



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 30, 2021

Mr. Corey Wise, Superintendent
Douglas County School District
620 Wilcox Street
Castle Rock, Colorado 80104

via email only to corey.wise@dcsdk12.org

**Re: Douglas County School District
OCR Case 08-21-1135**

Dear Superintendent Wise:

We write to inform you of the resolution of the above-referenced complaint, filed on February 25, 2021, against the Douglas County School District (District) and STEM Highlands Ranch Charter School (School), alleging discrimination based on disability. Specifically, the Complainant alleged that the School discriminated against XXXX (Student) during the 2020-2021 school year by refusing to allow the Student to bring her service dog to school, thereby denying her: (1) equal access to the School's programs and activities; and (2) a free appropriate public education (FAPE).

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 programs and activities that receive federal financial assistance from the Department; and 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. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at www.ed.gov/ocr.

During our investigation, OCR reviewed documents provided by the Complainant and School, conducted interviews with the Complainant, and conducted interviews with the School's Executive Director, Nurse, and former Assistant Director.

Also during OCR's investigation, OCR identified additional Section 504 and Title II concerns. First, was whether the School's grievance procedures to address complaints of disability discrimination were consistent with Section 504 and Title II. Second, was whether the School's failure to respond to a complaint of disability discrimination made by the Complainant was in violation of Section 504 and Title II.

Legal Standards

FAPE

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

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The Section 504 regulations require recipient school districts to provide a FAPE to all students with disabilities in their jurisdictions.¹ An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of Sections 104.34-36 pertaining to educational setting, evaluation and placement, and due process protections. OCR interprets the Title II regulations to require public school districts to provide a FAPE at least to the same extent required under the Section 504 regulations.²

Service Animals

Under the Section 504 regulations,³ no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. The Title II regulations create the same prohibition against disability-based discrimination by public entities.⁴

The Title II regulations define “service animal” as:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. ... The work or tasks performed by a service animal must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, ... helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.⁵

A student with a disability may be entitled to have a service animal at a public school under Title II’s accessibility regulations. Under the Title II regulations, a public entity generally must modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.⁶ A public entity may ask an individual with a disability to remove a service animal from the premises if: (a) the animal is out of control and the animal’s handler does not take effective action to control it; or (b) the animal is not housebroken.⁷ “[I]f a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior . . . that animal may be excluded.”⁸

In determining what constitutes a direct threat, 28 C.F.R. Section 35.139(b) provides that a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

¹ 34 C.F.R. Section 104.33.

² 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii)-(iii).

³ 34 C.F.R. Sections 104.4(a)-(b).

⁴ 28 C.F.R. Sections 35.130(a)-(b).

⁵ 28 C.F.R. Section 35.104.

⁶ 28 C.F.R. Section 35.136(a).

⁷ 28 C.F.R. Section 35.136(b).

⁸ DOJ FAQs, Q23.

Furthermore, “[a]llergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.”⁹ If an individual is allergic to dog dander, the public entity has an obligation to accommodate that individual as well as the individual with the service animal.

The Title II regulations, at 28 C.F.R. §35.136(f), also limit the extent of inquiry that may be made of an individual using a service animal. A public entity is prohibited from asking about the nature or extent of a person’s disability, and is limited to two permissible questions that may be asked in order to determine whether an animal qualifies as a service animal: (1) is the animal required because of a disability; and (2) what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

Grievance Procedures

The Title II regulation at 28 C.F.R. §35.107(b) requires a public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

The Section 504 regulation at 34 C.F.R. §104.7(b) requires a recipient that employs fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

Background

At all times relevant to the allegations the Student was a XXXX at the School. The Student’s XXXX Section 504 Plan (Plan) provided her with the following accommodations related to her diagnoses of XXXX, XXXX, XXXX, and XXXX:

1. Extended time (1.5x) on assignments and assessments or abbreviated in lieu of extended time.
2. Frequent checks for understanding and opportunity/extra practice to apply as needed.
3. Allow for short breaks.
4. Allow for use of noise cancelling earbuds.

During the 2020-2021 school year the School operated on a hybrid attendance model where students in Cohort A attended school in-person on Mondays and Tuesdays and students in Cohort B attended in-person on Wednesdays and Thursdays. The School also had an option where students could attend a fully virtual program without any in-person attendance. The Student was assigned to Cohort B.

