



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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May 17, 2023

Erin Kane, Superintendent
Douglas County School District
620 Wilcox Street
Castle Rock, Colorado 80104

via email only to erin.kane@dcsdk12.org

Re: **Douglas County School District**
OCR Case 08-21-1177

Dear Superintendent Kane:

On March 29, 2021, the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) received a complaint alleging discrimination against individuals with disabilities. Specifically, the Complainant alleged that Douglas County School District (District), at the Transition Bridge Program (Bridge), during the 2020-2021 school year (SY), failed to implement the Individualized Education Programs (IEPs) of students enrolled in Bridge (Bridge Students) (Allegation 1). Additionally, the Complainant alleged that the District failed to educate Bridge Students in the least restrictive environment (LRE) (Allegation 2). Finally, the Complainant alleged that the District subjected Bridge Students to different treatment based on disability by not including them in the District's summer extended learning plan (Allegation 3).

OCR is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulations, 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 regulations, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities, regardless of whether they receive federal financial assistance. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

OCR's investigation consisted of requesting and reviewing records from the Complainant and the District and interviewing the Principal of Bridge (Principal) and the District's Special Education Director (Director), who supervises the Principal. On December 16, 2021, the District expressed an interest in taking voluntary action to resolve Allegation 1 and OCR determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On February 13, 2023, OCR sent the District a proposed Resolution Agreement (Agreement). The District sent OCR a fully executed Agreement on May 16, 2023. Enclosed is a copy of the signed Agreement. OCR found insufficient evidence to support Allegations 2 and 3.

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

Legal Standards

Free Appropriate Public Education

The Section 504 regulations, at 34 Code of Federal Regulations (C.F.R.) Section 104.33, require school districts to provide a FAPE to all students with disabilities in their jurisdictions. 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 Section 504 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the FAPE requirements. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii)-(iii), to require public school districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Least Restrictive Environment

The Section 504 regulations, at 34 C.F.R. Section 104.34(a), require that a student with a disability be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. School districts must place students with disabilities in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily.

Different Treatment

Under the Section 504 regulations, at 34 C.F.R. Section 104.4(a) and (b), 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 which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. Section 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. Section 104.4(b)(1) and 28 C.F.R. Section 35.130(b)(1), a recipient public school district may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit, or service.

A student with a disability is a qualified individual with a disability if the student is of an age at which: students without disabilities are provided elementary and secondary educational services; or it is mandatory under State law to provide elementary and secondary educational services to students with disabilities. A student with a disability is also a qualified individual with a disability if he or she is a student to whom a state is required to provide a FAPE under the IDEA.¹

Background

¹ See 34 C.F.R. Section 104.3(l)(2); *Parent and Educator Resource Guide to Section 504*, U.S. Dept. of Educ., Office for Civil Rights, p. 9 (Dec. 2016).

The District's Bridge Program is designed for students with disabilities between the ages of 18-21, who have aged out of the general educational setting. The program's emphasis is on vocational training and training in life skills.²

Allegation 1: The District allegedly failed to implement the IEPs of students enrolled in the Bridge.

Findings of Fact

The Complainant alleged that 98 students were enrolled in Bridge during the 2020-2021 school year and that during the 2020-2021 school year, the District failed to provide them with the 1,470 minutes per week of community-based instruction that were included in each of their IEPs. The District provided OCR with a list of students enrolled in Bridge during the 2020-2021 school year, which totaled 119 students. The District also provided OCR with IEPs for each Bridge Student,³ as well as the transition service logs for each Bridge Student during the 2020-2021 school year. The District explained that during the 2020-2021 school year, Bridge Students were in-person Monday through Thursday, with remote learning on Friday through spring break which occurred in late March 2021. After spring break, Bridge Students were in-person five days per week. The District reported that Bridge Students had the option to attend virtually or on a hybrid schedule that combined remote and in-person learning. The District reported that the only exception to this schedule was between the Thanksgiving holiday and winter break of 2020 when the entire District was in remote learning.

During an interview with the principal of the Bridge program (Principal), she explained that because the Bridge Program is designed for students with disabilities aged 18-21, all Bridge Students receive transition services, but those services differ for each student. The Principal explained that all Bridge Students fall somewhere between high functioning and low functioning; some students are non-ambulatory and non-verbal and other students take college classes at a community college or work a part-time job. The Principal stated that the IEPs of Bridge Students do not delineate how many hours of instruction will be in the community versus the classroom and that she was unaware of any Bridge Student's IEP that specified they would be at community-site for a particular number of hours because Bridge does not specify hours of community-based instruction in Bridge Student's IEPs. The Principal explained that was because there may be circumstances out of their control, like the weather, that could impact how much instruction was delivered in the community versus the classroom. The Principal asserted that all Bridge Students had their transition service hours met during the 2020-2021 school year.

