



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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September 30, 2016

Dr. Nicholas Gledich
Superintendent
Colorado Springs School District #11
1115 North El Paso Street
Colorado Springs, Colorado 80903-2599
Re: Colorado Springs School District #11
OCR Case Number 08-16-1039

Dear Dr. Gledich:

We have completed our investigation of the above-referenced complaint filed on November 2, 2015, alleging that Colorado Springs School District #11 at CIVA Charter High School (CIVA)¹ discriminated on the basis of disability (ADHD and Anxiety Disorder). Specifically, the Complainant alleged that the District failed to provide her son with a free appropriate public education by not implementing his Section 504 Plan during the fall semester of school year 2015-2016. Specifically, the Complainant alleged that the District failed to: (1) provide the Student with one-on-one support from his teachers as needed, (2) provide the Student with an extra set of textbooks at home, and (3) provide the Student with a copy of teachers' notes. The Complainant also alleged that she filed a grievance with the District and was told that the District does not have the authority to investigate discrimination complaints against charter schools.

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. During the course of our investigation, we carefully reviewed documentation submitted by the Complainant and the Academy. We also interviewed the Complainant and Academy/District staff members. We find that the Academy is in violation of Section 504 and Title II by failing to implement the Student's IEP and failing to providing adequate notice to Complainant and stakeholders of the CIVA and District policy and procedures for filing a grievance, and the CIVA's and District's policies and procedures are not in compliance. A discussion of our findings is below.

Background

The Student previously attended school in the Cheyenne Mountain School District 12 (CMSD). He was enrolled in the Colorado Springs School District #11 at CIVA Charter High School (CIVA) on July 29, 2015. The Complainant met with the Executive Director on July 29, 2015 to discuss CIVA's program, the Student's goals, and whether the Student and CIVA were a good fit. The Complainant revealed that the Student is a student with a disability (ADHD and anxiety) and provided a copy of his Section 504 Plan that was developed at CMSD, dated May 12, 2015. The

¹ CIVA Charter High School is a charter school that is authorized by the Colorado Springs School District 11.

Executive Director asserts that because the Section 504 Plan from CMSD appeared to be reasonable, he did not convene a Section 504 team meeting. Therefore, CIVA adopted the Student's Section 504 Plan. During this meeting CIVA's Executive Director informed the Complainant that the Student's teachers would be available for 30 minutes before and after school for individual tutoring and that their class notes are available on CIVA's website. In addition, the Executive Director verbally agreed (not an accommodation of the Student's Section 504 Plan) that if the Student was having anxiety issues, he was allowed to go to the nurse's/front office.

The Student began attending school at CIVA on August 18, 2015, until he was suspended for 10 days because of a physical altercation with the Executive Director on September 30, 2015. On October 6, 2015, the Executive Director met with the Complainant to discuss the Student's suspension. At this meeting, the Complainant made the decision to withdraw the Student from CIVA. The Student did not serve any time of his suspension.

Issue One: Alleged Failure to Implement

The Complainant alleged that the District failed to implement the Student's Section 504 Plan by failing to: (1) provide the Student with one-on-one support from his teachers as needed, (2) provide the Student with an extra set of textbooks at home, and (3) provide the Student with a copy of teachers' notes.

The regulation implementing Section 504 at 34 C.F.R. §104.33, requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of a Section 504 Plan developed in accordance with the procedural requirements cited above is one means of meeting the FAPE requirement.

To determine whether the District failed to implement the Student's Section 504 Plan, we must determine: (1) whether the Student was identified as a person with a disability, (2) whether the Student has a Section 504 Plan, and (3) whether the services of the Section 504 Plan were provided.

First, we determined whether the Student was identified as a person with a disability and whether he has a Section 504 Plan. It is undisputed that the Student was identified as an individual with a disability and that he has a Section 504 Plan dated May 12, 2015. Therefore, at issue is whether the Student was provided accommodations that were identified in his Section 504 Plan. A discussion follows regarding each accommodation that the Complainant alleges was not implemented.

