



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

July 20, 2021

Mr. George S. Welsh, Superintendent
Cañon City Schools
101 North 14th Street
Cañon City, CO 81212

Sent via email to george.welsh@canoncityschools.org

Re: Cañon City Schools
OCR Case Number: 08-21-1137

Dear Superintendent Welsh:

We write to inform you of the resolution of the above-referenced complaint, filed on February 25, 2021, against Cañon City School District (District) at XXXX (School), alleging discrimination based on disability and retaliation. Specifically, the Complainant alleged that the District failed to implement the Student's Section 504 Plan; sent the Student home due to elevated blood sugar levels; and refused to provide her with the Student's diabetes related records, in retaliation for complaints the Complainant raised.

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; 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, regardless of whether they receive federal financial assistance. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. 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 25, 2021, we notified the District that OCR was opening an investigation of the allegations, and we sent the District a data request. The parties agreed to Facilitated Resolution Between Parties (FRBP) on March 31, 2021. The parties did not come to an agreement at FRBP, and the case was returned for investigation on May 2, 2021. The District fulfilled OCR's data request on May 12, 2021.

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 allegations. OCR determined that resolving the allegations with an agreement (Agreement), without concluding the

investigation, was appropriate pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On June 9, 2021, we sent the District a proposed Agreement. The District sent OCR a fully executed Agreement on July 20, 2021. Attached is a copy of the signed Agreement.

Legal Standards

The Section 504 regulations at 34 C.F.R. Section 104.33(b) states that the provision of a free and appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities. Section 104.35(c)(3) requires that in making placement decisions, school districts must ensure that the placement decision is made by a group of persons that includes persons knowledgeable about the child. Section 104.4 provides that no qualified student with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To find a *prima facie* case of retaliation, each of the following three elements must be established:

1. an individual engaged in a protected activity, and the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future;
2. an individual experienced an adverse action caused by the recipient; and
3. there is some evidence of a causal connection between the adverse action and the protected activity.

An act is an adverse action if it is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

If all of the elements of a *prima facie* case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation, or whether the recipient had multiple motives for taking the adverse action.

Background

The Student was X years old and a XXXX student at the School, with a Section 504 Plan (Plan) related to her diagnosis of XXXX diabetes. The Plan in effect during the relevant period was dated XXXX. Both parties reported that during the relevant period management of the Student's diabetes at the School extended beyond the accommodations listed in the Plan and included a XXXX health care provider's order (Provider's Order), a XXXX Individualized Health Plan (IHP), and the Colorado Standards of Care for Diabetes Management in the School Setting

(Standards). The Provider's Orders, IHP, and Standards were not referenced or otherwise incorporated in the Student's Plan.¹

Allegation Details from the Complainant

The Complainant alleged that during the 2020-2021 school year the District denied the Student a Free and Appropriate Public Education (FAPE) when it failed to provide the Student with insulin and check her ketone levels as indicated in her Plan. The Complainant also alleged that the District engaged in disability-based discrimination when it sent the Student home due to elevated blood sugar levels. Additionally, the Complainant alleged that the District engaged in retaliation when it refused to provide the Complainant with the Student's diabetes related records, in retaliation for complaints the Complainant raised, regarding the District's alleged failure to implement the Student's Plan.

Resolution Agreement

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504 and Title II 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 allegations 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

¹ The District asserted that the Student's Provider's Order was attached to the Student's Section 504 Plan but, due to the way the documents were compiled into one .pdf to provide to OCR, the individual .pdf names were lost. The District reported relying on the IHP and Standards in accommodating the Student's diabetes. Those documents were not attached, referenced, or otherwise incorporated in the Student's Plan.

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 XXXX, the attorney assigned to this case, at XXXX or XXXX.

Sincerely,



Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Melissa Barber, Attorney for the District
Katy Anthes, Colorado Commissioner of Education