² As described on the District's website, "at Bridge, students work on independent living skills, community access skills, and pre-employment skills. We strive to have our students build independence through communication, collaboration, critical thinking, creativity, system thinking, health/wellness, civic responsibility, financial literacy, global awareness, resiliency, and problem solving." See

https://www.dcsdk12.org/schools_academics/schools/transition_bridge_program.

³ OCR requested that the District provide a copy of all IEPs in place for all Bridge students during the 2020-2021 school year. Many of the IEPs provided were drafted during the 2020-2021 school year and the District did not provide copies of previous IEPs, which would have been in effect at the start of the 2020-2021 school year and through the date of the IEP that OCR received. For example, if the District provided OCR with a student's IEP that was drafted in April 2021, the District did not provide the IEP that was drafted previously and would have been in effect from August 2020 until April 2021. During the monitoring phase of the resolution agreement, OCR will obtain and review previous and current IEPs to ensure compliance with Section 504.

During a review of the IEPs that were provided, OCR found that each Bridge Student's IEP included community-based instruction as a transition service. However, the amount of community-based instruction minutes varied per student. Each IEP contained statements that specified how many minutes per week of community-based instruction students would receive, contrary to the Principal's assertion. For example, one IEP specified that a student would receive 300 minutes of direct instruction inside the general education classroom and that inside the general education classroom was defined as time in the community, such as grocery shopping, community activities, and volunteer worksites. Another IEP specified that a student would receive 6.5 hours per week of "direct instruction inside general education" and examples of that setting were grocery shopping and volunteer work sites. A third example included the following statement, "[the student] will receive 300 minutes per week of direct instruction inside general education classroom, which reflects time spent in the community (grocery shopping, community activities, volunteer work sites)." Every IEP OCR reviewed specified that Bridge Students, whose LRE is a separate school without access to the general education setting, would receive some amount of time in the general education setting, and that the general education setting was defined as the "community," with examples of community being "grocery shopping, community activities, and volunteer work sites." However, none of the IEPs that OCR reviewed included amounts of community-based instruction approaching the 1,470 minutes of community-based instruction alleged by the Complainant. The amount of time alleged by the Complainant most likely reflected the total amount of weekly minutes in Bridge, the majority of which were projected to be in the classroom and not in the community.

The Principal informed OCR that during the 2020-2021 school year, except for two parents,⁴ most parents did not want their student to participate in community-based instruction because of safety reasons due to the COVID pandemic. The Special Education Director (Director), who supervises the Principal, made similar statements in an interview with OCR. She stated that both parents and Bridge community partners and employers were hesitant to have students go to community-based sites because of the pandemic. She also asserted that restrictions imposed by the state and local health departments and District impacted the availability of community-based instruction. The Principal clarified that the inability to instruct students in the community did not prevent them from working on community-based skills in the classroom. She further stated that students also worked on job skills in the classroom.

OCR's review of service logs for the 2020-2021 school year indicated that several Bridge Students had multiple entries which stated that transition services were not provided because the student was absent. Additionally, many transition service logs did not clearly indicate whether the transition service logged was provided at a community-based site.

At this stage of the investigation, OCR identified the following: (1) the IEP of every Bridge Student specified an amount of time that a student would receive community-based instruction; (2) service logs kept by the District do not specify which services, if any, were provided at a community site; (3) both the Principal and Director were unaware that the IEPs of every Bridge Student specified an amount of community-based instruction; and (4) IEP teams were recording time spent in community-based instruction as time spent in the general education setting and factoring that time into the student's LRE. For example, if a student was to receive 300 minutes per week of community-based

⁴ The Principal asserted that Bridge staff provided community-based instruction, specific to worksite training for those two students after their parents raised a request that their students receive instruction at a specific worksite. That worksite was a bakery owned by one of the parents that made the request.

instruction the District recorded that the student spent 19% of the time in the general education setting⁵ when in fact the student was outside of the general education environment 100% of the time.

