



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
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September 10, 2019

Dr. Tom Heald, Interim Superintendent
Aspen School District
235 High School Road
Aspen, Colorado 81611

Sent via email to XXXX

Re: Aspen School District
Case Number: 08-19-1396

Dear Superintendent Heald:

On May 29, 2019, we received a complaint alleging that Aspen School District (District) at XXXX School (School) discriminated against the Complainant's son (Student) based on disability. Specifically, the Complainant alleged that the District failed to timely evaluate the Student for special education or related services and failed to consider information from a variety of sources when determining the Student's eligibility for special education and related services.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 investigation, and before we conducted interviews and had sufficient evidence to support findings, the District expressed a desire to take voluntary action to resolve the allegations. OCR determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), to resolve the allegation with a 302 Agreement without completing a full investigation.

The District has entered into the attached Agreement which, when fully implemented, will resolve the concerns raised in the complaint. The Agreement requires the District to:

1. Review and revise its Section 504 Handbook to ensure it communicates that:

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

- a. Students may be eligible for special education and related services even if they attain average or above average grades;
 - b. A Response to Intervention (RTI) process may not be used to delay or deny an evaluation of a student suspected of having a disability; and
 - c. The District must not consider the ameliorating effects of any mitigating measures that a student is using when determining the student’s eligibility for special education and related services.
2. Evaluate the Student and hold a meeting to determine if he is a student with a disability who needs special education or related services and, if the team determines that he is:
 - a. Develop an appropriate plan for the Student;
 - b. Consider whether the Student was denied a free appropriate public education (FAPE) in a timely manner; and
 - c. Consider whether compensatory education or related services are necessary and, if so, develop a plan to provide those services to the Student within six months.
 3. Arrange for School teachers, related service providers, and administrators to receive training on Section 504.

Prior to resolving the allegation through the Agreement, the Complainant informed OCR that she provided the School with a copy of a privately-obtained neuropsychological evaluation report for the Student in August 2018 and requested accommodations at that same time. OCR learned that after the Complainant provided the School the neuropsychological report, the School provided various interventions in an effort to help the Student. The parties agree that two Section 504 meetings were held in May 2019, one of which was facilitated by a representative from the Colorado Department of Education. The Complainant alleges that the Section 504 team determined the student was not eligible for Section 504 accommodations because it failed to consider information from a variety of sources.

After reviewing initial information provided to OCR by the Complainant and the District, we determined that it was appropriate to enter into an agreement that appropriately addresses the issue raised by the complaint without continuing a full investigation of the allegation. Therefore, we then drafted a Resolution Agreement (Agreement) and sent it to the District. We received a signed Agreement from the District. A copy of the signed Agreement is attached.

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the 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, which may include enforcement actions.

This concludes OCR’s investigation of the allegation and should not be interpreted to address the District’s compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that a complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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 individual may file another complaint alleging such treatment.

This letter sets forth OCR's determination in an individual 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.

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 are committed to prompt and effective service. If you have any questions, please contact Allison Morris, the attorney assigned to this case, at XXX, or by email at XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Cc: Alyssa Burghardt, counsel for the District
Kathy Anthes, Colorado Commissioner of Education