



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

May 21, 2020

Superintendent Robert A. Alejo
Alamosa School District
209 Victoria Avenue
Alamosa, CO 81101

Sent via email only to XXX@XXX

Re: Alamosa School District
Case Number: 08-20-1106

Dear Superintendent Alejo,

On January 8, 2020, the United State Department of Education (Department), Office for Civil Rights (OCR) opened for investigation a complaint alleging Alamosa School District (District) discriminated on the basis of disability. Specifically, the Complainant alleged that the District discriminated against the Complainant's son (Student) when the District: 1) Failed to fully implement the Student's Section 504 plan, including requirements relating to the Student's XXX XXX; 2) Harassed the Student due to disability by requiring that he participate in physical activities resulting in a hostile learning environment and XXX XXX to the student; and 3) Failed to modify grading and participation requirements due to the Student's disability.

OCR initiated an investigation of this complaint pursuant to 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.

Investigation Summary & Facts

OCR notified the District and the Complainant on January 8, 2020, that OCR opened the above complaint allegations for investigation. On February 11, 2020, the District provided its response to OCR's data request. While OCR was conducting this review, the District expressed an interest in voluntarily entering into an agreement with OCR prior to OCR interviewing district staff.

OCR’s initial review of the information reveals that during the 2018-2019 school year, the Student attended school in the District as a XXX grader. He was a student with a disability and always had a Section 504 plan during the school year.

At the start of the school year, the Student’s Section 504 plan, which was drafted in November 2017, stated, “[Student] has also had XXX XXX XXX. He needs modifications for physical education. He can’t XXX, XXX, or XXX at this time.”¹ Regarding his XXX, the plan provided for (XXX – phrase – XXX).

It is unclear to OCR when the Student’s Section 504 plan was later revised, but it appears the plan was revised on April 30, 2019. Both parties provided a copy of the Student’s revised Section 504 plan. Although the plan is not dated, it states that the duration of accommodations is from April 30, 2019 to April 30, 2020.²

As it relates to his XXX, the revised plan states, “[Student] has also had XXX XXX XXX. He needs modifications for physical education. He can’t XXX,XXX, or XXX at this time. No XXX XXX XXX. No XXX. Use XXX instead of XXX. (XXX – phrase – XXX).”³

During the school year, the Complainant provided the District with a variety of doctors’ notes. Most of the notes requested the Student be excused for his absence for medical reasons. The remaining notes are described below:

- XXX note, stating “[Student] is not cleared to return to full participation in physical education.” The note recommends, “(XXX – phrase – XXX).”
- XXX note stating that the Student should be excused from school for the rest of the week until XXX. Additionally, it states, “Depending on the nature of the procedure he may

¹ This appears to be the language of the Student’s Section 504 plan during the 2018-2019 school year, until it was subsequently revised to incorporate, “No XXX XXX XXX.” This is based on the Complainant’s document submission to OCR. The District did not provide OCR with a copy of the November 2017 Section 504 plan. Rather, it appears the District provided OCR a copy of the plan as modified after his XXX XXX. However, the District’s position statement stated that the plan provided for “no XXX, XXX, or XXX.”

² This is consistent with the Complainant who provided in her interview with OCR that the Student’s Section 504 plan was revised at an April 30th Section 504 meeting. The District made no mention of a Section 504 meeting in April 2019 (or at any date) to revise the Student’s plan.

³ The District provided in its position statement, “In October 2018, the Student XXX XXX XXX while participating in a School sponsored “XXX XXX” that his mother had signed him up for. Based on notes provided by his medical care givers, the School District continued his accommodation for the XXX XXX including those for physical education that included no XXX, XXX, XXX, XXX XXX XXX, or XXX. The Student was provided XXX XXX instead of using the XXX and was allowed to (XXX – phrase – XXX).” The language regarding no XXX XXX XXX, XXX XXX, and XXX XXX XXX XXX appears in the Student’s revised Section 504 plan, but the District provided OCR with no information as to when the Student’s plan was revised to incorporate such language.

need to miss more school [Student] has the following restrictions: Please allow XXX XXX. No XXX or XXX until follow up appointment.”

- XXX note stating that the Student may return to school partial days that week.
- XXX note stating, “[Student] is currently under my medical care and may not return to academic schedule at this time. Please excuse [Student] for 3 day(s). He may return to full schedule on XXX. Activity is restricted as follows: none.”
- XXX note stating, “At this time [Student] is not cleared to return to any participation in Physical Education, Recess and Sports.” It additionally states that he is to have “no participation until released” and that it is indefinite until he is cleared for participation.

It is undisputed that on XXX, the Student participated in a Physical Education (PE) class activity and XXX XXX XXX.

