



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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January 30, 2018

Douglas County School District  
Attn: Interim Superintendent Erin Kane  
620 Wilcox St.  
Castle Rock, CO 80104

Sent via email to: [erin.kane@dcsdk12.ort](mailto:erin.kane@dcsdk12.ort)

Re: Douglas County School District  
Case Number: 08-17-1433

Dear Interim Superintendent Kane:

This letter is to inform you of the disposition of the above-referenced complaint, filed on August 21, 2017, alleging the Douglas County School District (District) discriminated on the basis of disability (XXXX). Specifically, the Complainants allege that, during the 2016-2017 school year at STEM School & Academy (STEM), the District failed to implement their son's (Student) Section 504 Plan regarding computer gaming in class, provision of a graphic organizer in science class, breaking larger assignments into smaller pieces in any of his classes, and provision of writing supports in history. Additionally, the Complainants allege the District failed to respond to an internal grievance of disability harassment involving the Student on a school trip in late February 2017.

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. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During the course of the investigation, but before we completed the investigation, the District expressed a willingness to resolve your allegation regarding failure to implement the Student's Section 504 Plan, and to enter into a voluntary Resolution Agreement pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*. We determined that this was appropriate. Pursuant to our *CPM*, resolution options were discussed with the District, and it has agreed to enter into the enclosed Resolution Agreement regarding the failure to implement allegation. However, we continued to investigate the allegation regarding disability harassment, and found the evidence was insufficient to support a violation with respect to this allegation. The bases for our findings are explained below.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

During the investigation of this complaint, OCR reviewed information provided by both the District and the Complainants.

*Alleged failure to respond to disability harassment grievance*

**Legal Standard/Regulatory Authority**

34 C.F.R. § 104.4 Discrimination prohibited: (a) General. 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.

**Facts and Analysis**

The Complainants assert that the District failed to respond to an internal complaint of disability harassment involving the Student during a school trip in late February 2017. The District asserts that they did not make a complaint of disability harassment, and that no disability harassment occurred. The information provided shows that the Student was in the xxxx grade at the STEM School in the District and was on a Section 504 Plan during the 2016-17 School Year. In February 2017, the Student went with a group from the school to a state technology conference which included a stay in a hotel room. The Complainants assert the Student's two roommates, who were older than him, harassed him XXXX, and that the Student informed the chaperone teacher (Teacher) of the incident. The Complainants also assert the Teacher knew of the Student's disability and should not have placed him in a room with older students, and assert that the roommates were known "problem students". The Complainants also acknowledged to OCR that the roommates did not use disability-based language or mock the Student for XXXX, but that their language was inappropriate.

The District asserts that after Student told the Teacher about the incident in the hotel room, the Teacher immediately spoke with the roommates about their behavior, which they acknowledged, and were ready to apologize, but the Student did not return to the room. The District also asserts the Teacher informed the Student that he did not have to sleep in that room that night and provided him options on where to sleep. The Student slept elsewhere, and the roommates did not engage in any further inappropriate behavior with respect to the Student. The District asserts that the roommates did not use any language indicating disability harassment, nor did they harass the Student on the basis of his disability. Rather, they engaged in inappropriate conduct, which was immediately addressed and did not recur.

The Complainants assert that the day after the conference they emailed the Teacher and principal about the incident, and that the Teacher responded, but the principal did not respond, and that this lack of a response by the principal was the failure to appropriately respond to the complaint of disability harassment. The District asserts that they did not raise disability harassment in their emails, and that the Teacher did appropriately respond to their emails.

We reviewed the emails, which show the Complainants sent an email to all three teachers who were present at the conference, with a copy to the principal and other administrators, complaining about the incident and that their son, who had special needs, had been placed with older roommates at the conference who have a reputation of being difficult. The Teacher responded on that same day to their email, with a copy to the principal and everyone else on the original email, and explained that it was their practice to place students of different ages as roommates, and that he was unaware of any problems relating to or the reputation of the Student's roommates for the trip. He explained what occurred and apologized, offered the Complainants a refund, and asked for them to let him know if there were anything else he could do or if there were anything else they would like to see as a result of this, and offered to meet with them in person. The Complainants responded, ending the email explaining that they just wanted to bring attention to the bullying their son faced, and wanted to make sure students with challenges like him were placed in the best possible situations. The Complainants did not request a further response. The Complainants assert that the Principal should have responded to the emails, should have invited them to speak with him about the incident, and should have conducted an investigation.

Based on a review of the evidence, we could not establish that the Student was subjected to disability harassment, that the Complainants raised a concern of disability harassment with the Teacher or the principal, or that the Teacher or principal failed to appropriately respond to any complaint of disability harassment. Rather, the evidence shows that the Teacher immediately responded to an incident of inappropriate behavior at the conference which stopped and did not recur, the Teacher responded to their emails discussing the incident, and offered further assistance. The evidence also shows that the Complainants did not request an investigation into disability harassment nor specifically requested the principal look into the matter further. Therefore, based on the information provided, we find insufficient evidence to conclude that the District failed to appropriately respond to an internal complaint of disability harassment as alleged.

#### ***Alleged failure to implement Section 504 Plan***

As previously stated, the District voluntarily entered into a Resolution Agreement to resolve this allegation. In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), the provisions of the Agreement signed by the District on January 29, 2018 are aligned with the complaint allegations and the information obtained during OCR's processing of this case, and consistent with the applicable regulations.<sup>1</sup> Therefore, OCR is closing the complaint investigation for 08-17-1433 effective the date of this letter. OCR, however, will actively monitor the District's implementation of the Agreement until the District fulfills the terms of the Agreement and is in compliance with the statutes and regulations at issue in this case. If the District 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.

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<sup>1</sup> OCR notes that, prior to signing the Resolution Agreement, the District provided documentation demonstrating that it had provided appropriate Section 504 training to pertinent staff, including training on the requirement to fully implement all aspects of Student Section 504 Plans, during the 2017-18 School Year. Therefore, the Resolution Agreement does not contain such a training component.

## **Conclusion**

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. This letter sets forth OCR's determination in this 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 Complainants may file another complaint alleging such treatment. In addition, the Complainants 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

We thank you for your cooperation in this matter. If you have any questions, you may contact xxxx, the Attorney assigned to this case, at xxxx or by email at xxxx.

Sincerely,

/s/

Thomas M. Rock  
Supervisory General Attorney

Enclosure: Signed Resolution Agreement

cc (w/o enclosures): Dr. Katy Anthes, Commissioner – CDE

Wendy Jacobs, Esq.