One-on-one support from teachers as needed

The Complainant alleged that the Student was not provided one-on-one support from his teachers as needed in accordance to his Section 504 Plan. Specifically, the Complainant stated that the Student was left alone to compose himself during an anxiety attack and was not allowed to leave the auditorium during forum when he had an anxiety attack. The Student's Section 504 Plan states that the Student is to receive one-on-one support from his teachers as needed. The Section 504 Plan

does not clarify what “as needed” means, or what triggers the need for the teachers to provide support. The Complainant believes, based on her understanding at the time the Plan was developed at the Student’s previous school district, this accommodation means that the Student’s teachers will provide him with academic and emotional support. However, the Section 504 Plan does not specify that the Student will only receive this support if he requests it from his teachers.

According to the Complainant there were at least two occasions where the Student asked for emotional support from his teachers and was denied that support. Specifically, on August 16, 2015, during the Outdoor Learning Expedition (OLE), the Complainant said that the Student was having an anxiety attack and he went to sit alone and that the teacher did not respond to his emotional needs. OLE is an off-site District sponsored field trip prior to the start of the school year. Although the Student stated that he did not receive assistance during the trip, the Student’s World History Teacher stated that the Student was sitting by himself and he went over to see if he could assist the Student. On September 30, 2015, during forum, the Student asked his English teacher to leave the auditorium because he was having an anxiety attack and was not allowed to leave. The Executive Director reported that the Student tried to leave the auditorium during an all school forum, but since no one was in the hall to assist the Student, he told the Student to stand by the door. A teacher and the Executive Director’s Assistant asked the Student if he wanted to go to the office and the Student did not respond. Then the Executive Director knelt down to tell him to go to the office and then the Student punched the Executive Director in the chest and face.² The Executive Director attempted to calm the Student, but the Student continued to yell and throw punches. The School determined that the behavior was so out of control that the police were notified to assist in calming the Student down. The Complainant withdrew the Student the following day and no disciplinary action was taken by the District. The District asserted in its data response that its interpretation of one-on-one support as needed was that it only related to academic support. However, three teachers told OCR that the accommodation included one-on-one support for both academic and emotional issues.³

In an interview with the Student’s Math Teacher she stated that she understands the accommodation to mean that if the Student needs academic support he would let her know. She explained that she is available before and after school for tutoring; and if the Student requires tutoring for academic assistance, an acknowledgement of tutoring time is signed by students and parents. In addition, the Math Teacher said she informs the class about before and after school tutoring. The Math Teacher reported that on September 30, 2015, she noticed that the Student was not acting the way he usually does and asked him if he wanted to go to the office to see the nurse. The Math Teacher suggested the Student go to the nurse because that was what she understood was the agreement if the Student needed emotional support. The Math Teacher reports that the Student did not go to the nurse as suggested during Math class.

During an interview with the Student’s World History Teacher, he said that understands the one-on-one support as needed to mean that he would provide the Student with both academic and emotional support. The World History Teacher said that during an out-of-town trip (OLE trip), the

² The Executive Director reported that the night before the Student started a new medication. The Executive Director reported that the Student had been in the office several times during the day acting strangely and the Complainant had been called regarding the behavior and the Student elected to remain at school.

³ The Student’s Section 504 Plan was written by the Cheyenne Mountain School District 12 and not the Colorado Springs School District 11.

Student was anxious and asked to remove himself and that he provided the Student with one-on-one emotional support. However, he has not had to provide the Student with academic one-on-one support in the classroom setting and the Student has not ever requested one-on-one academic support from him. However, he emphasized that if the Student needed one-on-one support, he is available before and after school for tutoring.

The English Teacher said during an interview that she felt that the accommodation for one-on-one support from his teachers as needed is for both emotional and academic support. She said she informed all students that she is available before and after school if they needed emotional or academic support. She also stated that, depending on what is going on in class, she may provide one-on-one support if asked by the Student.

We also interviewed the Student's Earth Sciences Teacher. She said that understands the accommodation of one-on-one support as needed to mean that she provides academic support to the Student as needed. The Earth Sciences Teacher said that she is available for all students 45 minutes before and after school by appointment and a student would need to ask for an appointment. She said that this information is also included in her class syllabus and that she requires parents and students to sign an acknowledgement of their understanding to request an appointment for before and after school academic support.

We interviewed CIVA's Section 504 Coordinator to find out if the Complainant contacted her regarding any concerns that the Student did not receive the services of his Section 504 Plan. She said the Complainant never contacted her to discuss any concerns about the Student not receiving this accommodation.

