



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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July 28, 2021

Dr. Rob Anderson, Superintendent
Boulder Valley School District
6500 Arapahoe Road
Boulder, Colorado 80303

via email only to XXXX@XXXX

Re: **Boulder Valley School District**
OCR Case 08-21-1121

Dear Superintendent Anderson:

We write to inform you of the resolution of the above-referenced complaint, filed on February 16, 2021, against Boulder Valley School District ("District"), alleging discrimination based on race, national origin, and disability. The Complainant alleged that the District fails to appropriately evaluate Hispanic/Latino, African American, American Indian/Alaska Native students who are suspected of having disabilities. Specifically, the Complainant alleged that these students are not evaluated in a timely manner and that their eligibility and placement are not determined by a group of persons knowledgeable about the child, the evaluation data, and the placement options.

The Office for Civil Rights (OCR) of the U.S. Department of Education ("Department") is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination based on disability in any program or activity operated by recipients of federal funds from the Department;
- Title II of the Americans with Disabilities Act of 1990 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities, regardless of whether they receive federal financial assistance; and
- Title VI of the Civil Rights Act of 1964 ("Title VI"), and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance from the Department.

As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

On March 3, 2021, we notified the District that OCR was opening an investigation of the allegation, and we sent the District a data request. The District provided to OCR a partial data response and access to the District's student information system (Frontline).

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

Before OCR completed its investigation or issued a draft letter of findings, the District expressed to OCR an interest in taking voluntary action to resolve the Complainant's allegation. OCR determined that resolving the allegation with an agreement ("Agreement"), without concluding the investigation, was appropriate pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On June 2, 2021, OCR sent the District a proposed Agreement. The District sent OCR a fully executed Agreement on July 28, 2021. Attached is a copy of the signed Agreement.

Legal Standards

Under Section 504 and Title II, school districts must conduct an individualized, timely evaluation of any student who needs or is believed to need special education or related services because of a disability. School districts violate Section 504 when they deny or delay conducting an evaluation of a student when it would have been reasonable for a staff member to have suspected that a student has a disability and needs special education or related services because of that disability. Interventions – such as Response to Intervention (RTI), Student Support Team (SST), and multi-tiered system of support (MTSS) processes – cannot be used to unreasonably delay or deny an evaluation. In interpreting evaluation data and in making placement decisions, school districts are required to use a group of knowledgeable people that considers information from a variety of sources. English learner (EL) students who may have a disability, like all other students who may have a disability and require special education or related aids and services, must be located, identified, and evaluated in an appropriate and timely manner.¹

Additionally, under the Title VI regulations, a school district may not treat individuals differently based on race, color, or national origin regarding any aspect of services, benefits, or opportunities it provides. A school district may not, directly or through contractual or other arrangements, based on race, color or national origin, provide an individual any service or other benefit that is different, or is provided in a different manner, from that provided to others.²

Background

The Individuals with Disabilities Education Act (IDEA) requires states to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the local education agencies (LEAs) of the state with respect to the identification and placement of students with disabilities. If states find significant disproportionality, they are required to review, and if appropriate, revise, policies, practice, and procedures.³ According to data from the Colorado Department of Education (CDE), communications between CDE and the District, and documents

¹ See 34 C.F.R. § 104.35; 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii)-(iii); Office for Civil Rights, U.S. Dept. of Educ., "Parent and Educator Resource Guide to Section 504," Dec. 2016, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>; Office for Civil Rights, U.S. Dept. of Educ., "Resource Guide on Students with ADHD and Section 504," pp. 15-17, Jul. 26, 2016, *available at* <https://sites.ed.gov/idea/files/OCR-letter-07-26-2016.pdf>; and Office for Civil Rights, U.S. Dept. of Educ., "Dear Colleague Letter: English Learner Students and Limited English Proficient Parents," pp. 24-29, Jan. 7, 2015, *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

² 34 C.F.R. § 100.3(a)-(b).

³ 34 C.F.R. § 300.646; Colorado Department of Education, Exceptional Student Services Unit, "Significant Disproportionality in Special Education – Vol. 1," https://www.cde.state.co.us/cdesped/factsheet_sigdispro_vol01.

provided by the District to OCR, the District has significant disproportionality; specifically, District students of color with disabilities are overrepresented within the population of students identified as eligible under the IDEA.

