



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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June 18, 2015

Mr. Tom Boasberg  
Superintendent  
Denver Public Schools  
1860 Lincoln Street, 12th Floor  
Denver, Colorado 80203

Re: Denver Public Schools  
OCR Case Number 08-15-1072

Dear Superintendent Boasberg:

We completed our investigation of the above-referenced complaint filed on December 16, 2014, against Denver Public Schools (District) at the Denver School of Science and Technology (DSST). The Complainant alleged that the District failed to evaluate her daughter for a possible disability after the Complainant requested assistance, including tutoring, several times during the 2014-15 school year. The Complainant also alleges that the District discriminated against her daughter based on national origin (Hispanic) in the resolution of an incident on February 2, 2015. We have determined that we have the authority to investigate this complaint consistent with our complaint procedures and applicable law.

We initiated our investigation under 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; 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; and Title VI of the Civil Rights Act of 1964 and its implementing regulation, which prohibit discrimination on the bases of race, color, or national origin, in activities and programs that receive Federal financial assistance from the U.S. Department of Education. The District is a recipient of Department funds and a public entity, and is subject to these laws.

During the course of our investigation, we reviewed documentation submitted by the Complainant and the District. We also interviewed the Complainant and District staff members. The District entered into the attached agreement to resolve the compliance concern regarding the allegation of failure to evaluate. Our investigation finds insufficient evidence to support that the District violated Title VI as alleged. This letter explains our findings.

### **Background**

The Complainant informed OCR that the Student has “thyroid, asthma, difficulty breathing”, “physical therapy because she has a problem with her knee”, anxiety, and had many episodes of cutting. The Student attends Green Valley Ranch Middle School (GVRMS). GVRMS is operated by the Denver School of Science and Technology Public Schools (DSST)<sup>1</sup> and chartered by the District. The Student was previously identified as a student with a disability and received speech services from the District but was no longer receiving those services while she attended DSST.

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<sup>1</sup> DSST operates ten charter schools for the District.

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

### **Alleged Failure to Evaluate**

The Complainant alleged that the District failed to evaluate her daughter for a possible disability after the Complainant requested assistance, including tutoring, several times during the 2014-15 school year.<sup>2</sup>

The Section 504 regulation at 34 C.F.R. §§ 104.32-36 contains policies and procedures for the timely identification, referral, evaluation, and placement of students who need or are believed to need special education and related aids and services due to a disability and the subsequent implementation of those services. The provision of a free appropriate public education (FAPE) includes the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. OCR interprets the Title II implementing regulation at 28 C.F.R. § 35.130 to require public education entities to provide a FAPE to the same extent as is required under the Section 504 regulation. One of the ways in which a district can deny a student FAPE is by failing to properly identify a student as a person with a disability.

The contract between the District and DSST states that the District is responsible for providing the evaluation of students for a suspected disability. According to the District's Division of Student Services, in determining whether a student should be evaluated for a Section 504 Plan or Individual Education Program (IEP), school staff should consider the existence of a disability and possible Section 504 protection when a parent frequently expresses a concern about his or her child's performance at school and a disability of any kind is suspected. The DSST staff did not share information with the District about the Complainant's requests for tutoring assistance/academic help or about the Student's large number of absences due to illness or medical appointments which could have prompted the evaluation of the Student for a disability.

The Student's registration form did not indicate that she has a Section 504 Plan. The Complainant did not specifically request an evaluation for any specific disability. However, the Complainant did raise concerns regarding the Student's academic progress and requested tutoring. The Student also had excessive absences (excused and unexcused). On February 9, 2015, the Complainant requested to withdraw and transfer the Student to Kipp Montbello College Preparatory School (another District charter school) because she felt that the District failed to provide the Student with the academic support that she needed.

During the investigation, we learned that on September 29, 2014 the Student received an after-school intervention for eating a mint in class in violation of DSST's code of conduct<sup>3</sup>. Because of this incident, the Complainant provided GVRMS with medical documentation on September 30, 2014, stating that the Student requires something in her stomach constantly to function better in class and has a need for unlimited bathroom breaks. As a result of receiving the medical documentation, the Student's First Advisor sent an email to the Student's teachers on the same day to allow the Student to have snacks in class and use the restroom as needed.

The Complainant had concerns about the Student failing her classes so she requested a meeting, and the Dean of Students sent an email to the Advisor on October 3, 2014 indicating that he had scheduled a meeting for October 7, 2014 to discuss the Complainant's concerns and to share the GVRMS' concerns. The Dean stated in an interview that there was no discussion as to whether the Student should be evaluated for a suspected disability. This information was corroborated in a written statement from the GVRMS's Office Manager, who served as the Complainant's interpreter during the meeting.<sup>4</sup> The Complainant expressed concern that the Student was failing, she requested tutoring for Math and Science, and also wanted the

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<sup>2</sup> The Student had a large number of excused absences for various medical appointments and illness and the Complainant's request for tutoring was, in part, to help the Student learn the material she had missed due to those absences.

<sup>3</sup> Although the Student was issued an after-school intervention notice, she did not go to the after-school session.

<sup>4</sup> We were unable to confirm this with the Student's First Advisor, since this person is no longer with DSST. When the DSST reached out to the former Advisor to interview with OCR she reportedly declined.

Student's unexcused absences changed to reflect excused absences because she had provided medical documentation. On October 8, 2014, the Dean sent an email to the tutoring team requesting that the Student be signed up for tutoring in Math and Science. The GVRMS's Office Manager's written statement also demonstrates that the Complainant disclosed that the Student was diagnosed with depression and was showing signs that her depression may be worsening. The Complainant corroborated that she told the Office Manager about all of the Student's medical and other issues, including psychologist appointments.

