



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

ARIZONA
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July 16, 2020

Dr. Thomas S. Tucker
Superintendent
Douglas County School District RE-1
620 Wilcox Street
Castle Rock, CO 80104

By Email only to XX

Re: Douglas County School District
OCR Reference No.: 08-20-1229

Dear Dr. Tucker:

On February 7, 2020, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging the Douglas County School District (District) discriminated against a student (Student) on the basis of disability. Specifically, the Complainant alleged that the District failed to respond to complaints of harassment, bullying, and unprofessional conduct.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to 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, 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>.

Investigation Summary

On February 28, 2020, OCR opened the allegation for investigation in accordance with OCR's *Case Processing Manual* (CPM). Specifically, OCR notified the Complainant and the District on February 28, 2020, that OCR opened the allegation pursuant to the Rapid Resolution Process (RRP) under Section 110 of the CPM.¹ During its investigation, OCR reviewed documentation

¹ The Rapid Resolution Process (RRP) is an expedited case processing approach that can be used to resolve cases in any of OCR's statutory areas either during the evaluation stage or after issuance of the letter of notification. In this case, OCR utilized RRP during the evaluation stage and therefore did not issue a letter of notification to the District or the Complainant.

provided by the Complainant and the District.

OCR applies a preponderance of the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

Legal Standard

Section 504 and Title II's regulations contemplate an internal investigative or resolution process for allegations of disability discrimination that are prompt and equitable, and afford elements of due process, including notice to the recipient of the allegations, investigation of all allegations, information gathered from relevant witnesses identified by both the complainant and the recipient, and the application of acceptable legal standards to the relevant facts.

Disability harassment can constitute a form of discrimination prohibited by Section 504. Disability harassment under Section 504 is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

In analyzing claims of disability harassment, OCR considers the totality of the circumstances to determine whether a hostile environment has been created, i.e. whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on disability. These circumstances include the context, nature, scope, frequency, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved. When harassing conduct is sufficiently serious that it creates a hostile environment, it can violate a student's rights.

School districts have a legal responsibility to prevent and respond to disability harassment. When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action reasonably calculated to end the harassment, eliminating the hostile environment if one has been created, preventing it from recurring and, where appropriate, remedying the effects on the student who was harassed.

While disability harassment must involve the bullying or harassing of a student "on the basis of" disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefits constitutes a denial of FAPE that must be remedied, regardless

of the nature of the bullying or harassment. Section 504 imposes on a recipient an ongoing obligation to provide FAPE to students with disabilities, and that obligation exists whether or not school officials know or reasonably know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

Background

The Student attended XX High School (School) during the 2018-19 school year, during which time she participated in the School's POMS team. The Student is a student with a disability, specifically the Student has been diagnosed as XX and also sustained a XX-injury during the 2018-19 school year.

In April 2019, the Complainant and many other parents jointly submitted a complaint letter (Letter A) to the District regarding the Student's POMS coach (Coach). On May 1, 2019, the Complainant submitted an additional letter (Letter B) by email to the District which addressed the Complainant's specific concerns impacting the Student. Letter A and Letter B raised concerns regarding harassment of the Student on the basis of her disability. While Letter A alleged that the Coach engaged in unacceptable behavior and unprofessional conduct, including harassment, Letter B specifically alleged that the Student was discriminated against on the basis of disability.

The District initiated an investigation in April 2019 in response to Letter A. The District's investigation was conducted by the District's Director of Human Resources and the District's Director of Athletics and Activities. The investigation included interviews with 21 students, four parents, the School's Athletic Director, three POMS coaches, and the Coach. The District's investigation, summarized in an internal memo, concluded in May 2019. The District found that the Coach exhibited concerning behavior; however, ultimately the District did not find that the Coach had engaged in conduct that rose to the level of a terminable offense. As a result, the District issued a "Letter of Concern" to the Coach on May 24, 2019. The "Letter of Concern" addressed the allegations which the District found credible, explained that the Coach's conduct failed to meet the District's expectations, and directed the Coach to modify her behavior. The District indicated that failure to comply with and sustain the expectations within the "Letter of Concern" may result in disciplinary action, up to and including termination of employment. The May 2019 memo and the "Letter of Concern" did not provide the legal standard of review and a discussion thereof, nor did the District provide the Complainant, or other parents, with notice of the right to appeal the outcome of the investigation at that time.

After OCR notified the District of its investigation in complaint no. 08-20-1229 in February 2020, the District initiated a review of the investigation it previously conducted in response to Letter A. The District disputed that a violation occurred and indicated that it was responsive to the requests of the Complainant. Further, the District reiterated that the Coach is no longer employed by the District, effective XX.

On June 18, 2020, before OCR had the opportunity to fully investigate the District's statements and determine whether the District's actions were discriminatory, the District notified OCR that it was interested in resolving these allegations.

Analysis

Pursuant to Section 302 of the CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On July 14, 2020, OCR received the District's signed resolution agreement (Agreement) (enclosed). Accordingly, this allegation is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

Conclusion

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 allegations will have been resolved consistent with the requirements of Section 504, and its 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 complainants 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

In addition, the Department has developed guidance to support recipients, as well as the students, families, staff, and community served therein, through the unprecedented challenges faced by COVID-19. For more information, see the Department's [COVID-19 \("Coronavirus"\) Information and Resources for Schools and School Personnel](#). If the District is in need of assistance from the Department or OCR as a result of COVID-19, please don't hesitate to reach out.

If you have any questions, please contact XX, the Attorney assigned to this complaint, at XXX or by email at XX. You also may contact me at XX or by email at XX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Ms. Wendy Jacobs, Esq.
Deputy General Counsel
By Email only to XX