In rebuttal, the Complainant said that she believes that this accommodation means that the Student's teachers will provide both academic and emotional assistance because of the Student's anxiety. She said that the Student asked to leave because he was having an anxiety attack and wasn't allowed and that he also was left alone at a time when he needed emotional support. The Complainant confirmed that she never contacted the Section 504 Coordinator because she never knew who the Section 504 Coordinator was. The Complainant said that she spoke to the Executive Director's assistant about the Student not receiving accommodations on September 30, 2015, and that she wanted a meeting about this but that a meeting never happened. In addition, we interviewed the Student and he also said that he did not receive one-on-one support from his teachers as needed and that he did not ask for any support.

The Section 504 Plan required that the Student's teachers provide one-on-one support to the Student as needed. According to the Student's teachers, he only requested one-on-one emotional support one time on August 16, 2015 and the World History Teacher provided that support to the Student. The Student's Math Teacher indicated she offered emotional support to the Student on one occasion even though the Student didn't ask for support and he chose not to avail himself of that support. The Student's teachers and the course syllabi support the District's contention that academic support was available and that neither the Student nor the Complainant requested additional academic support. We note that the Complainant never contacted any of the teachers or the Section 504 Coordinator about any instances where the Student did not receive this accommodation until after the September 30, 2015 incident. We find that attempts were made to assist the student and perhaps even provide one-on-one emotional support in the form of suggesting or sending the student to the nurse's office earlier in the day on September 30, 2015, but there is conflicting evidence that we are unable to resolve about if and how one-on-one emotional support

was to be provided for the Student. Therefore, based on this information, we find that there is insufficient evidence that CIVA discriminated against the Student by not providing one-on-one support from his teachers as needed as alleged.

Extra set of books for home

The Complainant alleges that the Student was not provided an extra set of textbooks for home in accordance with his Section 504 Plan. The Student's Section 504 Plan states that the Student will have an "extra set of books for home."

Our investigation revealed that the Student was required to check out one textbook at the beginning of the school year for classes that required textbooks. During interviews with the Student's Math, Earth Sciences, World History, and English Teachers, they confirmed that the Student checked out only one textbook for their class and did not have an extra one for use at home. However, they all stated during interviews that they maintain extra textbooks in their classrooms for use if the Student did not have his checked-out textbook. This option is available to all students. The World History Teacher said that he assigns textbooks when they are actively being used because in his class they mainly work from handouts and PowerPoint presentations in which he would give them a hard copy of the handouts and presentation. All teachers reported that the Student generally used his checked-out textbook for both home use and in the classroom.

The Student confirmed in an interview that he only has one assigned textbook for all of his classes and that he transports his books to and from school. He also reported that he was unaware that any of his teachers maintained textbooks in their classrooms for his use.

We find that the Student was only assigned one textbook for classes when his Section 504 Plan specifically states that the Student should have an extra set of textbooks for home. Therefore, we find that CIVA/District failed to implement the Section Student's 504 Plan by not providing the Student with an extra set of textbooks for home as required by the Student's Section 504 Plan in violation of 34 C.F.R. § 104.33. The District entered into a Resolution Agreement to resolve this concern.

Copies of teachers' notes

The Complainant alleges that the Student was not provided a copy of teacher's notes in accordance with his Section 504 Plan, and that none of the Student's teachers provided him with their notes. The Student's Section 504 Plan states that the Student is to receive copies of teachers' notes as an accommodation.

In our review of the Section 504 Plan, it does not specify how the accommodation is to be implemented. CIVA's practice for providing teachers' notes is to upload their notes to CIVA's website. We interviewed the Student's teachers regarding how their notes are provided. The Student's Math Teacher confirmed that in her class she directs students to retrieve her notes from CIVA's website and that she does not provide hard copies of her notes. She said that the Student is allowed to log into her website on a computer in the classroom or can access the notes with his cell phone. The Math Teacher added that the Student had great notetaking skills and provided an example where she requires all students to maintain an interactive notebook that she observes daily

and that is graded. She said in her observation of the Student's interactive notebook, he had no problems with notetaking and has assisted another student with her notes.

