



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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December 2, 2019

Dr. Michael J. Thomas, Superintendent
Colorado Springs School District 11
1115 N. El Paso Street
Colorado Springs, CO 80903

Sent via email to michael.thomas@d11.org

Re: Colorado Springs School District 11
OCR Case Number: 08-19-1417

Dear Superintendent Thomas:

We have completed our investigation of the above-referenced complaint, filed on June 12, 2019. The complaint alleged Colorado Springs School District 11 (District) at XXXX (School) discriminated on the basis of disability. Specifically, the complaint alleged:

1. The District denied the Student a Free and Appropriate Public Education (FAPE) when it failed to provide her homebound tutor with assignments and lesson plans from December 12, 2018 through the end of the 2018-2019 school year, which were necessary to implement her February 28, 2018 Individual Education Program (IEP), December 13, 2018 IEP, and January 7, 2019 Interim Service Plan (ISP).
2. The District failed to conduct an appropriate evaluation before it significantly changed the Student's placement when it disenrolled her from the School and enrolled her in the District's online GradPoint program, when it removed her from GradPoint, and when it unilaterally decided to create an ISP for your daughter on January 7, 2019.

The Office for Civil Rights (OCR) is 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.

OCR reviewed documents provided by the District and conducted interviews with the Complainant and the Student's tutor. During the 2018-2019 school year the Student was enrolled in the District, in the XXXX grade, with an IEP, and received homebound instruction. The Complainant's application for homebound services was approved by the District on August 21, 2018. An individual service plan (ISP) was created on January 7, 2019 that provided the Student with three and a half hours per week of homebound instruction – one and a half hours of reading instruction, one hour of written language instruction, and one hour of math instruction.

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 2018-2019 school year the Student's homebound tutor informed the Complainant that the District was not providing him with assignments or lesson plans. The alleged effect of that failure was that the tutor was unable to provide the Student with instruction that paralleled the instruction being provided at the School. The tutor stated that the District expected him to create assignments and lesson plans. However, the District Homebound Tutor Handbook states, "It is District 11 policy that teachers provide assignments and materials. If you do not receive materials and assignments from a teacher, please contact the counselor and ask them to check with the teacher. If that is not successful, let the Homebound Office know, and we will follow up." Despite the lack of materials, the tutor reported to OCR that he provided the three and a half hours per week of tutoring that he was expected to provide under the Student's ISP.

The record includes several emails between the tutor and contacts at the District, where the tutor shared his concerns that he had not been provided with lesson plans and assignments from the teachers at the School. The record also indicates, in emails between the tutor and the District's Extended Learning Teacher, that the online program used to provide homebound instruction, Gradpoint, provided reading instruction that began at the sixth-grade instructional level, yet the Student's instructional reading level was at the second grade. The documents OCR received from the District did not indicate if those issues were resolved.

The Complainant also alleged that the District made a series of educational decisions for the Student without the Complainant's knowledge or consent. The Complainant alleged that in May of 2019 she discovered that the District drafted an IEP in December of 2018 and an ISP in January of 2019. The Complainant further alleged that the District disenrolled the Student from the School and enrolled her in the Gradpoint online program, then removed her from Gradpoint, all without informing the Complainant or explaining why those placement decisions were being made. The District provided OCR with a copy of the December 2018 IEP and January 2019 ISP. Neither document included an original signature page which would have indicated that the Complainant had been in attendance when the documents were drafted.

Interviews with District staff and an additional records request were needed to determine how the tutor's concerns regarding lesson plans and assignments were addressed, if at all, and whether the Complainant had been notified of meetings, attended the meetings, and/or was informed of the decisions taken at the meetings. OCR did not conduct additional interviews or request additional records because during the course of OCR's investigation, the District expressed an interest in resolving the complaint through a voluntary resolution agreement.

Pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the District. To resolve the issues of this investigation, the District agreed to provide the student with 2 hours of tutoring for 20 weeks, for a total of 40 hours of tutoring; revise its Homebound Procedures for students with a Section 504 plan or IEP; and train staff at the School on the revised Homebound Procedures.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require

prompt actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement. We will provide the Complainant with a copy of our monitoring letters.

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

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 or concerns about our findings, you may contact XXXX, the attorney assigned to this complaint, at XXXX. You may also contact me at (303) 844-6083.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

Cc: Alvin Brown, Director of Equal Opportunity Programs (via email); Katy Anthes, Commissioner, Colorado Department of Education (via email).