



UNITED STATES DEPARTMENT OF EDUCATION  
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July 28, 2016

Mr. Rico Munn  
Superintendent  
Aurora Public Schools  
Educational Services Center 1  
15701 E. 1<sup>st</sup> Avenue  
Aurora, Colorado 80011

Re: Aurora Public Schools  
OCR Case Number 08-14-1242

Dear Superintendent Munn:

We have completed our investigation of the above-referenced complaint filed on August 12, 2014, alleging that Aurora Public Schools discriminated on the basis of disability. Specifically, the Complainant alleged that the District failed to adequately respond to her disability complaint regarding her son's Section 504 Plan and failed to provide her accommodations for her disability by not providing documents in a format accessible to her and not including her advocates in email responses. The Complainant also alleges that the District retaliated against her after she requested her accommodations be provided, by threatening to hold an educational meeting without her and ceasing communication with her.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 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; 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. The District is a recipient of Department funds and a public entity, and thus subject to these laws.

During the course of our investigation, we carefully reviewed documentation submitted by the Complainant and the District. We also interviewed the Complainant and District staff members. We find that the District is in violation of Section 504 and Title II when the District did not adequately respond to the Complainant's disability discrimination complaints regarding the Student's Section 504 Plan, and did not provide the Complainant with her agreed upon accommodations, and retaliated against the Complainant based on her advocacy. The District has agreed to resolve the violations through a Resolution Agreement with our office. A discussion of our findings is below.

### **Background & Case Summary**

The Complainant and the Student are people with disabilities. The Student has had a Section 504 Plan with the District for several school years. The Complainant's disability affects her memory and processing of information. In order to allow her to participate in the Student's education, the District agreed to provide the Complainant with accommodations for her disability and documented the agreed upon accommodations in a letter dated September 16, 2011. The accommodations

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include providing the Complainant with information in a preferred font size, providing information before meetings to allow for extra processing time, and including the Complainant's advocates on email communications.

### ***Allegation 1 – Failure to respond to a disability discrimination complaint***

We investigated whether the District failed to adequately respond to the Complainant's disability complaint regarding her son's 504 Plan during school year 2013-2014 in accordance with 34 C.F.R. §104.7(b) and 28 C.F.R. § 35.107(b), which require the District to provide a prompt and equitable response when it is on notice of potential disability discrimination.

#### District Policies

At the time of the Complainant's May 2014 internal complaints, the District was revising its policies and procedures regarding the compliance officer and grievance procedures. Consequently, the policies and procedures were not available on-line. The District's revised policy documents were adopted in June 2014.

In order to determine whether the District appropriately responded to the Complainant's disability complaints, we first reviewed the District's revised policies for addressing disability discrimination and find these do not meet the requirements of Section 504 and Title II of the ADA. The regulation at 34 C.F.R. § 104.7(b) requires the District to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints. The regulation at 28 C.F.R. § 35.107(b) requires the District to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints. The District provided two different policies in support of the regulatory requirements for grievance procedures; Policy AC and Policy AC-R. The District's Policy ACE is the District's notice of non-discrimination.

We found Policy AC and Policy AC-R have different procedures of complaint processing and these two procedures do not align so it would be impossible for anyone to follow both procedures. We also identified a number of items that case law and policy require in order for the policy and procedures to provide for adequate due process and prompt and equitable resolution of complaints. Such items were missing in the District's policy and procedures. For example, Policy AC does not identify and provide contact information for the compliance officer or specifically refer individuals to Policy AC-R. Policy ACE, Non-discrimination on the Basis of Disability, does not provide the contact information for the District's Compliance Officer. Policy AC-R does not state that it will provide interim measures to aggrieved students; does not describe its identified appeal process; does not include a statement prohibiting retaliation; states that it will contact law enforcement for potential criminal matters, but does not affirm its obligation to continue to investigate and take appropriate actions; does not provide the standard by which it will determine whether discrimination occurred; does not specify that any party may identify or provide witnesses or documentary evidence; states it will provide actions the District will take in response to findings, but does not describe what possible actions the District may take to remedy the discrimination, the effects of the

discrimination, and prevent its reoccurrence. Therefore, we find the District's revised June 2014 policies do not meet the requirements of Section 504 or Title II.<sup>1</sup>

