



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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January 13, 2020

Mr. Chris Gdowski, Superintendent
Adams 12 Five Star Schools
1500 East 128th Avenue
Thornton, Colorado 80241-2602

Via email only to chris.gdowski@adams12.org

Re: Adams 12 Five Star Schools
OCR Case Number: 08-19-1501

Dear Mr. Gdowski:

On September 12, 2019, we received a complaint against the Adams 12 Five Star Schools (District) alleging discrimination on the basis of disability.

Specifically, the complaint alleges that the District discriminated against a middle school Student with disabilities (ADHD) when it failed to implement the Student's Section 504 Plan during the 2018-19 and 2019-20 school years.

In addition, the complaint alleges that the District failed to conduct an evaluation before a significant change in placement when, on or about August 29, 2019, the District notified the Complainant that it would commence expulsion proceedings against the Student and suspended the Student for more than 10 days.

OCR is 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. These laws also prohibit retaliation. 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 course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve the complaint allegations pursuant to Section 302 of our *Case Processing Manual (CPM)*. OCR carefully reviewed the documentation provided by the District and the Complainant and determined that resolution pursuant to Section 302 was appropriate. On January 10, 2020, prior to OCR completing its investigation or making any findings of fact, the District signed an Agreement which, when fully implemented, will address the issue raised in the complaint.

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

Factual Background

The Student enrolled at XXXX Elementary School (Elementary School) for fourth grade at the beginning of the 2015-16 school year after transferring from XXXX school district. The Complainant checked the box on the District enrollment form to indicate that the Student had a 504 plan and stated that he provided the Elementary School a copy of the Student's then-current 504 plan during the enrollment process. The District acknowledged that the Complainant had checked the box to indicate that the Student had a 504 plan but informed OCR that it did not have a copy of the Student's 504 plan. At the outset of the 2017-18 school year, the Student moved to XXXX Middle School (Middle School), where he remains enrolled during the current School year.

On or about August 29, 2019, the Student was taking an exam in the Teacher's class. The Student's XXXX district 504 plan allowed for the Student to receive extra time on tests and quizzes, among other accommodations. According to the Complainant, as the Student turned in the exam, he asked the Teacher if he could change an answer on the exam and the Teacher informed the Student that if he made changes to the exam, he would receive a zero on the exam. Both the District and Complainant acknowledge that the Student did not change the exam.

XXXX – Factual description of disciplinary incident removed - XXXX

The Assistant Principal issued the Complainant a notice of suspension and referral for expulsion. The notice indicated that "the Student admitted doing the act(s) charged." The notice further stated:

Colorado State Law and Board Policy/Procedure Code 5000 (Student Due Process) proved that such action is grounds for exclusion from school.

3.18 Violation of criminal law which negatively impacts the school or the general safety or welfare of students or staff.

The notice contains no explanation supporting the conclusion that the Student's conduct, even if it occurred as described by the Teacher, who acknowledged in the discipline referral that he was not injured, constitutes a "violation of criminal law which negatively impacts the school or the general safety or welfare of students or staff."

According to the Complainant, he met with the Assistant Principal and attempted to explain that the Student had Attention Deficit Hyperactivity Disorder (ADHD) and a 504 plan. The Complainant asserts that the Assistant Principal became hostile, smirked, repeatedly told the Student he would be expelled, and summoned a Westminster police officer to read the Student the Colorado Statute on Harassment before issuing the Student a summons for harassment. The District acknowledged that the meeting was tense and that four staff members and security escorted the Complainant from the building.

On September 5, 2019, the Complainant then contacted the Principal by email, informing the Principal that two students had allegedly corroborated the Student’s version of events and that the Student had ADHD and had recently changed his medication. The Complainant requested an end to the suspension. The Principal responded stating, in part, that “ADHD and being on medication do not excuse the behavior of XXXX a teacher” and that there was no evidence “of how ADHD or [the Student’s] medication affected his written statement.” The Principal upheld the 5-day OSS pending expulsion hearing.

On September 10, 2019, the Complainant then provided the School a note from the Student’s psychiatrist confirming that the Student had ADHD. The District then halted the expulsion proceedings and held a 504 team meeting and created a new 504 plan for the Student, though the team did not discuss whether the District should provide compensatory services for the time in which it had not implemented the Student’s 504 plan. In addition, on December 18, 2019, the District informed the Complainant by letter that the Principal and Assistant Principal would no longer be responsible for oversight of the Student and that the School’s Dean and a different assistant principal would assume that responsibility.

Legal Standards

The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegations.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student’s initial placement and before any subsequent significant change in placement. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. Under Section 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. A recipient school district violates Section 504 when it knows or has reason to suspect that a student has a disability, and needs special education or related

services, but the recipient fails to initiate the evaluation process or unreasonably delays conducting an evaluation.

The regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Analysis

Based on the above described information and the District's interest in resolving the allegations, the District entered into a resolution agreement to fully address the allegations. The provisions of the enclosed resolution agreement are aligned with the complaint allegations, information obtained by OCR to date in its investigation, and are consistent with the applicable regulations. In accordance with Section 302 of OCR's *CPM*, the provisions of the Agreement signed by the District, when fully implemented, will address the allegations and are consistent with the information obtained during OCR's processing of this case and the applicable regulations. Therefore, OCR is closing this complaint investigation 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.

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 Complainant may file another complaint alleging such treatment. In addition, the Complainant 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.

If you have any questions, you may contact the attorney assigned to this case, XXXX, at (303) 844-XXXX or XXXX.

Sincerely,

Sandra J. Roesti
Supervisory General Attorney

cc: Kathy Shannon, Counsel, *by email to* Kathy.Shannon@adams12.org

Enclosure: Signed Resolution Agreement