The District expressed an interest in resolving Allegation 1 with a Resolution Agreement pursuant to Section 302 of OCR's CPM.⁶ OCR determined that a 302 Resolution Agreement was appropriate and the term in the attached Agreement is tied to the allegation, and the evidence obtained during the investigation and will be consistent with applicable regulations. The Agreement will provide parents with an opportunity to raise any concerns they may have regarding the implementation of community-based instruction during the 2020-2021 school year.

Allegation 2: The District allegedly failed to educate Students in Bridge in the least restrictive environment. Specifically, the Complainant alleged that, because Bridge Students did not receive the community-based transition services to which they were entitled, they were not exposed to an environment that included individuals without disabilities.

Findings of Fact

The IEPs of Bridge Students indicate that they are placed in a separate school and without access to general education peers in the educational environment. This is a determination made by their IEP teams. According to the District, Bridge is designed for students with disabilities between 18-21 years old, that have graduated from high school, and require transitional services. The District also stated that the Bridge is the most restrictive setting short of home or hospital instruction. Additionally, the District stated that there are no non-disabled students who participate in Bridge. Similarly, there are no programs in the District for students aged 18-21 without disabilities.

Analysis

Bridge is designed to provide transition services for students with disabilities who are 18-21 years old; therefore, there is no reasonable expectation that Bridge students would have access to general education classes or general education students. Therefore, while it true that Bridge Students are not placed with nondisabled peers, that is by design and as a result of a placement decision made by those students' IEP teams. Disagreements with a placement decision are a matter for a due process complaint.⁷ To the extent that the Complainant alleges that the District failed to provide community-based transition services, OCR is addressing this specific allegation in Allegation 1. Based on all the facts and information provided by the complainant and the District, OCR finds insufficient evidence to support Allegation 2.

Allegation 3: The District treated Bridge Students differently based on disability by not including them in the District's summer learning program

⁵ Based on OCR's review of the IEPs, there appeared to be 1,650 total minutes of instruction, per week.

⁶ Pursuant to Section 302 of OCR's *Case Processing Manual*, an allegation under investigation may be resolved at any time when, prior to OCR issuing a draft letter of findings, a recipient of federal financial assistance or public entity expresses an interest in resolving the allegation and OCR determines that it would be appropriate to resolve the allegation.

⁷ Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by an IEP team that is properly constituted and that takes appropriate actions in light of the requirements of due process.

Findings of Fact

The District has a summer learning program that is designed for and offered to K-12 students and primarily focused on the opportunity for students to catch up on credits needed for graduation. The Bridge program is not a part of the District's K-12 program and is designed as a transition program for special education students aged 18-21. The District described the closest alternative to the K-12 summer learning program for Bridge Students is the use of Extended School Year (ESY) services when necessary and appropriate and that IEP teams do consider whether Bridge students qualify for (ESY) services during IEP meetings.

Analysis

Based on these facts, OCR has determined that there is no reasonable expectation for Bridge Students to participate in the K-12 summer learning program because Bridge Students have completed the credit requirement and graduated from high school. OCR found that the District provides ESY for Bridge Students when a Student's IEP team determines that a Student has a need for ESY. Based on OCR's review of Bridge Student IEPs and service logs during the 2020-2021 school year, OCR identified Bridge Students that were offered and provided with ESY services during summer 2021. Therefore, OCR finds insufficient evidence to support Allegation 3.

Conclusion

OCR found insufficient evidence to support Allegations 2 and 3. The District entered into a 302 Resolution Agreement (Agreement) to resolve Allegation 1. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issue will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. OCR will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of our monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, stating that this case is closed.

The Complainant has a right to appeal OCR's insufficient evidence determinations for Allegations 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in an investigation are protected by federal law against harassment, retaliation, or intimidation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we 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 courtesy and cooperation that you and District staff extended to us during the investigation and resolution of this case. If you have any questions, please contact the Equal Opportunity Specialist assigned to this case, Rachel Phillips-Cox, at (303) 844-4559 or rachel.phillips-cox@ed.gov.

Sincerely,

/S/

Daniel Contreras
Supervisory Attorney

cc: Judy Jordan, Bridge Principal (jajordan@dcsdk12.org)
Wendy Jacobs, District Deputy General Counsel (wjacobs@dcsdk12.org)
Mary Kay Klimesh, District General Counsel (MARY.KLIMESH@dcsdk12.org)
Katy Anthes, Colorado Commissioner of Education (anthes_k@cde.state.co.us)