The Complainant stated to OCR that the Student’s PE teacher “encouraged” the Student to play basketball on XXX, and that the PE teacher continued to encourage the Student to play even after the Student informed the PE teacher he was not allowed to because of his XXX. The Complainant also stated that on XXX, prior to the PE XXX, one of the school’s teachers required the Student to carry boxes upstairs. She added that later that same day, the PE teacher required the Student to participate in a (XXX- phrase – XXX). She stated that following the Student’s XXX, the PE teacher required the Student to (XXX - phrase – XXX) while holding two heavy textbooks over his head in order for the Student to have something to do. Finally, she stated that on XXX, when the Student had stopped XXX XXX the PE teacher encouraged, but did not require the Student to play basketball.

Regarding the District’s alleged failure to implement the Student’s Section 504 plan regarding his XXX, the Complainant stated that during the 2018-2019 school year, and continuing into the current school year, the District did not provide the Student with (XXX – phrase – XXX). The Complainant provided no documentation or evidence in support of her allegation regarding the Student’s XXX accommodations.

The Complainant provided OCR with a copy of the Student’s original and revised Section 504 plans, described above. Additionally, the Complainant provided OCR with a copy of some of the doctors’ notes described above. The Complainant also provided a copy of a letter from one of the Student’s doctors, stating that he received a phone call from the Complainant stating that the Student (XXX – phrase – XXX) during a XXX PE class. The doctor stated that the Complainant informed him that the Student was required to complete (XXX – phrase – XXX) the Student. The doctor further explained that the student was not medically cleared to engage in that activity and that no new note was provided that he could participate in anything (XXX – phrase – XXX). The Complainant provided no other documentation or evidence in support of her allegations.

The District denied that it discriminated as alleged. Specifically, the District stated that the Student was never required to participate in a PE activity. The District stated that it was the school’s practice in PE that no student is ever required to participate in a PE activity. The District stated, “if a student was not feeling well, was sick, injured or had some other reason for not participating, students could watch, do homework and/or walk. Up until the time of XXX

XXX in PE, the Student always attended PE but (XXX – phrase – XXX). On the date of XXX XXX, the Student voluntarily participated in the activity. He was not required to do so.” The District added that at the time of the XXX activity, the District had received the Student’s XXX doctor’s note stating that the Student had no activity restrictions, and the Student was not (XXX – phrase – XXX).

The District added that following the XXX XXX, the District again implemented the previous accommodations, including allowing the Student to only (XXX – phrase – XXX). The District stated that, per the Complainant’s request that the Student not (XXX – phrase – XXX) was made available for the Student to (XXX – phrase – XXX). The District added that the Student was provided (XXX – phrase – XXX). The District also stated that it also provided the Student’s XXX related accommodations.

The District acknowledged that the Student’s mother reported the incident where the Student allegedly was required to stand on one leg and hold books over his head. As a result of this report, the District stated, “The School investigated that allegation and it was determined to not have occurred. At no time is a student required to engage in any activity they do not want to do in PE. If he attended PE the Student was allowed to XXX but he was not allowed to participate in activities that would be in contravention to his 504 plan.”

In addition to copies of the Student’s Section 504 plan and doctors’ notes discussed above, the District provided OCR with additional documentation. Amongst the documentation, the District provided OCR with a copy of the Student’s report card for the school year. For Physical Education for each of the first three quarters, the Student received, “Outstanding” (95%).⁴

The District also provided OCR with a copy of the school’s interim principal’s notes. It repeats all of the doctors’ notes referenced above, including the XXX note that the Student had no activity restrictions. An April 2nd note states that the Student has permission to (XXX – phrase – XXX). An April 23rd note states that the Student needed (XXX – phrase – XXX). It also mentions the Complainant’s allegation that the Student was required to stand on one foot and hold books over his head. The note states that the interim principal spoke with the PE teacher and that the PE teacher reported it was not true. The provided further documentation, including other staff’s notes, but those notes are not relevant to the issues in this complaint or not useful without further context and information.

On May 7, 2020, before OCR had completed its investigation, the District notified OCR that it was interested in resolving this complaint. Further investigation is necessary in order for OCR to make findings on the allegation.

Pursuant to Section 302 of OCR’s Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations.

⁴ The report card provides the Student’s grades for the first three quarters, but it does not provide the fourth quarter’s grades.

On May 21, 2020, OCR received the District’s signed Resolution Agreement (enclosed). OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient’s policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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, OCR will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Michael Germano, Attorney and primary contact for this case, at (XXX) XXX-XXXX or by email at XXX@ed.gov, or me at (XXX) XXX-XXXX or by email at XXX@ed.gov.

Sincerely,

/S/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

cc: XXX (Legal Counsel) at XXX@celaw.com

cc w/out enclosure:

Katy Anthes (CDE Commissioner of Education) via email at XXX@state.co.us