The Student began working with the service dog in June 2020. The service dog is trained to perform grounding and blocking, which assists with the Student’s XXXX. In August 2020 the Student inquired about the School’s process for allowing her service dog to accompany her at school.¹⁰

⁹ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “ADA Requirements: Service Animals,” available at https://www.ada.gov/service_animals_2010.htm (July 2011).

¹⁰ The School acknowledged that throughout the process the School considered the dog to be a service animal.

At the time of the request, the School did not have a policy or procedure on service animals. After consultation with the District, the School agreed to adopt the District's Service Animals Guideline (Procedure) and request form to address the Student's request.¹¹

The Procedure requires prior authorization by the school building principal. To receive authorization, the Procedure requires the handler/owner of the service dog to submit:

1. a signed Service Dog Request Form at least 30 days prior to the service dog's first attendance day at school;
2. an annual health certification or report of examination from a veterinarian licensed in the State of Colorado, indicating that the service dog has a vaccination license and is free of diseases; and
3. written proof that the service dog has been spayed or neutered.

The Procedure set forth additional requirements, which include that the service dog:

1. be the personal property of the student;
2. be clean and well-groomed to prevent shedding and dander, and without objectively unpleasant odor;
3. not seek attention or annoy other students or school personnel;
4. not vocalize unreasonably by barking, growling [sic], or whinnying;
5. not show aggression towards people or other animals;
6. not beg or steal food or other objects from students or school personnel;
7. not disrupt the normal course of school business;
8. be able to perform the work/tasks in public; and
9. be able to lie silently beside the handler without blocking aisles, doorways, etc.

The Procedure allows for the exclusion of a service dog if, (1) it is not under the control of its handler and the handler does not take effective control; or (2) if the service dog is not house broken. The Procedure also allows for the exclusion of a service dog if its presence would disturb the nature of the service, program, or activity.

Finally, the Procedure includes a section on "direct threat" which it defines as:

"Direct Threat" occurs when a substantial risk to health and safety of others cannot be removed by an adjustment of policies, practices and procedures. Dogs might trigger an allergic reaction or otherwise harm the health of students or employees.

In further discussing "direct threat" the Procedure notes that service dogs may not be taken to school or kept in the school, classroom, office, or public areas that may negatively affect the health of any student or employee that uses the areas. In assessing whether a service dog poses a "direct threat" the Procedure states that the District will make an individualized evaluation that will consider, (1) the nature, duration, and severity of the risk; (2) the probability that the potential injury will occur; and (3) whether reasonable modifications of policies, practices, or procedure will mitigate the risk.

On September 21, 2020, the School denied the Student's request, finding that her service dog posed a direct threat to another student, Student B, who had an allergy to dogs and carried an EpiPen as a result.

¹¹ Both the District and School assert that while the School's charter is authorized through the District, the District does not oversee the School's day-to-day activities and did not have decision making authority over the service dog request.

The Complainant appealed the School's decision in an email to the School's Board of Directors (Board) on December 1, 2020, where she asserted that the Executive Director of the School had misapplied Title II in making her determination. The Complainant asserted that she did not receive a response to her appeal. The School acknowledged that it received the Complainant's appeal and that it did not send the Complainant a response.

Allegation 1: Whether the District and School denied the Student equal access to the School's programs and activities when it refused to allow the Student to bring her service dog to the School.

Findings of Fact

The School's former Assistant Director (Former AD) reported that she oversaw the process for determining whether the School could meet the Student's request, in consultation with the School's Director, until she resigned from her position on September 17, 2020.¹²

The Former AD reported that her first step in assessing the Student's request was to contact School families and staff to request information regarding allergies. She said she did so because she was following the District's protocols and used the District's letter template to contact families and staff. The inquiry to families and staff was coordinated with the School Nurse and was sent via email on September 4, 2020.¹³

The School Nurse reported that the Former AD asked her follow-up with the families of those students that were listed in Infinite Campus¹⁴ as potentially having a dog or animal allergy. On September 7, 2020, the mother of a student, Student B, notified the School Nurse that Student B had a severe allergy to dog dander and saliva, could go into anaphylaxis if he came in contact with a dog, and carried an EpiPen as a result. Student B's mother asked that Student B not be in the same classroom as the service dog.

The School Nurse reported that her involvement in the process ended after she provided the Former AD with Student B's healthcare plan and the email from Student B's mother. The School Nurse said that the School did not seek her opinion regarding the service dog or Student B's allergy, she did not speak to Student B's medical provider, and she was not involved in any conversation about whether Student B could be in the same building the day after the Student's service dog was in the building.

