately was taking steps to comply with Section 504. Correspondingly, we find insufficient evidence that the District's stated reason was pretext for discrimination. Therefore, we find the District did not retaliate as alleged.

### **Conclusion**

For the reasons explained, we determined that the evidence is sufficient to conclude that the District discriminated against the Student on the basis of disability with respect to the first two allegations. We found that there was insufficient evidence to establish that the District retaliated as alleged. The District agreed to voluntarily resolve the violations found in this investigation and entered into a Resolution Agreement, signed April 13, 2016. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory manner. Once fully implemented, the Resolution Agreement will ensure the District's compliance with the regulations as addressed in this complaint.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

Dr. Conley  
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We are committed to prompt and effective service. If you have any questions, please contact Ms. Heidi Kutcher at 303-844-4572 or by email at [heidi.kutcher@ed.gov](mailto:heidi.kutcher@ed.gov).

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

cc (w/o enclosures): Syndee Dickson, Interim State Superintendent of Public Instruction