



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 7, 2014

Mr. Tom Boasberg
Superintendent
900 Grant Street, Suite 701
Denver, CO 80203

Re: Denver Public School District
Case Number: 08-14-1091

Dear Superintendent Boasberg:

This letter provides notice of our decision in the above-referenced case. We received a complaint against the Denver Public School District (District) on February 14, 2014. The Complaint alleged that the Hill Campus Middle School (School) discriminated against a student (Student) on the basis of disability. Specifically, OCR accepted for investigation whether the District failed to respond to a report that the Student was harassed on the school bus due to her disability. In addition, OCR investigated whether the District failed to respond to a complaint that other students harassed the Student by making fun of the Student XXXX.

We investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations (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; 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 by public entities. As a recipient of Department funds and a public entity, the District is subject to these laws and regulations.

In the investigation, we carefully considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed the Complainant, and District witnesses. With regard to the first allegation, failure to respond to complaints of disability harassment on the school bus, we found that there was insufficient evidence to support the allegation. A discussion of our finding with regard to this allegation can be found below.

With regard to the second allegation, that the District failed to appropriately respond to a complaint that other students harassed the Student by making fun of the Student XXXX, the District agreed to enter into an agreement to resolve the concerns presented in this allegation. This agreement was entered into during the course of OCR's investigation, and before OCR made any further findings with regard to this allegation. The District indicated its willingness to take steps necessary to ensure compliance with Section 504 and Title II with regard to the second allegation. We reviewed this request and determined that it justified entering into an agreement

without completing a full investigation. On August 6, 2014, we received the District's signed Resolution Agreement (enclosed). The provisions of the agreement are aligned with the second allegation in this case and the information obtained during OCR's investigation and are consistent with the applicable regulations. When the agreement is fully implemented, the allegation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. We will monitor implementation of the agreement through periodic reports demonstrating the terms of the agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the agreement and will promptly require actions to address such deficiencies. If the District fails to implement the agreement, we will take appropriate action, which may include enforcement actions.

Legal Standard

The regulations implementing Section 504 at 34 C.F.R. Section 104.7(b) and Title II at 28 C.F.R. Section 35.107(b) require a covered entity, such as the District, to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by their respective provisions, including disability harassment. To meet this standard, a recipient's grievance procedures should include, among other requirements, notice to the complainant of the outcome of his or her grievance and a process for appealing the determination. Additionally, the District is responsible, whenever it has notice of possible discrimination based on disability, to respond in a prompt and equitable manner. That obligation applies regardless of whether a complainant uses the District's existing grievance procedures, otherwise informs the covered entity of the disability-based discrimination, or the District learns of the alleged discrimination in another way.

When investigating allegations of a failure to respond to a disability-based complaint, OCR first examines whether the District knew or should have known that a complainant may have experienced discrimination based on disability. Once OCR determines that the District is on notice of possible disability-based discrimination, it then examines whether the District responded in a prompt and equitable fashion. The response should consist of steps to promptly and thoroughly investigate or otherwise determine what occurred, including, but not limited to, interviews of the individual alleging discrimination, as well as the accused and other relevant witnesses. Following the investigation, the District must determine whether discrimination occurred, notify the parties of the outcome of the investigation, and take prompt and effective measures reasonably calculated to end any discrimination, prevent discrimination from occurring again, and remedy any effects of the discrimination on the victim.

Facts

Complainant's position

The Complainant stated the District did not respond in a timely or appropriate manner when the Student was involved in a fight on the bus XXXX. The Complainant stated that the fight started because the Student was harassed based on her disability. The Complainant explained that the bus driver pulled the bus over, XXXX, but did not report the incident to the School. The Complainant specifically identified three members of the School staff – the special education teacher, student advisor, and a social worker – to whom she reported the school bus disability harassment to in-person. The Complainant stated that School staff informed her that they would

work on addressing the concerns she brought to their attention. The Complainant further stated that when she inquired with the School staff about the status of her concerns, they made comments to her that failed to adequately address her questions and concerns. The Complainant finally stated that based on these responses, she concluded that nothing was being done in a timely manner or appropriately to address the concerns she verbally brought to the School Staff's attention about the school bus incident. The Complainant acknowledged that she never made a written report regarding this matter.

Recipient's position

During interviews, the District informed OCR that they did not receive any reports regarding the Student related to disability harassment on the bus. The District also provided all the documentation from the bus driver documenting any incidents involving the Student on the bus. The documentation does show that the Student had some conflicts with other students, but none of the reports reflected harassment on the basis of disability or that any kind of physical altercation occurred on the bus. In an interview with the special education teacher, who was identified by the Complainant, he explained that he has never received any oral or written communication from the Complainant concerning disability harassment. The special education teacher stated that he was aware of other complaints and investigations regarding the Student, but those incidents were related to gender based matters.

The student advisor, who was identified by the Complainant, explained that he had not received any complaints this current school year regarding the Student's disability. The student advisor stated that typically transportation handles any issues that occur on the bus and that any consequences due to incidents on the bus are handled through the transportation supervisors. Finally, the social worker, who was identified by the Complainant, reported that she had never received a disability harassment complaint regarding the school bus from the Complainant.

Analysis/ Conclusion

OCR first examined whether the District knew or should have known that the Student may have experienced discrimination based on disability. OCR interviewed the three District staff members whom the Complainant identified as having knowledge of the complaints she made on behalf of the Student. All three District staff members reported that they never received a report, oral or written¹, from the complainant about disability harassment on the bus. In addition, a review of the documentation from the bus driver involving interactions with the Student does not reflect that the Student was subjected to harassment on the basis of disability on the bus or that the Student was involved in a physical altercation, as alleged in the complaint.² Consequently, we were unable to verify that the District had notice that the Student was allegedly subjected to disability harassment. As we could not establish that the District had notice of the alleged harassment, we must therefore conclude that there is insufficient evidence to establish that the District failed to respond in a timely and appropriate manner to a report that the Student was harassed on the school bus due to her disability.

¹ There is no assertion that a written complaint was ever filed.

² Emails from the bus driver reflect that the Student's seat was moved because she alleged other students threatened to "beat her up." However, according to the bus driver's investigation, other students on the bus reported that the Student was making up the "threat." There was also no indication from the documentation that the threat to "beat up" the Student was even alleged to be based on the Student's disability.

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 have the right to file a private suit in federal court whether or not OCR finds a violation.

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, an unwarranted invasion of privacy.

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 complainant may file another complaint alleging such treatment.

We are committed to prompt and effective service. If you have any questions, you may contact Rodney Reed, Equal Opportunity Specialist, at (303) 844-4696, or by E-mail at rodney.reed@ed.gov.

Sincerely,

/S/

Stephen Chen
Supervisory Attorney

cc: Ms. Danielle Simpson, Deputy General Counsel
Denver Public Schools-VIA E-Mail

Commissioner Robert Hammond,
Colorado Department of Education