The Former AD reported that she contacted Student B's mother to assess the severity of his allergy and together they worked out a plan that the Former AD believed was acceptable. The plan involved (1) the Student and her service dog using the School hallways a few minutes before Student B, (2) ensuring that the Student and Student B were not in the same classroom at the same time, and (3) the custodial staff performing a nightly cleaning.¹⁵

A September 11, 2020 email from the Former AD to the School Nurse, Executive Director, and another School staff member further described the proposed plan. It included moving the Student to Cohort A;

¹² The School's Director also resigned at the start of the 2020-2021 school year and, according to the Former AD, left the School on or around September 11, 2020.

¹³ The letter informed the School community of the service dog and asked that any concerns regarding allergies be sent to the School Nurse by September 8, 2020.

¹⁴ The District's online student database.

¹⁵ The Former AD reported that she asked Student B's mother if normal vacuuming was sufficient or if custodial staff needed to perform a deep cleaning and Student B's mother said normal vacuuming would be sufficient.

moving a class to a different room so that the service dog is never in the same room as “the student with the highest allergy needs”; having the Student move to her next class in the last three minutes of her class period to minimize hallway exposure; designating a separate lunch space for the Student that was not the cafeteria; and an identified location for the service dog to relieve itself.

The Former AD reported that she was not part of, or aware of, any discussions about the Student’s service dog posing a “direct threat” to Student B. She left the School before a final determination on the Student’s request was made.

OCR reviewed a September 4, 2020 email from the School’s Executive Director to the Former AD, in response to the Former AD’s email inquiry to School families and staff about allergies. In the email, the Executive Director acknowledged that the School did not have a service animal policy and noted that any policy the School did not have meant that it used the District’s policy. The Executive Director also wrote that she was uncomfortable with the Former AD’s email because it did not indicate how the School could be advised of allergies and gave the impression that the School decided it would allow the service dog. The Executive Director wrote, “the rights of students and staff are higher ranking than the rights of the student to bring a service dog into a school.” She also wrote, “many remaining steps including verification of the dog’s health certificates, etc. Also, the certification of the dog. Not all certifications rise to ADA protected status for a school.”

In a September 8, 2020 email, the Executive Director wrote that the process had become “convoluted” and that the message to parents should be “students first, dog second.” In another email on September 8, 2020, the Executive Director wrote that parents should be notified that the “schedule of the dog will be modified if there are any identified allergies in the rooms.” She noted that was in line with District policy and that the message should be “students first and then dog” and that the earlier email by the Former AD to families and staff had conveyed “dog first and then students.” She ended the email noting, “we cannot lose any other parents as our count is seriously low.”

Additionally, on August 16, 2020, the Executive Director wrote, “it is within our rights to ask for a letter from a medical professional to provide a health plan. Dogs need their own health plan in a school. Anxiety without a doctor’s note won’t be enough.”

In an interview with the Executive Director, she stated that she took over the process after the Former AD left and she had made the decision that the Student’s service dog posed a direct threat to Student B. She characterized Student B’s allergy as life-threatening and asserted that the School Nurse was not comfortable with having the service dog at the School unless a saliva and dander-free space could be guaranteed. She said she also took the request to the Chair of the Board of Directors (Board Chair), legal committee, and school attorney. When OCR asked if she reviewed any medical documentation regarding the nature, duration, or severity of Student B’s allergy, the Executive Director said she had not. She added that the School Nurse would typically confer with a student’s pediatrician to verify the severity of an allergy, but then acknowledged that in this case she did not ask the School Nurse if she had spoken to the Student’s medical provider.

The Executive Director reported that the School considered moving the Student to Cohort A but she rejected the plan after custodial staff, who were short staffed by two, told her they would not be able to sufficiently clean the area of all dog dander and saliva at current staffing levels.

When asked how she determined that Student B's allergy was so severe that he could not use the same hallways as the Student, even if it was the next day and after normal cleaning, the Executive Director said that was the School Nurse's determination.

On September 21, 2020, the Executive Director informed the Student and the Complainant via email that the Student's request to bring her service dog to the School had been denied. In the September 21 email the Executive Director referred to the District's procedural language and wrote, "if any other student or staff member has a severe allergy, the student with the allergy must be protected from allergens." The Executive Director went on to explain to the Complainant and Student that another student had a severe allergy to dogs with a history of anaphylaxis and because the School could not guarantee that no allergens would remain after the service dog's presence in School areas, it could not grant the Student's request.