The Student's Earth Sciences Teacher also confirmed that her notes are available on CIVA's website. She stated that if the Student requested a hard copy of her notes she would have provided them to him in this format. She also said that the Student had good notetaking skills and has never asked for her notes. The Earth Sciences Teacher said that she has not had any contact with the Complainant regarding her concern that the Student asked for her notes and did not receive them.

We also interviewed the Student's World History and English Teachers. They both stated that their notes are available on the CIVA's website and that they do not provide hard copies of their notes. The teachers stated that the Student never asked them for notes.

In rebuttal, the Complainant asserts that none of the Student's teachers provided him with their notes and that she was never told that the Student can access teachers' notes on CIVA's website. The Student also said in his interview that he did not receive notes from any of his teachers and that he was also unaware that their notes are available on CIVA's website.

We find that CIVA's practice is for teachers to upload their notes to CIVA's website and that they are available to all students. We reviewed screenshots of CIVA's website and found that notes were available for the Student's classes. We also reviewed the screen shot of the syllabi for the Student's Math and Earth Sciences Teachers and found that the Teacher's notes were discussed within the syllabi to include information about how the Student could locate and download the notes from the CIVA website. The Math Teacher also provided a screen shot of her notes that were posted online. We also find that the Student was provided the syllabi in his various classes and could have accessed the notes for all of his classes from the CIVA website. While the Student and the Complainant indicate that they were never made aware of the availability of the teachers' notes on CIVA's website, we find that this information was readily available to the Student and the Complainant in the syllabi for several of his courses. Therefore, we find that there is insufficient evidence to determine that the Student was not provided access to copies of teachers' notes as alleged.

Issue Two: Failure to respond to a grievance

The Complainant alleges that she filed a discrimination complaint with the District and was told that the District does not have the authority to investigate discrimination complaints against charter schools.

The regulation implementing Section 504 at 34 C.F.R. § 104.7(b) requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II implementing regulation contains a similar requirement at 28 C.F.R. § 35.107 (b).

The District provided a copy of policies JBB and JBB-R, *Sexual and Racial Harassment/Discrimination towards Students (Reporting and Investigation Procedures)*. The procedures state in part that reports of alleged acts of discrimination should be immediately reported to the Principal/Building Administrator or designee, the District 11 Equal Opportunity Officer/Ombudsperson or to the District Security Officer. Any teacher, administrator, volunteer, visitor, or other personnel of the District who has received notice that a student may have been the victim of harassment,

discrimination or sexual violence, is required to immediately report the alleged acts to the officials identified above. The District encourages the reporting party or complainant to use the report form that is made available from the Principal or the Equal Opportunity/Ombudsperson's Office. Oral reports shall also be considered as a complaint. Reports may also be made directly to the Superintendent of Schools for the District.

The policies further state that upon receipt of a report or complaint alleging harassment or discrimination, the Principal or Equal Opportunity Officer shall promptly undertake or authorize an investigation after the receipt of a complaint and can simultaneously use voluntary alternative dispute resolution (ADR). ADR techniques such as mediation may be used where and when deemed appropriate by the District to resolve the complaint. If the issue is not resolved during ADR, there will be no delay of the investigation or its outcome. In Step I of the formal procedure, the investigator is to fill out a complaint form based on the written or verbal allegations of the complaining student. The investigation shall be completed within 14 calendar days from the date of the complaint. Any extension of this deadline may be granted by the Superintendent of Schools or designee. During Step II of the procedures, the investigation may consist of personal interviews with the complaining student, the alleged perpetrator, and any other individuals who may have knowledge of the alleged incident(s). In addition, the investigator should consider the surrounding circumstances; any relevant documents; the nature of the behavior; past incidents or continuing patterns of behavior; the relationships between the parties involved; the context in which the alleged incident(s) occurred; and the age of the students involved. Whether a particular action or incident constitutes a violation, the District requires a determination based on all the facts and circumstances. The complaining student and alleged perpetrator shall be informed of the results of the investigation in a timely manner.