The District reported that it has taken a variety of steps to address its significant disproportionality, including: (a) forming a “Significant Disproportionality Action Plan,” a “Significant Disproportionality Planning” instructional leadership team (ILT), and “disproportionality cohorts” for elementary and secondary levels; (b) using special forms, such as a “Sociocultural Factors Worksheet” “to gather and consider additional information about emerging bilingual students early on in the process;” (c) conducting data analysis and presentations for staff; and (d) dedicating significant portions of the District’s strategic plan and Unified Improvement Plan (UIP) to equity and reducing disproportionality.

Allegation Details from the Complainant

The Complainant alleged that, since the 2019-2020 school year (SY), the District’s practices related to the overrepresentation of Hispanic students who are identified as eligible under the IDEA for a specific learning disability and Black and Native American students who are identified as eligible under the IDEA for other health impairment (OHI) have resulted in discrimination based on race, national origin, and disability. The District’s approach requires school-based staff to consult with central office special education staff or MTSS coordinators (“Coordinators”) – who are not bilingual, who do not possess expertise in English learner students or second language acquisition, and who are not familiar with the specific students at issue – regarding evaluations and eligibility determinations for Hispanic, Black, and Native American students. The Coordinators review referrals for these students and determine the appropriateness of proceeding to the next level of tiered interventions (*e.g.*, SST, evaluation for special education, etc.). Coordinators direct school-based teams to continue four-to-six weeks of interventions for these students, at times for multiple rounds of interventions, rather than proceeding to a formal evaluation. Moreover, at times, Coordinators unilaterally overrule team decisions related to evaluations.

In contrast, school-based staff need not consult Coordinators regarding referrals of white students; instead, school-based staff are allowed to make timely decisions about interventions and evaluations without interference or “additional hoops” from central office. Consequently, Hispanic, Black, and Native American students are spending more time in the District’s “pre-SST” and SST phases than similarly situated white students; or are being formally evaluated less frequently than similarly situated white students. Additionally, evaluation and placement decisions for Hispanic, Black, and Native American students are being made: (a) by individual Coordinators, not groups of knowledgeable people; (b) based on race and national origin, not information from a variety of sources; and (c) in an untimely manner. District staff have expressed concerns about these issues to District leaders.

Allegation Details from the Recipient

The District rejected the allegations and asserted to OCR that its practices comply with the law. Additionally, the District asserted the following.

During the last two years, the District worked with the CDE to refine its practices related to the identification of students with disabilities in order to address identified significant disproportionality of Latinx students with specific learning disabilities. The District's approach has included consultation to school teams and review of student information and records by District Coordinators with expertise in MTSS, special education, and culturally and linguistically diverse education. Such coordinator consultation is common throughout the District, not only as a matter of general supervision and monitoring, but also for complex student cases, including, but not limited to, those that have been identified as potentially contributing to significant disproportionality. These District leaders work with the school teams, and do not have veto power, final approval, or any other unilateral authority. As required by the IDEA and Section 504, the District's teams review all of the information available about a student and determine as a team whether there is adequate information and data to support a referral for consideration of whether a student qualifies as a student with a disability under the laws. The District's current work and structure is designed to assure that its practices and procedures adequately address linguistic or cultural barriers that may be interfering with the appropriate identification of students, and to strengthen the overall MTSS process for all students.

Resolution Agreement

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504, Title II, and Title VI, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District. OCR will promptly provide written notice to the District of any deficiencies with respect to the implementation of the Agreement terms and will require prompt actions to address such deficiencies. The Complainant will be copied on OCR's monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegation and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

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

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 individual may file a complaint alleging such treatment.

This letter sets forth OCR's determination in an individual 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, releasing this document and related correspondence and records upon request may be necessary. If 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.

Thank you for the District's prompt attention to this matter and cooperation. If you have any questions or concerns, you may contact Jason Langberg, one of the attorneys assigned to this case, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Michelle Brenner, Executive Director of Special Education
(XXXX@XXXX)

Kristin Nelson-Steinhoff, Director of Culturally and Linguistically Diverse Education
(XXXX@XXXX)

Kathleen Sullivan, Attorney for the District
(XXXX@XXXX)

Katy Anthes, Colorado Commissioner of Education