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June 11, 2015

Canon City School District RE-1
Attn: Superintendent Robin Gooldy
101 North 14th Street
Canon City, CO 81212

Re: Canon City School District
Case Number: 08-15-1071

Dear Dr. Gooldy:

We are notifying you of our decision in this case. The Complainant alleged the Canon City School District (District) discriminated on the basis of disability. Specifically, the Complainant alleged the District failed to provide her with effective communication by not providing her with American Sign Language (ASL) interpreters at a variety of school related activities at her daughter's (Student's) school, including XXXX. The Complainant also alleged the District retaliated against her for advocating for her disability related needs by limiting or restricting communication between her and the Student's school staff.

We investigated this complaint pursuant to 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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

In reaching a compliance determination regarding these issues, we reviewed documentation submitted by the Complainant and the District. We also interviewed the Complainant and relevant District staff members.

Background

The Complainant is an individual with a disability (deafness) and communicates by using American Sign Language (ASL). She is the mother of the Student who has been enrolled in District schools for a number of years. At the XXXX (School), the Student first enrolled for the 2013-14 school year and continued at the School for the 2014-15 school year.

Over the years the Complainant and the District have disagreed regarding the District's obligations to provide the Complainant with an interpreter. This disagreement continued when

the Student enrolled at the School.

The Complainant generally believed that the District was obligated to provide her with an interpreter anytime she met with school staff, as well as other situations such as awards assemblies, meetings with the school nurse, and registration day. Prior to the start of the Student's first year at the School, the Complainant articulated her expectations for an interpreter in an August 8, 2013 email to the School's principal (Principal).

The Principal responded in an August 12, 2013 email stating,

In terms of your request of an interpreter, I can't say for certain what I can do to grant your request but I have contacted the school district related to your request to provide you an interpreter for school activities such as Open House, Parent Teacher conferences, Awards day at the end of the school year. Unlike your last school, they had a budget that was used to meet your requests, we do not have Title I funds to honor your request at this time, which is why I contacted the district to see if we can address some of your concerns¹.

Additionally, in an August 20, 2013 letter to the Complainant, the Principal stated, "For any school initiated conference that you will attend which related to (Student's) academics, behavior, or medical concerns we will do our best to provide an interpreter for you. It will be necessary, however, for you to be prompt for any such conference in order to keep the expense down." He additionally stated, "However for any general discussion or meeting which you seek to have, we will not provide an interpreter."

This dispute regarding interpreters continued throughout the 2013-2014 school year. In a May 28, 2014 email to the Principal, the Complainant requested an interpreter for an awards ceremony which was to take place the next day and was open for members of the community to attend. She explained that the School was required to provide an interpreter whether or not the Student was receiving an award.

The next day, the Principal responded and stated that he was not aware whether the Student was getting an award and that the 6th grade team should have sent the Complainant something to let her know whether the Student was getting an award. He added that the School did not have an interpreter for the Complainant and stated, "I apologize but I was never informed from the team that (Student) would be getting an award. Normally, 48 hours ahead of time so I can arrange one to be here for you. I can accommodate you with a seat at the front of the stage but I have no interpreter for you for this activity."

After complaining in a May 29, 2014 email to the Principal of the District's failure to provide her with an interpreter at the awards ceremony, the Principal stated,

[Complainant], our school district will not provide an interpreter for non-educational or non-disciplinary events concerning [Student]. If you have other

¹ The District stated that this was "not in keeping with existing District policy and corrective action was taken with (Principal)."

authority that you would like to present to us, we would certainly consider it? You can certainly make arrangements for an interpreter for such events like the awards ceremony we had yesterday, but at your expense. As a school we can provide you an interpreter at school sponsored events involving [Student's] academic or disciplinary issues. These would include parent/teacher conferences, meeting with you if the school requests and of course, for any disciplinary proceedings. Social and extra-curricular events would not mandate us providing you an interpreter.