### Response to Complaint

The Complainant alleges that the District failed to adequately respond to her disability discrimination complaints regarding her son's Section 504 Plan. District policy AC-R states in part that when a parent has a complaint the District's Compliance Officer shall be responsible for conducting an investigation and coordinating all complaint procedures and process for any alleged violation of federal or state statute or Board policy prohibiting unlawful discrimination. All reports received by teachers, counselors, principals or other District employees shall be promptly forwarded to the appropriate Compliance Officer. The Compliance Officer shall confer with the aggrieved individual as soon as is reasonably possible but not later than 5 school days following the receipt of the complaint.

During the investigation, we learned that the Complainant's complaints were not referred to the District's Compliance Officer. The evidence establishes that the Complainant complained to School administrators multiple times about issues concerning the Student's 504 Plan.<sup>2</sup>

- On May 20, 2014, the Complainant informed the Assistant Principal in an e-mail of her intent to file a formal complaint that asserted that the Student did not receive FAPE in several ways, and referenced the ADA. The Complainant also requested compensatory services for the Student for the 2013-2014 school year. This communication qualifies as a complaint of disability discrimination.
- The Assistant Principal clearly recognized that the Complainant was attempting to file a complaint when he responded on May 22, 2014 and wrote to the Complainant that he could not understand the bases for her complaint. He provided a non-functioning<sup>3</sup> link to an on-line pdf complaint form and the complaint process.
- On May 26, 2014, the Complainant emailed and informed the Assistant Principal that the link he provided did not work and requested assurance that she would receive her accommodations. The District did not respond to the Complainant's emailed complaint.
- On September 23, 2014, a Section 504 meeting was held which resulted in a new Section 504 Plan for the Student. However, the Complainant's May 20, 2014 complaint was not fully addressed, as discussed below.

The District stated that it did not understand the Complainant's concerns in her May 20, 2014 email. In its response to our data request, the District claimed that it did not conduct an investigation because the

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<sup>1</sup> It appears that the District also uses this policy for Title IX. The District's Title IX grievance procedures must follow Title IX guidance regarding responding to complaints of discrimination based on sex, including sexual harassment and sexual assault.

<sup>2</sup> Emails and letters provided by the District and the Complainant demonstrate that between May 20, 2014 continuing after the filing of this complaint, the Complainant continued to raise various Section 504/ADA issues with the District in emails to School staff and letters to a School Board member.

<sup>3</sup> We tested the link provided to the complaint form and, like the Complainant, we found the link did not work.

OCR complaint was filed prior to it having an opportunity to respond. We find that the Complainant's May 20, 2014 email identifying concerns with the Student's Section 504 Plan was sufficient to describe disability discrimination allegations and to prompt the District to respond before the OCR complaint was filed. Based on the applicable District policies, the District staff and administrators are to report disability discrimination to the District's Compliance Officer and have the responsibility to ensure that it is addressed. Although District Policy ACE suggests individuals use the District form, it is not and should not be required. In other words, a school district cannot avoid its responsibility to respond to complaints of disability discrimination of which it is aware by requiring individuals to fill out a complaint form. The District should have adequately and promptly responded to the complaint but failed to do so, and should not have required the Complainant, in this instance, to use the discrimination complaint form in order to respond to the complaint. Additionally, the District had more than 3 months to respond to the complaint before receiving notice of the OCR complaint on August 28, 2014.

We note that the District did start to schedule a Section 504 meeting for the Student in August 2014 and held a meeting on September 23, 2014. However, holding a meeting does not fully address the Complainant's concerns, as there was no investigation into the delay in setting the meeting and whether the Student received accommodations during the 2013-14 school year. Further, the Section 504 Plan meeting did not address remedies related to the delay in holding the meeting and no determination was made regarding whether the Student needed compensatory services for school year 2013-14. Thus, we find that the District failed to resolve the Complainant's disability discrimination complaints in a prompt and equitable manner. The District entered into an agreement to resolve these compliance concerns.