In an interview with the District's EEO Officer, he stated that he is responsible for investigating complaints at the District level. However, parents have the right to file a complaint at the school level with the designated Coordinator. Here, the Executive Director at CIVA is the designated Coordinator. We interviewed the Executive Director and he stated that the Complainant neither filed any complaints with him nor did she ever inquire about filing a complaint of any sort against CIVA. In addition, he said that CIVA would enlist the support of the District in any matter that they are unable to resolve between the parties or would appear to warrant the expertise and guidance of the District. In rebuttal, the Complainant said that she was unaware that the Executive Director is the designated Coordinator to file complaints at CIVA. The Complainant said she contacted the Assistant Superintendent about her concerns. During an interview with the Assistant Superintendent he stated that he received a call from a parent regarding the actions of the CIVA Director, but did not know the parent's name. The Assistant Superintendent stated that the parent discussed a student altercation with the CIVA Director, but did not mention disability, IEP or discrimination. Therefore, we could not find that the Complainant raised a disability discrimination complaint with the District, but we continued to review the District's grievance procedures to determine whether they meet the requirements of Section 504 and Title II.

In reviewing the District's complaint procedures (JBB and JBB-R Sexual and Racial Harassment/Discrimination towards Students (*Reporting and Investigation Procedures*)), we noted several items lacking in clarity and requiring refinements to ensure compliance with Section 504 and Title

II.⁴ First, the title of the policies JBB and JBB-R Sexual and Racial Harassment/Discrimination towards Students (*Reporting and Investigation Procedures*) document only addresses sexual and racial harassment and does not include any mention of disability harassment or discrimination. Second, although the formal procedure at Step II requires that the parties shall be notified of the outcome, it does not specify that they will be notified in writing. Third, at Step II of the formal procedure, it does not state under what circumstances the Superintendent may extend the 14-day deadline to complete the investigation. Fourth, under the subtitle of other issues, if police reporting is required, the procedure does not state that the complaint will also be investigated by the District. Lastly, the nondiscrimination notice does not provide contact identification or contact information for the District's EEO Officer.

We next reviewed CIVA's conflict resolution process, which was identified by CIVA as its grievance procedures. We find the conflict resolution process does not include any of the requirements for appropriate due process required by Section 504 and Title II of the ADA. For example, CIVA requires a grievant to address a conflict one-on-one with the individual with whom they are having a problem with and to participate in mediation, both requirements are not appropriate for resolution of discrimination complaints; there is no process for an investigation (gathering evidence, interviewing witnesses, etc.); and there are no timeframes in which to process the complaint.

We found that the Complainant contacted the Assistant Superintendent because she was unaware that she could file a complaint with the Executive Director or the District's EEO Officer in accordance with the District's grievance procedures. In addition, the District's and CIVA's policies did not provide the Complainant with necessary information to determine who to contact to file a complaint. We also found that the District's and CIVA's discrimination complaint procedures do not meet the due process requirements nor do the procedures provide for a prompt and equitable resolution of complaints as required by Section 504 and Title II. Therefore, we find that the District is in violation of Section 504 and Title II in various respects as a result of our investigation into this allegation. The District agreed to enter into a Resolution Agreement to resolve these concerns.

Conclusion

We find the District failed to implement the Section Student's 504 Plan by not providing an extra set of textbooks for home in violation of 34 C.F.R. § 104.33. We also find that the District's and CIVA's procedures to respond to disability discrimination complaints and notice of its compliance officer that are not compliant with Section 504 and Title II of the ADA (34 C.F.R. §§ 104.7-104.8 and 28 C.F.R. §§ 35.106-35.107). The District agreed to resolve the violations found in this investigation and entered into a Resolution Agreement (enclosed). 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 fully implemented, the Resolution Agreement will ensure the District's compliance with the regulations as addressed in this complaint.

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 and Title II or other

⁴ We also note that the District should ensure these policies comply with Title VI and Title IX if the District chooses to combine all its reporting and investigation procedures for Section 504, Title II, Title VI and Title IX into one policy.

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 District's cooperation extended to us throughout the investigation and especially the assistance of Deborah Menkins. If you have any questions, please feel free to contact XXX, Equal Opportunity Specialist, at XXX. I can be reached at 303.844.6083.

Sincerely,

Angela Martinez-Gonzalez
Supervisory General Attorney

cc: Deborah Menkins, Attorney for the District
Colorado Springs School District #11

Honorable Dr. Katy Anthes
Colorado Commissioner of Education