In a July 14, 2014 email to the Principal, the Complainant repeated her expectations for an interpreter, including her expectation that the District provide her with an interpreter for Registration Day prior to the start of the 2014-2015 school year. Regardless, the District did not provide her with an interpreter for Registration Day which took place in August 2014.

During the Fall 2014 semester, the Complainant continued to have issues with the healthcare the Nurse's office was providing the Student², as well as the healthcare providers' decisions whether or not to excuse the Student from school attendance for medical reasons. This had also been an ongoing problem through the 2013-2014 school year at the School and it spilled over into the 2014-2015 school year. The Complainant frequently expressed her frustration with the care in emails to the School's health care providers.

On October 15, 2014, the District, through its attorney, sent the Complainant a letter clarifying when the District will or will not provide an interpreter. In part, it stated,

In the main, the school district will provide an interpreter for your use for school initiated events concerning your child. For example if you desire to participate in a parent-teacher conference, an interpreter will be provided. The school district will not provide one for your child's extra-curricular activities nor for meetings that you request.

Additionally, the letter cited a court case, Rothschild v. Grottenthaler, 907 F.2d 286 (end Cir. 1990). The District recognized the requirement in *Rothschild* that a school district shall provide a disabled parent of a non-disabled student with accommodations for such things as parent-teacher conferences and meetings with school district personnel. However, the letter also stated, "Mindful of the potential financial and administrative concerns of the school district, however, *Rothschild* also went to explain:

We take pains, however, to emphasize that the [school] district's obligation, and correspondingly, the plaintiff's entitlement, is limited to "school-initiated conferences incident to the academic and/or disciplinary aspects of their child's education." To the extent that the plaintiffs wish to voluntarily participate in any of the plethora of extra-curricular activities that their children may be involved in, we think they, like other parents, must do so at their own expense.

Also, the October 15th letter addressed the Complainant's behavior. In particular, it noted that

² The Student suffers from Asthma and uses an inhaler.

the Complainant presents herself as XXXX and stated that the Complainant had called a health technician XXXX. The letter warned the Complainant that these types of comments are “unacceptable and inexcusable.” It added that the District has the authority to issue a “bar letter” which would prohibit the Complainant from being able to come onto school property unless expressly authorized. Finally, it stated that the District had considered issuing her a “bar letter” in the past, but that her recent behavior makes it more likely that the District might take such action. It encouraged the Complainant to refrain from such inappropriate behavior.

On November 20, 2014, the Student visited the Nurse’s office and met with the Nurse Technician. The Nurse Technician noted that the Student’s throat was a little red, but that her temperature and oxygen level were normal. The Nurse Technician emailed the Complainant asking her to bring the Student’s inhaler as she did not have one in school at that time. After about an hour wait, the Nurse Technician asked the Student to text the Complainant to see if the Student could reach the Complainant for the inhaler. Subsequently, the Complainant emailed the Nurse Technician and stated in part XXXX.

On December 9, 2014, the Principal mailed a letter to the Complainant informing her that he was restricting her communication with School staff. Specifically it stated that the Principal planned to block the Complainant’s emails to School staff and instructed the Complainant to email him instead of other School staff and that he would share the information with the staff. He added that these School staff still would be able to email the Complainant directly if they needed to. The Principal also emailed the same letter to the Complainant on December 11, 2014.

Following the communication restriction, the Complainant essentially stopped sending the Student to school. The Student missed 4 of the remaining days prior to the winter break and 70 days during the 3rd and 4th quarters.

Legal Standard

The Section 504 regulations at 34 C.F.R. §104.4 provides that no qualified individual with a handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives Federal financial assistance.

