



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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April 12, 2018

Superintendent Don Haddad  
St. Vrain Valley School District Re 1J  
395 South Pratt Parkway  
Longmont, Colorado 80501  
(via email only at: haddad\_don@svvdsd.org)

Re: St Vrain Valley School District RE 1J  
OCR Case Number: 08-18-1017

Dear Superintendent Haddad,

On October 16, 2017, we received the above captioned complaint alleging that the St. Vrain Valley School District (District) discriminated against the Complainant's son (Student) on the basis of disability (ADHD). Specifically, the Complainant alleged that the District failed to appropriately investigate the Complainant's multiple complaints of disability discrimination and retaliation against the Student, and that the District failed to provide a free appropriate public education (FAPE) by failing to timely evaluate the Student under Section 504. We determined that we had the authority to investigate this complaint consistent with our complaint procedures and applicable law.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementation regulations 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; Title II of the Americans with Disabilities Act of 1990 and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and Individuals asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. section 104.61, which incorporated 34 C.F.R. section 100.7(e), and 28 C.F.R. section 35.134.

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>.

Legal Analysis

Allegation 1- The District failed to appropriately investigate the Complainant's multiple complaints of disability discrimination and retaliation against the student.

Per 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130 (a), the District must not discriminate against a student on the basis of disability, nor allow students or third parties to discriminate against an individual on the basis of disability. Upon notice of harassment or retaliation, the District must take appropriate steps to conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. If harassment is found, the District must take reasonable, timely, age-

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appropriate, and effective corrective action to remedy the harassment and to ensure it does not continue in the future.<sup>1</sup>

In order to determine whether the District failed to appropriately investigate the Complainant's allegations of disability harassment and retaliation, the Office for Civil Rights determines:

- a. Whether the District had notice of the alleged harassment and retaliation.

The Complainant alleges that she notified the principal in person, the school counselor, and the area superintendent that the student was being discriminated and retaliated against on the basis of his disability. Specifically, the Complainant provided copies of email messages to different individuals complaining that the Student was being harassed (bullied) and retaliated on the basis of his disability.

The District argued that the Complainant did not file a formal complaint/grievance with the District. However, District policy allows for oral and written complaints. Policy states that individuals may choose to submit a complaint on the formal complaint form and provided to the Grievance Officer but are not required to do so. However, a complainant providing notice to a building administrator is notice per District Board of Education (BOE) policies AC and AC-R.

Here, the Complainant and the District provided several examples of when the Complainant complained to the assistant principal at the school, the principal, a school counselor and the area superintendent that the Student was being harassed (bullied) and retaliated on the basis of his disability.

We find that the District had notice of the Complainant's complaints of disability harassment and retaliation.

- b. If the District had notice, OCR determines whether the District conducted a prompt, thorough, and impartial inquiry designed to reliably determine what occurred.

Before completion of the investigation of this allegation, the District indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

Allegation 2 - The District failed to provide a free appropriate public education (FAPE) by failing to timely evaluate the student under Section 504.

In order to determine whether a District provided a FAPE, the Office for Civil Rights determines:

1. Whether the District had a request for an evaluation, and
2. Whether the District evaluated the Student in a timely manner.<sup>2</sup>

The Section 504 regulation, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular

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<sup>1</sup> We note that while the legal analysis for disability harassment and retaliation have different standards of investigation and determination, both begin with notice of the complaint and initiating an investigation.

<sup>2</sup> We note that adherence to the requirements of the Individuals with Disabilities in Education Act is one means of meeting the standards for the provisions of providing a free, appropriate public education under Section 504.

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 an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) 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.

#### Request for an evaluation

Here the Complainant notified the District on October 5, 2017 that she wanted the Student with ADHD placed on a 504 plan. She alleged that the Student has been in the District and diagnosed with ADHD since the primary grades. The Complainant alleged that the District knew of the Student's disability for years. The Complainant alleged that despite her request, the District did not evaluate the Student until January 2018.

Before completion of the investigation of this allegation, the District indicated its desire to enter into an agreement to resolve this allegation pursuant OCR's *Case Processing Manual*, section 302.

A 302 resolution agreement with the Office for Civil Rights does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures OCR, that it will take the identified actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

#### Conclusion

We thank the District for being willing to voluntarily address the allegations in this case. The District's decision to enter into this agreement is not an admission of liability or wrongdoing, nor shall it be construed as such. 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 and 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 these allegations. 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.

If you have any questions, please contact xxxxxxxx, Attorney Advisor, at xxxxxxx or by email at xxxxxxxx, or me at xxxxxxx or xxxxx.

Sincerely,

/s/

Thomas M. Rock  
Supervisory General Attorney

Enclosure: Resolution Agreement

Cc: Catherine Tallerico  
Attorney for the District (via email only at:CTallerico@lyonsgaddis.com)

Dr. Katy Anthes, Colorado Commissioner of Education (via email only without enclosure at: anthes\_k@cde.state.co.us )