### ***Allegation 2 – Failure to Provide the Complainant with Accommodations***

We investigated whether the District failed to provide the Complainant accommodations for her disability by not timely providing documents in a format accessible to her and failing to include her advocates in email responses. The Complainant previously disclosed to the District her disability and requested accommodations. After discussing the Complainant's requests, the District agreed to accommodations which were memorialized in a letter dated September 16, 2011, from the District's legal counsel that stipulates the following: emails in a font no smaller than 12 point; including the Complainant's advocates on emails; allowing a person to sit next to the Complainant when she is having hearing difficulties; ability to have her cell phone on; allowing meetings to be recorded; providing documents electronically a minimum of one week before a meeting; allowing the Complainant to request additional time to process information; and emails and text messages as the primary means of communication for Student absences.

The Section 504 regulation provides that no qualified person with a disability, shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance. 34 C.F.R. § 104.4(a). The Complainant, as a parent of a student in the District, must be able to participate in the Student's education to the extent other parents are able to participate.

The particular accommodations for the Complainant at issue in this complaint include: when communicating by email or in written form all documents will have a font size no smaller than 12

point; including the Complainant's advocates in written communications, including emails; and providing documents for meetings more than one week prior to a meeting. In reviewing documents submitted by the District, we found emails in May and August 2014 between the Complainant and School administrators and staff members that included a font size smaller than 12 point. The District also did not include the Complainant's advocates when it replied to several of the Complainant's emails that were originally sent to the District with the advocates on the cc line.

We also found that the District failed to provide documents to the Complainant one week before a meeting scheduled for September 3, 2014 and because this accommodation was not provided, the Complainant refused to participate in the meeting scheduled for September 3, 2014. In an email dated August 27, 2014, the Principal responded to the Complainant acknowledging that he failed to provide the Complainant with documents one week before the scheduled September 3, 2014 meeting and then began rescheduling the meeting and providing the needed documents. In an interview with OCR, the principal stated that he was first aware of the Complainant's need for accommodations in September 2014. District counsel stated that the meeting was held on September 23, 2014 because the Principal did not provide the Complainant with seven days to review documentation before the originally scheduled date of September 3, 2014.

Based on the documentation and the Principal's admission, we find that the District did not provide the Complainant with the accommodations of providing written communication in a font no smaller than 12 point, including the Complainant's advocates on emails, and providing information and/or documents for the Complainant's review more than 1 week prior to a meeting. The District took action to remedy the failures by ensuring that School staff knew of the Complainant's accommodations and their responsibility to correspond electronically in the correct font, include her advocates in email responses, and provided the Complainant with required documents before the rescheduled meeting. The District violated Section 504 and Title II by not consistently providing the Complainant's accommodations. However, the District rescheduled the September 3, 2014 meeting, provided the required documents more than 1 week before the rescheduled meeting, and ensured emails were in the correct font with the Complainant's advocates carbon copied on emails. We contacted the Complainant to determine if any other remedies were sought. The Complainant could not provide suggestions for any other remedies. Therefore, no additional individual remedies are required to remedy this allegation for the Complainant but we will require the District to provide training to staff members and their responsibility to ensure access for parents with disabilities.

### ***Allegation 3 – Retaliation***

We investigated whether the District retaliated against the Complainant after she requested her accommodations be provided by threatening to hold an educational meeting without her and ceasing communication with her.

In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 or Title II of which the recipient had knowledge; the recipient took 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.

To determine whether retaliation occurred, we first considered whether the Complainant engaged in a protected activity of which the District was aware. We find that the Complainant engaged in activities during the 2013-2014 school year that are protected by Section 504 and Title II because she frequently advocated for her rights as a parent with a disability and for her son, a student with a disability. These protected activities, of which the District was aware, are sufficient to satisfy the first element of the analysis.

We next looked at whether the Complainant was subjected to adverse actions. The alleged adverse actions are the threat by the Principal to hold the scheduled Section 504 meeting on September 3, 2014 without providing the Complainant her accommodations even if she does not attend. He also threatened to cease communication with the Complainant.