34 C.F.R. §104.4(b)(1)(iii) provides that a recipient may not “Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.” This “equally effective” requirement is explained further. “For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.” 34 C.F.R. §104.4(b)(2)

The regulations for Title II of the Americans with Disabilities Act provides a similar requirement at 28 C.F.R. §35.130(a). It states, “No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”

It additionally states that a recipient may not “Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.” 28 C.F.R. §35.130(b)(1)(ii) It further provides that a recipient may not “Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. §35.130(b)(1)(iii)

With respect to communication, it states, “A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.” 28 C.F.R. §35.160(a)(1) It defines “companion” to include , “a family member, friend, or associate of an individual seeking access to a service, program or activity of a public entity, who , along with such individual, is an appropriate person with whom the public entity should communicate.” 28 C.F.R. §35.160(a)(2)

A “public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. §35.160(b)(1)

Additionally, “The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities....” 28 C.F.R. §35.160(b)(2)

With respect to individuals who are deaf, the regulation defines “auxiliary aids and services to include, “(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.”

It additionally provides that a public entity shall not rely on a minor child to interpret or facilitate communication “except in an emergency involving an imminent threat to the safety or welfare of an individual or the public.” 28 C.F.R. §35.160(c)(3)

Analysis

Allegation: Effective Communication

The Complainant first alleged the District failed to provide her with effective communication by not providing her with American Sign Language (ASL) interpreters at a variety of school related activities at the School, including XXXX.

The District denied it discriminated as alleged. In its Data Response, the District stated, “Based on our legal advice, it is our understanding that our obligation is to provide an interpreter for (Complainant) only for meetings with the parent regarding the student’s academic or behavioral progress.” Next, the District stated that it had provided the Complainant with ASL interpreters on 10-3-2013, 10-25-2013, 12-12-2013, and 9-30-2014. This includes two parent-teacher conferences, a Truancy Review Board meeting, and one meeting with the Principal.

Regarding the Complainant’s requests for interpreters, the District identified only 3 instances when the Complainant requested for an interpreter. One was on August 8, 2013 for which the Principal responded on August 12th regarding an August 22nd meeting. For this request, the District stated that the Principal responded incorrectly regarding funds and corrective action was taken. Next was a request for an October 3, 2013 parent-teacher conference for which the District provided an interpreter. Also, the Complainant requested for an interpreter for a school assembly which took place on June 3, 2014. The District denied this request and instead provided an explanation of the District’s practice regarding interpreters for parents. Finally, the District identified a July 7, 2014 email to the Principal. The District stated that this email was not a specific request for services, but rather was the Complainant’s discussion of her expectations.

With respect to the District’s understanding that its obligation is to provide an interpreter “only for meetings with the parent regarding the student’s academic or behavioral progress,” the District did not provide an explanation in its Data Response. It appears this understanding is articulated in its attorney’s October 15, 2014 letter to the Complainant as described previously in the Background section of this letter. It appears the District believes *Rothschild* articulates its legal obligations to provide an interpreter for a deaf parent of a non-disabled student who attends one of its schools.

OCR first notes that the issues in *Rothschild* took place prior to the enactment of the Americans with Disabilities Act in 1990. As a consequence *Rothschild* addressed a school’s obligation under only Section 504 as defined at that time, 25 years ago. Since the enactment of the ADA, the District is also subject to Title II of the ADA as described previously. As a consequence, *Rothschild* does not fully articulate the District’s legal obligations with respect to ensuring it does not discriminate on the basis of disabilities. Next, OCR notes that *Rothschild* was merely a decision of the Second Circuit and is not controlling in Colorado. It also has not been cited and relied upon in Colorado to define the limitations of a school’s obligation to accommodate a disabled parent of a student who attends the school. Rather the scope of a school’s obligation to accommodate a disabled parent is articulated in detail in the Legal Standard section of this letter.

