



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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March 13, 2018

Dr. Stan Scheer, Superintendent
Thompson School District
800 South Taft Avenue
Loveland, Colorado 80537

Re: Thompson School District
OCR Case Number: 08-17-1091

Dear Superintendent Scheer:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Thompson School District (District) alleging that the District discriminated on the basis of disability. Specifically, the issue that OCR opened for investigation was whether the District treats students with disabilities differently in its admissions and enrollment policies and practices for charter schools, by capping the number of students with individualized education programs (IEPs) who may be admitted into the District's charter schools.

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations (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.

During the course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve the allegation pursuant to Section 302 of our *Case Processing Manual* (CPM). We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details the relevant legal standards, the status of our investigation prior to receiving the District's request to enter into an agreement to resolve the allegation in this case, and the reasons for our determinations that an agreement pursuant to Section 302 of our CPM was appropriate in this case.

I. Legal Standards

A. Different Treatment

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual 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. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service;
- afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; or
- provide a qualified disabled individual 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;
- provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others; or
- limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

B. Methods of Administration

The Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), provide 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. The Title II regulations, at 28 C.F.R. §35.130 (a) and (b), create the same prohibition against disability-based discrimination by public entities.

Under 34 C.F.R. §104.4(b)(4) a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that: (i) have the effect of subjecting qualified disabled individuals to discrimination on the basis of disability; or (ii) have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity

for individuals with disabilities. The Title II regulations contain a similar provision applicable to public entities, at 28 C.F.R. §35.130(b)(3).

In this type of case, OCR must establish whether there has been a disproportionate denial of opportunity to benefit from a program and determine if this is due to a neutral policy, process, or practice. If a disproportionate denial can be established, we assess whether the evidence establishes that the recipient's policy, process or practice is educationally necessary. Even if the policy, procedure, or practice is determined to be necessary, discrimination may still be occurring if there is a less discriminatory alternative that the recipient does not use that would meet the recipient's important educational goal.

II. OCR's Investigation and Resolution Pursuant to Section 302 of our CPM

During our investigation, we reviewed substantial evidence related to the District's open enrollment processes and procedures at its charter and other schools for the two most recent school years, including but not limited to District- and school-level student assignment and enrollment policies, procedures, and/or regulations; communications about, and application materials for, enrollment in the charter schools; submitted applications for the charter schools; and data and policies related to students with disabilities at the charter schools. Before we requested and received supplemental information and interviewed staff and parents, the District indicated its desire to voluntarily enter into an agreement to resolve the allegation pursuant to Section 302 of our CPM and offered what appears to be a thoughtful, revised approach to address the issues raised by this case. At this stage, OCR has determined that it is appropriate to resolve this case through a Resolution Agreement.

III. Conclusion

We thank the District for being willing to voluntarily address the issues raised by this case. A copy of the signed Resolution Agreement is enclosed for your records. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding 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.

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 case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the District, copied to the Complainant, stating that this 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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 you and your staff and counsel, especially XXX, extended to us during the investigation of this case. If you have any questions, please contact XXX.

Sincerely,

/s/

XXX
Supervisory Team Leader

Enclosure: Resolution Agreement

cc (w/enclosure): XXX, outside counsel for District
cc (w/o enclosure): XXX, Commissioner of Education, CO Department of Education