



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

February 2, 2018

XXXXXXXXXXXXXXXX, Head of School
Colorado Springs Charter Academy
2577 N. Chelton Road
Colorado Springs, CO 80909

Sent by email only to: xxxxxxxxxxxxxxxx

Re: Colorado Springs Charter Academy
OCR Case Number: 08-17-1413

Dear XXXXXXXXXXXX:

On August 10, 2017, OCR received a complaint alleging that the Colorado Springs Charter Academy (School) discriminates against prospective students on the basis of their national origin and disability status. In addition, the complaint alleges that the School retaliated against the Complainant.

Specifically, the complaint alleges that the School discriminates against prospective students on the basis on their national origin (English language learners) and students with disabilities in the admissions process.

In addition, the complaint alleges that the School retaliated against the former xxxxxxxxxxxxxxxx when it did not renew his employment contract after the 2016-17 school year because he opposed the School's allegedly discriminatory admissions process.

We are responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-7, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and by public entities, respectively. All of these laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the School is subject to these laws and regulations.

Administrative Closure

Under Section 110(a)(1) of OCR's *Case Processing Manual (CPM)*, we will close a complaint allegation when the same allegation has been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency, and for pending complaint allegations, OCR anticipates that there will be a comparable resolution process under comparable legal standards.

The School provided OCR with documents from the Colorado Civil Rights Division (CCRD) demonstrating that the Complainant filed an identical retaliation allegation against the School (namely, that the School declined to renew his contract because he opposed the School's allegedly discriminatory admissions process) with the CCRD. The Complainant's statement to the CCRD parallels the statement he made to OCR, raising an identical allegation. The retaliation allegation pending with the CCRD arises from the same set of operative facts as the retaliation allegation to OCR.

Based on this information and pursuant to Section 110(a)(1) of OCR's *CPM*, OCR is closing the retaliation allegation effective the date of this letter. Please be advised that the complainant may re-file the allegation with OCR within 60 days of the completion of the other entity's action or decision. However, OCR generally will not conduct its own investigation; instead, OCR reviews the results of the other entity's determination and determines whether the other entity provided a comparable process and applied appropriate legal standards

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no individual may be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance from the Department. The regulation, at 34 C.F.R. § 100.3(b)(i)-(iii), prohibits the denial of any service or benefit, or the provision of different services or benefits, or separate treatment in a program, on the basis of race, color or national origin. The regulation, at 34 C.F.R. § 100.3(b)(v), prohibits treating an individual differently than others in determining whether he satisfies any admission, enrollment, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the program on the basis of race, color, or national origin.

The U.S. Department of Health, Education, and Welfare, Office for Civil Rights, Identification of Discrimination and Denial of Services on the Basis of National Origin (May 25, 1970), reprinted in 35 Fed. Reg. 11,595 (July 18, 1970) (1970 OCR Guidance), clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. The 1970 OCR Guidance states in part: "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." The May 1970 memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal

standard for the Department's Title VI policy concerning discrimination on the basis of national origin against EL students.

Section 504 at 34 C.F.R. § 104.4(a) and Title II at 28 C.F.R. § 35.130 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.

In determining whether a recipient has subjected an individual to discrimination on the basis of national origin or disability, OCR examines whether there were any apparent differences in the treatment of similarly situated individuals on the basis of national origin. If different treatment is established, OCR then considers whether the recipient had a legitimate, non-discriminatory reason for the difference in treatment, and whether the reason provided by the recipient was a pretext for discrimination. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and procedures, and whether there is any other evidence of discrimination.

Summary of Investigation and Resolution

During the investigation, OCR reviewed documents provided by the School and the Complainant and also interviewed the Complainant. OCR observed that the School's admissions documents requested information about a student's IEP or English language learner (ELL) status and that the documentation reflecting the decision-making process often included concerns expressed by School staff about a student's IEP or ELL status. In addition, OCR observed that the School admitted a small percentage of students with an IEP or Section 504 plan or who were ELL.

During a November 15, 2017 telephone call and prior to OCR making any findings of fact, Counsel requested that the complaint be resolved pursuant to Section 302 of the *CPM*. OCR carefully reviewed the information obtained during the course of the investigation, including documentation provided by the School and the Complainant, and determined that resolution pursuant to Section 302 was appropriate.

On February 2, 2018, prior to OCR making any findings of fact, the School signed an Agreement, which will address the issues raised in allegation regarding discrimination in the School's admissions process when the Agreement is fully implemented.

In accordance with Section 302 of the *CPM*, the provisions of the Agreement signed by the School on February 2, 2018, are aligned with the allegation regarding discrimination in the School's admissions process and the information obtained during OCR's processing of this case, and consistent with the applicable regulations. Therefore, OCR is closing this complaint investigation into this allegation effective the date of this letter. OCR, however, will actively monitor the School's implementation of the Agreement until the School fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. If the School fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