The Complainant told OCR that after receiving the School's decision she contacted the District's ADA compliance officer who told her that if she wanted to appeal the School's decision, she would have to contact the School's Board of Directors (Board). The Complainant said she followed the instructions of the District's compliance officer when on December 1, 2020, she filed an appeal of the School's decision by sending an email to five of the School's Board members. In her appeal the Complainant asserted that the Executive Director had misinterpreted Title II when she denied the request.¹⁶ The Complainant did not receive a response to her appeal.

As a result of not being allowed to bring her service dog to the School, the Student attended via remote learning for the entirety of the 2020-2021 school year. The Complainant reported to OCR that because of the School's decision regarding the service dog, the Student was unable to attend many extracurricular activities as well, including XXXX and XXXX. X – sentence redacted – X.

OCR reviewed emails between the Former AD and the mother of Student B from August 25 and 26, 2019, which involved the School allowing dogs on School property for a security drill. The emails were regarding a lock down drill the School was preparing that would include police dogs. Student B's mother reached out to the Former AD to inform her of Student B's allergy to dog dander and inform her that because of the allergy XXXX¹⁷, Student B would not be in attendance on the day of the drill. Student B's mother noted that she was fearful of having Student B in the classroom at the same time as the police dog and having him touch spots that had dog dander. The Former AD responded that she would make sure that the police dog did not enter any of Student B's classrooms, and that appeared to resolve the concern.

Analysis

The School asserted the ADA's direct threat exception when it denied the Student's request due to Student B's allergy. However, when determining what constitutes a direct threat, 28 C.F.R. Section 35.139(b) requires public entities to make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids

¹⁶ In the email the Complainant incorrectly identified Title II as Title IX but it is clear from the rest of the email that she is referring to Title II.

¹⁷ A shooting occurred at the School in May 2019.

or services will mitigate the risk. The District's Procedure, which the School used, similarly states that when assessing whether a service dog poses a "direct threat" the District will make an individualized evaluation that will consider, (1) the nature, duration, and severity of the risk; (2) the probability that the potential injury will occur; and (3) whether reasonable modifications of policies, practices, or procedure will mitigate the risk.

It is evident from the information OCR gathered during its investigation that the Executive Director did not meet the requirements of 28 C.F.R. Section 35.139(b), or the District's Procedure, when she decided that the Student's dog posed a direct threat to Student B. She acknowledged that she did not contact Student B's medical provider to determine the nature, duration, or risk of Student B's allergy, nor did she ask whether the School Nurse had contacted Student B's medical provider. If she had asked the School Nurse, she would have learned that the School Nurse had not contacted Student B's medical provider and that the School Nurse's involvement ended, by her own admission, when she passed along Student B's health plan and the email from Student B's mother to the Former AD. In fact, there is no evidence that the Executive Director gathered any new information regarding Student B's allergy after the Former AD left the School.

The Former AD did attempt to ascertain the nature, duration, and severity of the allergy risk to Student B; the probability that the allergy risk will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk, when she contacted Student B's mother. Her inquiry resulted in a plan that would have allowed the service dog to attend the School while accommodating Student B. That plan was communicated to the Executive Director in a September 11, 2020 email but not adopted by the School.

It is also worth noting that the Department of Justice has interpreted its service animal regulations and communicated that, "[a]llergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals." If an individual is allergic to dog dander, a Title II entity has an obligation to accommodate that individual as well as the individual with the service animal.

OCR also noted concerns with the Procedure. Under Section 504, school districts cannot implement policies that have the effect of denying individuals with disabilities access to services, programs and activities. Additionally, Title II and its implementing regulations require that school districts permit the use of service animals by individuals with disabilities. The regulations permit school districts to ask an individual accompanied by an animal two questions to determine if the animal qualifies as a service animal, (1) is the animal required because of a disability, and (2) what work or task has the animal been trained to perform. The regulations permit removal of a service animal in limited circumstances: if the animal is out of control and the animal's handler does not take effective action to control it, and if the animal is not housebroken. If an animal is properly excluded, the school district must give the individual with a disability the opportunity to participate in the service, program or activity without having the animal on the premises. In general, service animals are subject to the same licensing and vaccination rules that are applied to all dogs under local law.