Additionally, the U.S. Department of Education in conjunction with the U.S. Department of Justice provided clarification in a November 2014 guidance, “Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools.” In this guidance, Question 7 inquires under what

circumstance a public school is required to provide auxiliary aids and services to persons with disabilities who are not students, such as parents or relatives. In response, it states that this effective communication requirement is not limited to only students. It additionally clarifies the programs or activities for which schools are required to provide auxiliary aids and services. It states, “schools are obligated to provide effective communication to all individuals who seek to participate in or benefit from a school district’s services, programs or activities such as student registration, parent-teacher conferences, meetings, ceremonies, performances, open houses, and field trips.” Thus, it is clear that the District is required to ensure that the Complainant is provided with effective communication for all of its programs or activities, unless it would result in a fundamental alteration or result in an undue financial and administrative burden.

The Complainant identified two specific dates and events in 2014 for which she requested for an interpreter and the District did not provide her with an interpreter XXXX. She stated that she requested for an interpreter in July 2014 for Registration Day in August 2014. She additionally stated that she requested in-person for an interpreter for the musical approximately one week prior to the event.

Regarding Registration Day, the District stated that the Complainant’s July 7, 2014 email to the Principal was not a specific request for services, but rather was the Complainant’s discussion of her expectations. OCR notes the District’s statement is incorrect. OCR reviewed the July 7th email and notes that, although the District is correct that the Complainant additionally articulated her general expectations, she specifically stated that she expected to have an interpreter for Registration Day. As Registration Day was to take place approximately a month from the date of the email and the District requires advance notice of a request for an interpreter, the Complainant’s email was sufficiently specific to be considered a request for an interpreter for that day.

Regarding the December 2014 musical, the District did not provide an explanation. During an interview, the Principal stated that the Student was in choir and that she performed as part of the choir in December 2014. He added that, contrary to the Complainant’s statement that she requested for an interpreter a week in advance, the Complainant requested an interpreter approximately the day before the performance and that it was insufficient time to obtain an interpreter. He stated that he would have gotten an interpreter for the Complainant for the Student’s performance if he had been given more time. When questioned, he stated that he was not a recipient of the District’s October 15th letter from its attorney and thus was not aware of the District’s position that the District would only provide an interpreter for meetings with the parent regarding the student’s academic or behavioral progress, and not for such an event as a choir performance. However, OCR notes that the Principal’s statement that he would have provided an interpreter for the choir performance contradicts his earlier emails describing the circumstances for which an interpreter would be provided.

It is undisputed the District did not provide the Complainant with an interpreter for Registration Day in August 2014 and the December 2014 musical/choir performance. The District also provided no evidence that the head of the school district or his or her designee had made a determination that the Complainant’s requests would result in a fundamental alteration or an undue financial and administrative burden.

Additionally, OCR notes that the District had articulated several times (August 2013, June 2014, and October 2014) its general policy that it will not provide an interpreter for anything other than meetings with the parent regarding the student's academic or behavioral progress. We note that it is clear the District's repeated emphasis of this policy frustrated the Complainant and that it is possible, if not likely, this repeated emphasis may have prevented the Complainant from making further specific requests.

Consequently, we found sufficient evidence of a violation when the District failed to provide the Complainant with effective communication when it did not provide her with an ASL interpreter as requested and alleged. Additionally, the District's repeated statements that it will not provide a sign language interpreter for the Complainant except for meetings with the parent regarding the Student's academic or behavioral progress raises further compliance concerns.

Additionally, during OCR's investigation, OCR learned that the Principal twice used the Student to interpret during meetings between the Complainant and him. He added that the Complainant refused to permit him to rely on the Student to interpret and that the Student did not interpret long. OCR notes that the Principal's reliance on a minor child to interpret or facilitate communication in a non-emergency situation raises further compliance concerns.

As a result, the District has voluntarily agreed to resolve the compliance concerns found in our investigation of this allegation in the attached Resolution Agreement. OCR will monitor the District's implementation of the Resolution Agreement until it is completed.

Allegation: Retaliation

The Complainant next alleged the District retaliated against her for advocating for her disability related needs by limiting or restricting communication between her and the Student's school staff. The District denied it retaliated as alleged.