On August 20, 2014, the Complainant provided the Principal with information regarding her disability, explained her accommodations such as including her advocates on emails, and referred the Principal to the District main office to obtain a copy of the accommodations the District agreed to provide. The Complainant reminded the Principal she needs accommodations, in an August 23, 2014 email after the Principal failed to include the Complainant's advocates on his email response. In an August 25, 2014 email, the Complainant again reminded the Principal that he needed to provide accommodations in order for her to be able to participate in the Student's Section 504 meeting. In an email on August 26, 2014, the Complainant informed the Principal that she has not received her accommodations, including receiving documents one week prior to the September 3 meeting, and stated that since she does not believe she will receive her accommodations, she will not attend the September 3 meeting and requested assurances of receipt of her accommodations in the future. On August 27, 2014, the Principal responded to the Complainant but did not address whether the Complainant's accommodations would be provided, instead stating, "I am not able to operate in this manner and will not email any further until I meet with the 504 Team on September 3, 2014 at 4:00 p.m. My expectation is that you and [Student] will attend so we can move forward in a positive manner." We find that through his August 27, 2014 email, the Principal subjected the Complainant to an adverse action. Specifically, the Principal stated he would hold the Student's Section 504 meeting without providing the Complainant her accommodations to allow her to participate in the Student's education. The Principal also threatened to stop email communication with her until the meeting that she could not fully participate in was held.

We next considered whether there was a causal connection between a protected activity and the alleged adverse actions. Here, the adverse action is the August 27, 2014 email that is immediately in direct response to the Complainant's protected activity of requesting accommodations. We find a causal connection between the protected activities and the alleged adverse actions.

Because we find that a causal connection existed, we next considered whether the District has a legitimate, non-retaliatory, non-pretextual reason for its action. The Principal stated that he would continue to hold the September 3 meeting because he wanted to stop the tug of war between the District and the Complainant. The District also states that the Principal was initially not aware of the extent of the Complainant's accommodations. We find that both the Principal's reason and the District reason could have been legitimate, non-retaliatory reasons, but the circumstances of this case demonstrate the reasons are pretext for retaliation. Our finding of pretext is based on the numerous emails from the Complainant to the Principal informing him of the accommodations she

was requesting and directing the Principal to obtain her District accommodation plan. The evidence demonstrates that instead of providing the accommodations, the Principal ignores the Complainant's requests and states, "I'm at a loss at your refusal to meet . . . ." This is in his response to the Complainant's August 26, 2014 email where she states "[t]he on-going pattern of not granting or sporadically granting my accommodations is why I must decline having the 504 committee meeting for the [Student] on September 3, 2014." We find that the Principal had sufficient information from the Complainant to provide her accommodations and to avail himself of additional information from the District's legal counsel regarding the agreed-to September 16, 2011 accommodations.

The Principal sent the Complainant documents on August 28, 2014, and later agreed to reschedule the Section 504 meeting to September 23, 2014. The meeting was held on September 23, 2014 with the Complainant receiving her accommodations. While the Section 504 meeting was not held on September 3, and communication continued, we found that the District retaliated but immediately took actions to correct the retaliation. We request the District take additional steps to prevent the retaliation reoccurrence by providing training to its administrators regarding the District's obligation not to retaliate.

The District agreed to resolve the violations found in this investigation and entered into a Resolution Agreement (enclosed) on July 25, 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 the Resolution Agreement is fully implemented, it will ensure the District's compliance with the regulations as addressed in this complaint. In addition, we have notified the Complainant that the District has entered into this Agreement, and we provided the Complainant with a copy of the Agreement and will also keep the Complainant apprised of monitoring activities related to this case.

This letter addresses only the issues listed above and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504 or any other federal law in any other respect. Accordingly, we are closing the investigation of this complaint effective the date of this letter.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. Additionally, the Complainant has a 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

Thank you for your cooperation and attention to this matter and especially that of Mr. Brandon Erye, Attorney for the District. If you have any questions regarding this letter, please feel free to

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contact XXX, Equal Opportunity Specialist at XXX or by email at XXX or XXX, Lead Attorney at XXX or by email at XXX.

Sincerely,

/S/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure – Resolution Agreement

cc: Mr. Brandon Erye, Attorney for the District

Dr. Katy Anthes  
Commissioner of Education