The District's and School's Procedure places requirements on individuals who use service animals that are not permitted by the regulations and places an additional burden on access to the District and School on individuals with disabilities that is not placed on those without disabilities. Those additional requirements include: prior authorization by the school principal; written proof that the service dog has been spayed or neutered; that the service dog be the personal property of the student; that the service dog be able to perform the work/tasks in public; and that the service dog be able to lie silently beside

the handler. The Procedure also imposed certain subjective criteria on the service dog that is not required under the regulations, such as: not having an unpleasant odor; not seeking attention or annoy other students or school personnel; not vocalize unreasonably by barking, growling, or whinnying; not showing aggression towards people or other animals; not begging or stealing food or other objects from students or school personnel; and not disrupting the normal course of school business. While some of these behaviors may lead to exclusion it would first require an individualized assessment to determine if the behaviors made the service dog a direct threat to the health and safety of others.

The Executive Director also exhibited an incorrect understanding of Section 504, Title II, and their implementing regulations when she wrote to staff that “many remaining steps including verification of the dog’s health certificates, etc. Also, the certification of the dog. Not all certifications rise to ADA protected status for a school” and “it is within our rights to ask for a letter from a medical professional to provide a health plan. Dogs need their own health plan in a school. Anxiety without a doctor’s note won’t be enough.” This incorrect understanding is exacerbated by the Procedure’s requirement that the Executive Director provide authorization before a service dog can be allowed into the School.

Additionally, the Title II regulations allow a public entity to ask an individual with a disability to remove a service animal from the premises if: 1) the animal is out of control and the animal’s handler does not take effective action to control it; or 2) the animal is not housebroken. The Procedure includes that language; however, it also includes an additional reason for exclusion that is not included in the regulations. The Procedure states that a service dog can be excluded if “its presence would disturb the nature of the service, program, or activity.”

Accordingly, OCR concludes that the School violated Section 504 and Title II and their implementing regulations when it denied the Student’s request to bring her service dog to the School. Furthermore, OCR has determined that the District’s and School’s Procedure do not meet the requirements of Section 504, Title II, and their implementing regulations.

Allegation 2: Whether the District/School denied the Student a FAPE when it refused to allow the Student to bring her service dog to the School.

Finding of Fact

A Section 504 Plan meeting for the Student was held on XXXX. The Complainant stated that she tried to bring up the Student’s need for the service dog during the meeting but was told that it was just an annual review to see if anything in the Student’s Section 504 Plan needed to change and that the request for the service dog would be handled separately.

Although the School Nurse was noted as having attended the Student’s XXXX Section 504 Plan meeting, she asserted in an interview that she did not attend the meeting. The Former AD did attend the meeting but did not recall whether the service dog was discussed. She did recall that the Section 504 Plan meeting and service dog request were being handled separately, on the recommendation of the District.

Analysis

In the context of elementary and secondary schools, the ability of a student with a disability to use a service animal is independent of his or her ability to receive a FAPE and the determination of whether a dog is a service animal is not subject to the determination or review of a student’s Section 504 team or

an individualized education program (IEP) team. While a student's receipt of a FAPE may be enhanced or supplemented by the use of a service animal, a service animal is not required in any way to enhance or increase the student's ability to receive or the actual receipt of a FAPE.

As a result, we find insufficient evidence that the District or School denied the Student a FAPE when the School denied the Student's request to have her service dog with her at the School.

Additional Concerns: Whether the School established grievance procedures consistent with Section 504 and Title II to address complaints of disability discrimination and whether it violated Section 504 and Title II when it failed to respond to the Complainant's complaint of disability discrimination.

Findings of Fact

After receiving the School's decision to deny the Student's request to bring her service dog to school, the Complainant reached out to the District's ADA compliance officer to appeal the decision. The Complainant reported that the District's compliance officer informed her that her appeal had to go to the School's Board. Acting on that information, the Complainant appealed the School's decision in an email to five members of the School's Board on December 1, 2020. In her appeal, the Complainant asserted that the School had misinterpreted Title II when it denied the Student's request. The Complainant asserted that she did not receive a response to her appeal. The School acknowledged that it received the Complainant's appeal and that it did not send the Complainant a response.

The School reported that its grievance procedures for the 2020-2021 school year could be found in the School's 2020-2021 Parent and Student Handbook (Handbook)¹⁸. The School also included a "communication pathways" document on its website¹⁹ that provided students and parents with a guide of where to direct specific types of questions. Finally, the School reported that during the 2020-2021 school year the email addresses of individual Board members were available for anyone to email. The Complainant reported that she did not recall receiving the Handbook and that if it was posted on the School's website, she did not recall reading it.