In analyzing a retaliation claim, we determine whether: the individual engaged in a protected activity 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, whether the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

The Complainant contended that the District retaliated against her for her repeated advocacy of her rights as a parent with a disability. She noted the several instances in 2014 where she requested an interpreter and accused the District of repeatedly violating her rights under the ADA. She believes that her advocacy resulted in the District's issuance of the December 9, 2014 letter restricting her access to email School staff.

We determined that the Complainant engaged in a protected activity several times in and after May 2014 for which the District had knowledge.

We next determined whether the District took adverse action against the Complainant. An

adverse action is something that adversely affects a person's work, education, or well-being in a serious, lasting, and usually tangible manner—something that is more than a transient, unpleasant incident. The key consideration is the degree to which the action complained of will have (or has had) a chilling effect on the assertion of protected activities.

The District stated that the District limited the Complainant's ability to email School staff directly, but that the Complainant still was able to email the Principal and the School staff were able to directly email the Complainant. Additionally, the District stated that the District did not restrict the Complainant's ability to come into the School under the same expectations as other parents.

During the investigation, the Principal stated that although the District issued the December 9th letter, the District did not actually restrict the Complainant's emails to School staff. He explained that he contacted the District's technology services department to discuss blocking the Complainant's communications. He had assumed that the Complainant's communications were blocked after he had contacted technology services, particularly because he stopped hearing of complaints from the teachers regarding the Complainant's rude email communications. He stated, however, that he learned several weeks later at a meeting that the communications were in fact not blocked.

Regardless of whether or not the Complainant's email communications were blocked, OCR determined that the District's action is sufficiently adverse. Additionally, OCR determined that a causal connection may be inferred between the protected activity and the adverse action, because the alleged adverse action occurred shortly after the protected activity.

We next determined whether the District had a legitimate non-retaliatory reason for its action. The District did not provide an explanation for its action. However, its December 9th letter provides its justification. The letter stated that the District was taking that action because the Complainant sent XXXX email to School staff, which included some profanity. The letter specified a November 20, 2014 email from the Complainant to the Nurse Technician. OCR notes that the District's justification for its action was legitimate and non-retaliatory.

We next determined whether the District's action was pretextual.

The Complainant denied that she was rude and used profanity. The District provided OCR with a copy of the November 20, 2014 email correspondences from the Complainant to the Nurse Technician. OCR notes that the Complainant's November 20th email was generally rude, hostile, and contained profanity as the District described.

When inquired of the District's past actions since January 1, 2013 in dealing with similar conduct, the District stated that it has not restricted access to communication for any other individual. During an interview, the Nurse Technician noted that, although she has dealt with other rude parents, the Complainant is on "another level." She explained that the Complainant has always been rude and threatening to her, often threatening to sue her, but that this hostility elevated during the 2014-2015 school year. The Principal also stated that he has dealt with other difficult parents, but added that other parents were willing to listen and work on their differences

and the Complainant was not willing. He also added that the Complainant had been warned regarding her behavior and communications and that he and the School staff had tolerated and dealt with her rudeness and hostility for a long time. He stated that they reached their limit, thus he decided to limit only the Complainant's rude and hostile email communications to them.

OCR notes that the Principal imposed a minimal amount of restriction on communication necessary to protect the School staff from the Complainant's rude and hostile emails. The Complainant was still able to communicate with School staff by emailing the Principal, visit the School, and receive email communications from the School staff.

Typically OCR will defer to a recipient's decisions regarding whether to restrict a parent's communication with its staff. OCR notes that there is insufficient evidence of pretext. Consequently, we have determined there is insufficient evidence that the District retaliated as alleged.

This concludes OCR's investigation of this 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. The Complainant may have a right to file a private suit in Federal court whether or not 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 Complainant 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 is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

If you have any questions, please contact XXXX, Attorney Advisor and the primary contact for this case, at 303-844-XXXX, or me at 303-844-5927.

Sincerely,

Thomas M. Rock
Supervisory General Attorney
Denver Enforcement Office

Enclosure – Resolution Agreement