



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
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WYOMING

June 7, 2017

Mr. Sheldon Rosenkrance  
Superintendent  
Estes Park School District  
1605 Brodie Avenue  
Estes Park, CO 80517

Re: Estes Park School District  
OCR Case Number: 08-17-1208

Dear Superintendent Rosenkrance:

On March 1, 2017, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint against the Estes Park School District (District). The complaint alleged that the District failed to provide the Student with a free appropriate public education (FAPE) by not implementing his Section 504 Plan.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the laws' implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Based on the complaint allegations, OCR investigated the following legal issues:

- Whether the District denied the Student a FAPE by not submitting a request for test accommodations to the College Board in a timely manner; and,
- Whether the District failed to implement the Student's Section 504 Plan by not providing assistive technology, audio textbooks, and electronically and digitally formatted assignments, class notes, handouts, instruction, and test and quizzes, during the 2015-2016 and 2016-2017 school years, which resulted in a homeschool placement; and, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.33 and the regulation implementing Title II at 28 C.F.R. § 35.130.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District informed OCR that it was amenable to resolving the complaint in this manner. OCR and the District entered into the attached agreement to resolve the complaint. Accordingly, OCR did not

complete its investigation of the complaint or reach conclusions regarding the District's compliance with Section 504 and Title II.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require 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 Student's Section 504 Plan developed in accordance with Section 504 of the Rehabilitation Act, at 34 C.F.R. § 104.33 is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

OCR's preliminary investigation showed the following:

During the course of its initial investigation, OCR learned that in February 2017, on behalf of the Student, the Complainant requested the District submit a request for accommodations to the College Board for the Student's SAT exam. Based on information provided by the District and the Complainant, initially the College Board denied the request for accommodations due to the lack of supporting documentation to support the Student's needs for accommodations. The District and the Complainant confirmed to OCR that after the Complainant provided additional documentation, the District re-submitted the request to the College Board, along with the necessary supporting documentation; and, the College Board granted the Student accommodations for which he received during the April 2017 SAT exam.

The complainant alleged to OCR that the District failed to timely submit an accommodation request to the College Board to ensure that the Student would receive accommodations during the SAT exam. Additionally, the Complainant alleged that the District failed to implement the Student's Section 504 Plan regarding assistive technology services (including audio textbooks, electronic and digitally formatted quizzes, tests, and exams), class notes, instruction, handouts, and assignments for the two classes that the Student took on the school campus during school year 2016-2017<sup>1</sup>.

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<sup>1</sup> The Complainant has homeschooled the Student since the 2015-2016 school year. During the 2016-2017 school year, the Student attended two elective classes on the Estes Park High School campus.

## Resolution and Conclusion

OCR has determined that the District has resolved allegation one of this complaint by re-submitting the request for accommodations to the College Board after the Complainant provided the District with documentation to support the request. Pursuant to Section 110(a) of OCR's Case Processing Manual<sup>2</sup>, OCR will administratively close an allegation when it is resolved through a recipient's internal grievance procedures, if the remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint, and there was a comparable resolution process under comparable legal standards. Consequently, OCR is administratively closing allegation one of this complaint.

On April 27, 2017, OCR contacted the District regarding allegation two of the complaint, and the District indicated its interest in voluntary resolution. As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into an agreement to resolve allegation two of the complaint. The agreement requires the District to send a letter to the Complainant that offers to hold a team meeting for the Student to consider the appropriate accommodations and services that the Student needs to attend classes at Estes Park High School during school year 2017-2018, and to consider any compensatory services that may be owed to the student for school year 2016-2017. The District will also conduct an in-service training to all staff at Estes Park High School that will include a review of the District's obligations to comply with Section 504 and Title II by providing students with disabilities a FAPE and for ensuring full implementation of students' Section 504 Plans and Individualized Education Programs, how the Dyslexia disability affects student learning, appropriate accommodations for students with Dyslexia, and ways to implement such accommodations. Since the District agreed to voluntarily resolve allegation two of this complaint, OCR did not complete its investigation or reach conclusions regarding the District's compliance with Section 504 and Title II with respect to this allegation. OCR will monitor the District's implementation of the agreement.

This concludes OCR's investigation of the complaint. Our letter 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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently.

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.

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<sup>2</sup> OCR will administratively close an allegation when it is resolved through a recipient's internal grievance procedures, including due process proceedings, if the remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint, and there was a comparable resolution process under comparable legal standards.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

We are committed to prompt and effective service. If you have any questions, please contact Rachel Phillips-Cox at 303-844-4559 or by email at [Rachel.Phillips-Cox@ed.gov](mailto:Rachel.Phillips-Cox@ed.gov).

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosures – Resolution Agreement

cc (w/ enclosures): XXXXXX, District Legal Counsel

cc (w/o enclosures): Katy Anthes, Colorado Commissioner of Education