



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII

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August 18, 2020

Dr. Rob Anderson
Superintendent
Boulder Valley School District RE-2
6500 E. Arapahoe Rd.
Boulder, Colorado 80303

By Email only to XX

Re: Boulder Valley School District
OCR Reference No.: 08-20-1404

Dear Dr. Anderson:

On July 14, 2020, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging that the Boulder Valley School District RE-2 (District) discriminated against a student (Student). Specifically, the Complainant alleged that the District failed to provide the Student with a free appropriate public education (FAPE) during the extended school year program (ESY) as a result of failing to implement his individualized education program (IEP).

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 August 7, 2020, OCR opened the allegation for investigation in accordance with OCR's *Case Processing Manual* (CPM). Specifically, OCR notified the District that OCR opened the allegation pursuant to the Rapid Resolution Process (RRP) under Section 110 of the CPM.¹

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.

During its investigation, OCR reviewed documentation provided by the Complainant.

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

The Section 504 implementing regulation, at 34 C.F.R. Section 104.33(a), requires recipients to provide a FAPE to each qualified person with a disability who is in the recipient's jurisdiction. 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 students with disabilities as adequately as the needs of students without disabilities are met and that are based upon adherence to Section 504's procedural requirements, at 34. C.F.R. Sections 104.34-36. Failure to implement a student's IEP or Section 504 plan may result in a failure to provide FAPE.

Background

The Student attended XX Middle School (School) during the 2019-20 school year. The Student is a student with a disability, specifically the Student has XX (XX). The Student was enrolled in the District's ESY during the summer between the 2019-20 and 2020-21 school years. As a result of the COVID-19 pandemic, the District's in-person learning has been suspended until the District enters the appropriate phase of its reintroduction plan; therefore, ESY occurred remotely during June and July 2020.

The Complainant contacted the District regarding her concerns about the implementation of the Student's IEP during ESY in June 2020. On July 8, 2020, the Complainant emailed the District and OCR, detailing her concerns about the lack of services provided to the Student during ESY. Among the concerns expressed, the Complainant noted that the District failed to provide "XX," "XX," "XX," and "XX" during ESY. By phone on July 14, 2020, the Complainant stated that the District had not yet contacted her and that ESY was set to conclude on July 16, 2020.

On August 7, 2020, before OCR had the opportunity to fully investigate the District's actions during ESY and determine whether the 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 August 17, 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 XX 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. Kathleen Sullivan, Esq.
Legal Counsel
By Email only to XX