The Handbook includes a section on "grievance and complaints." The section states that "a student, parent, or guardian may initiate the [grievance] procedure when they believe that a violation, misapplication, or misinterpretation of school or Board policy or state or federal law or regulation has occurred." The procedure outlines four steps of review. The first step is to make a written request to the Assistant Director within thirty days of the act that gave rise to the grievance for a conference to discuss the grievance and seek resolution. Appeals of the first step can be made to the School's Director in writing and within 10 school days of the Assistant Director's decision. The third step is a written appeal to the Executive Director within 10 school days of the School Director's decision. The fourth step is a written appeal to the School's Board within 10 school days of the Executive Director's decision. If the grievance involved the Executive Director a written appeal may be made directly to the Board. The policy goes on to state that,

"the Board may review the Executive Director's decision at the next regular Board meeting which occurs more than four (4) school days after receipt of the Grievance Notice from the parent and shall provide notice and an opportunity to be heard to the parent, guardian or

¹⁸ http://stemk12.org/wp-content/uploads/2020/07/20_21-Student_Parent-Handbook-.pdf

¹⁹ http://stemk12.org/wp-content/uploads/2021/07/2122_STEM_Communications_Pathways.pdf

student invoking the grievance written response to the student, parent, guardian, Assistant Director of Student Experience, Director and Executive Director within ten (10) school days following the review by the Board.”

The Handbook does not identify and provide contact information for the School’s compliance officer. While the Handbook includes a section titled “School’s Compliance Officer” that describes some of the compliance officer’s duties, it identifies the compliance officer as “TBD” and does not include contact information.

The Handbook states that the School will keep the District updated of any complaints forwarded to the School by the District by notifying the District’s “Choice Programming Office.” The Handbook also states that the School shall notify the District’s Choice Programming Office of the resolution of the complaint within 30 business days of the resolution.

According to the communication pathways document, questions about School policies can go to the Board Chair. The Complainant included the Board Chair’s email address in her December 1, 2020 email.

Analysis

The grievance procedure in the Handbook fails to include certain components necessary for the prompt and equitable resolution of disability discrimination complaints. For example, it does not identify an individual or individuals responsible for coordinating the School’s efforts to comply with and carry out its responsibilities under Section 504. It does not notify the complainant that they may present evidence or offer witnesses. The procedures do not describe the steps the School will take to conduct an investigation.

Additionally, the Complainant followed the direction of the District’s ADA coordinator, and the School’s grievance procedures, by submitting her appeal of the Executive Director’s decision to the School’s Board. However, despite following the District’s direction and the School’s grievance procedures, the Complainant did not receive a response to her discrimination complaint.

Therefore, we find that the School’s grievance procedures are not consistent with the requirements of Section 504 and Title II, and that the School violated Section 504 and Title II when it failed to respond to the Complainant’s December 1, 2020 written appeal of the discrimination complaint.

Conclusion

OCR finds that the School violated Section 504 and Title II when it denied the Student’s request to bring her service dog to the School. OCR also finds that the District’s and School’s Service Animal Procedure does not meet the requirements of Section 504 and Title II. Additionally, the School’s grievance procedures are not consistent with the requirements of Section 504 and Title II. Finally, OCR finds that the School violated Section 504 and Title II when it failed to respond to the Complainant’s December 1, 2020 discrimination complaint. OCR found insufficient evidence that the District or School denied the Student a FAPE when the School denied the Student’s request to have her service dog with her at the School.

To resolve the aforementioned violations the District and School have agreed to the attached Resolution Agreement (Agreement). When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations.

This concludes OCR's investigation of the allegations and should not be interpreted to address the District's or School'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.

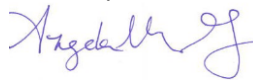
Please be advised that the District and School may not harass, coerce, intimidate, retaliate or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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 and School's prompt attention to this matter and cooperation. If you have any questions or concerns, you may contact XXXX, the attorney assigned to this case, at XXXX or XXXX.

Sincerely,



Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Penny Euker, Executive Director, STEM Highlands Ranch
Wendy Jacobs, Deputy General Counsel, Douglas County School District
Mary Gray, Attorney for the School, Semple, Farrington, Everall & Case, P.C.
Katy Anthes, Colorado Commissioner of Education