The Student's attendance records show that the Student had excessive absences in various class periods during Terms 1 and 2. The information demonstrates that the Student had 103 excused absences, 45 unexcused absences, and 15 tardies. In an interview with the Second Advisor, she stated that she tried to contact the Complainant in January 2015 to introduce herself as the Student's new advisor. At that time the Student was failing in Reading, Writing, Math and STEM. The Second Advisor said that she did not have any reason to believe that the Student's failing was due to a suspected disability but instead felt that it was more because of her missing school. According to the Second Advisor, when she spoke with the Complainant, the Complainant told her that she would try to do better with getting the Student to school.

The District's response to our request for information and the staff interviews repeatedly state the Complainant did not request any evaluations. Based on DSSST providing the accommodations of allowing the Student to have snacks in class and use the restroom as needed in September, the Complainant's raising concerns regarding the Student's academic struggles, the Office Manager's knowledge of the Student's depression, and the Student's excessive absences, DSSST had sufficient information to suspect the Student may have a disability and the District needed to evaluate the Student. Section 504 places an affirmative obligation on the District to identify students suspected of having a disability and determine whether evaluation is necessary. The District failed to consider whether the Student needed an evaluation after receiving sufficient information of a number of potential disabilities.<sup>5</sup>

The District agreed to enter into an agreement to resolve this compliance concern. We will monitor the District's actions toward reaching the requirements of the agreement.

### **Alleged Discrimination based on National Origin**

The Complainant alleged that the District discriminated against her daughter based on national origin (Hispanic) in the resolution of an incident on February 2, 2015. The Complainant's basis for believing this was that two students who accused her daughter of eating a marijuana brownie are white and the Complainant's daughter is Hispanic. In evaluating an allegation of different treatment, we determine what action the recipient took against the alleged injured party, whether it followed its policies and procedures for taking such action and whether similarly situated non-Hispanic individuals were treated differently. If the alleged injured party was treated differently, 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 Student's teacher reported that she observed the Student displaying strange behavior in class, such as giggling at her desk during silent work time. Two students reported to the Dean that they were concerned about the Student because the Student told them that she consumed a marijuana brownie. The Dean said that the Student was reported as having sudden bursts of loud laughter, talking in a very high tone, and visible red eyes. After these reports he went to the bathroom to check the trash for any evidence of the marijuana brownie and did not find any such evidence in the bathroom. After his search for evidence in the bathroom, the Dean spoke with the teacher about the incident and pulled the Student out of class to talk to her about the accusation. The Dean said when he interviewed the students, they were confident that the Student was

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<sup>5</sup> The Student is attending another charter within the District and the new charter school also did not evaluate the Student, but asked the Complainant for documentation and is providing accommodations requested by the Complainant.

serious when she told them she consumed the marijuana brownie. The DSST reported that the Student initially admitted to taking the edible marijuana, but later the Student admitted to telling the other students that she ate the marijuana brownie but said it was a joke. The Dean said he and two other adults went through the Student's backpack and did not find any evidence of the marijuana brownie. After speaking to the teacher, he returned to the office and to his surprise the Complainant was there. He said they discussed what happened during his investigation thus far. The Complainant gave the Dean permission to go through the Student's locker and he did not find any evidence of the marijuana brownie in the Student's locker. The Complainant confirmed with OCR that she was present in the school at this time. The next day, the Complainant provided documentation from the Student's doctor that the Student did not have marijuana in her system and that she had a fever. The Student did not attend school after this incident and the Complainant withdrew the Student from the School two weeks after this incident. The Dean did not maintain the disciplinary record, including interviews, for this incident. The Student continues to attend school in the District and there have been no efforts to discipline the Student for the February 2, 2015 incident.

DSST's drug policy prohibits possession or use of illicit drugs on school grounds. As required by law, or at the discretion of the school, violation of this policy leads to suspension, a report to authorities, and possible recommendation for expulsion. Upon receipt of a report of illegal drug use, DSST investigates the allegation to determine its validity prior to determining any discipline actions.

We find that upon receipt of information that the Student may have taken drugs, the DSST conducted an initial investigation and found no marijuana or paraphernalia related to marijuana on the Student or amongst her belongings or in her locker. We also find that the District's response is consistent with the DSST and District policies; the DSST conducted an immediate investigation to determine the validity of the accusation that the Student had ingested a marijuana brownie before determining any disciplinary actions. Neither the DSST nor any other District school ever imposed disciplinary action on the Student and there is no record of the investigation in the Student's file. We also note that the Student is currently attending another school within the District and has no record of any discipline related to this incident in her record. We are unable to establish that the District treated the Student differently based on national origin in its investigation of the incident on February 2, 2015.

## **Conclusion**

We find that the District failed to evaluate the Student for a suspected disability and the District has entered into an agreement to address the compliance concern. We also found insufficient evidence for the Complainant's allegation regarding the District's response to the incident on February 2, 2015 since the investigation was conducted consistent with its policies and no disciplinary action was taken.

This letter addresses only the issues discussed in this letter and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504, Title II and Title VI or other Federal civil rights laws in any other regard. Please note that the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. The District is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

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.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation extended to us throughout the investigation and especially that of Eric Hall and Amber Elias. If you have any questions, please feel free to contact Joyce Y. Hayward, Equal Opportunity Specialist, at 303.844.6097. I can be reached at 303.844.6083.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure

cc: Eric V. Hall  
Designated Representative  
Denver School of Science and Technology

Amber Elias  
Attorney for the District

Honorable Robert Hammond  
Commissioner of Education