



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 17, 2015

Dr. Harry C. Bull, Jr.
Superintendent
Cherry Creek School District
4700 S. Yosemite Street,
Greenwood Village, CO 80111

Re: Cherry Creek School District
OCR Case Number: 08-15-1075

Dear Dr. Bull:

On December 19, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint filed against the Cherry Creek School District (District) alleging disability discrimination. Specifically, the Complainant alleged that the District denied her daughter (Student) a free appropriate public education (FAPE) when it failed to conduct a special education re-evaluation prior to a significant change in placement, after the Complainant placed the Student in the District's XXXX program from October 2014 until the end of the 2014-2015 school year. The Complainant also alleged that the District failed to implement the Student's Individualized Education Program (IEP) after she began receiving XXXX services.

OCR is 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 U.S. Department of Education (Section 504), 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 (Title II). As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

Section 504's regulation at 34 C.F.R. §104.35 requires that the District conduct an evaluation of the Student prior to any significant change in placement. Additionally, the regulation requires that the placement decision is made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and ensures that the placement decision is made in conformity with § 104.34, which requires that the student be educated with their non-disabled peers to the maximum extent appropriate to their needs. When we notified the District of the Complainant's allegations, the District expressed a willingness to resolve the complaint via OCR's Rapid Resolution Process and assured OCR that appropriate action would be taken to resolve the Complainant's concerns. To that end, the District agreed to conduct an evaluation meeting to discuss the Student's IEP, review the results of the Student's Independent Educational Evaluation (IEE), and discuss the appropriate educational setting for the Student. Additionally, the District agreed that if the IEP team determined that the XXX placement is

appropriate for the Student, the District would determine whether compensatory services are required from the date that the Complainant placed the Student in XXX instruction until the date that, if required, a revised IEP is implemented.

The District provided OCR documentation that demonstrates that it took appropriate steps to resolve the Complainant's allegations. The documents provided by the District indicate that an IEP meeting was held on February 27, 2015, with a continuing meeting that took place on March 13, 2015, to re-evaluate the Student's special education services. The attendees' signature sheet indicates that the Complainant, along with the Student's advocate, attended both IEP meetings. Based on the documentation provided and the Complainant's acknowledgement, we determined that the District discussed the Student's appropriate educational placement. During both meetings, the Complainant requested that the Student receive XXXX. The District rejected this option as too restrictive and unnecessary based on the multiple sources of information considered, including medical information from the Student's physician. The District convened a team of persons knowledgeable about the Student to discuss recent evaluation information, the available placement options, and the most integrated setting appropriate to the Student's needs.

Further, the District indicated that the team determined that no changes to the Student's IEP or educational placement were determined or made during the meeting. Therefore, no compensatory services were warranted.

We contacted the Complainant and provided her the opportunity to provide additional information regarding the District's efforts to resolve her complaint allegations. The Complainant confirmed that she and her daughter's advocate attended the IEP meetings. She also confirmed that the team discussed XXXX placement services for her daughter. The Complainant stated that she continues to disagree with the IEP team's determination that the classroom environment is the appropriate educational placement for the Student. We informed the Complainant that disagreements over a student's educational placement are appropriately resolved through the District's due process procedures. The Complainant previously acknowledged that she is aware of her right to request a due process hearing.

Regarding the Complainant's individual complaint allegations, we conclude that the District took appropriate action to resolve the complaint allegation by conducting an IEP meeting to reevaluate the Student's placement following Section 504's regulatory requirements at 34 C.F.R. 104.35. Therefore, OCR has determined that the Complainant's individual complaint allegations are resolved.

During the course of our review of the District's supporting documentation, we became aware that the District's XXXX Policies and Procedures may not ensure that students with disabilities receive special education and related aids and services that are consistent with an individual student's IEP or Section 504 plan while participating in the XXXX program. Prior to our investigation of this possible systemic concern, the District indicated its willingness to voluntarily enter into an agreement with OCR to resolve this systemic concern pursuant to Section 302 of the *Case Processing Manual*. We reviewed this request and determined that it justified entering into an agreement without completing a full investigation.

We have received the signed Resolution Agreement, which is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding 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, as described in the Agreement.

We thank the District for its willingness to resolve the Complainant's individual allegations via OCR's Rapid Resolution Process, and for voluntarily entering into an Agreement to resolve the systemic concerns that OCR identified during the processing of this complaint. This concludes OCR's investigation 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 systemic concern is now in the monitoring phase. The monitoring phase of the systemic concern will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase is complete, OCR will close OCR Case Number 08-15-1075 and will send a letter to the District, copied to the Complainant, stating that the case is closed.

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.

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. In addition, 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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank you for the courtesy and cooperation you extended to us during the processing of this case. We would also like to extend our appreciation for the support that Mr. John Stanek, District Legal Counsel, provided us during this process. If you have any questions regarding this matter, please contact XXXX, Equal Opportunity Specialist and the primary contact for this case, at 303-844-XXXX, or by email at XXXX@ed.gov.

Sincerely,

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure

cc: John R. Stanek, District Legal Counsel

Robert Hammond
Commissioner of Education