



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

November 21, 2022

Dr. Rob Anderson, Superintendent
Boulder Valley School District
6500 Arapahoe Rd.
Boulder, CO 80303

By email only to XXXX@XXXX

Re: OCR Case No. 08-22-1272
Boulder Valley School District

Dear Dr. Anderson:

This letter is to advise you of the outcome of the complaint that the United States Department of Education (Department), Office for Civil Rights (OCR) received on February 28, 2022, against Boulder Valley School District (the District). The complaint alleged that the District discriminates against students on the basis of their national origin and disabilities. Specifically, the complaint alleges that the District fails to provide students at XXXX XXXX School (the School) who need both English Language Development (ELD) services and special education services with ELD services.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 and a public entity, the District is subject to these laws and regulations.

Background

On April 27, 2022, we notified the District that OCR was opening an investigation of the above allegation. In a September 15, 2022 email, the District indicated that it was interested in voluntarily resolving the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified

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

concerns can be addressed through a voluntary resolution agreement. OCR has determined that the concerns identified during the course of the investigation can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint. The following is a discussion of the relevant legal requirements and information obtained by OCR during the investigation that informed the development of the voluntary Resolution Agreement (Agreement) in this case.

Under Title VI, school districts must provide equal educational opportunity to EL students, including taking affirmative steps to address the language needs of EL students. Recipients must ensure that EL students with disabilities under the Individuals with Disabilities Education Act (IDEA) or Section 504 receive the services that meet their language needs and the services that meet their special education needs. School districts must ensure that an EL student who has been evaluated and determined to be eligible for ELD services and disability-related services is provided with both ELD services and disability-related services.

OCR's investigation included interviewing the Complainant; reviewing documents pertinent to the complaint allegation, including information, records, and data from the District; and interviewing five current or former District staff, including a District administrator, a principal, and three teachers. The investigation did not reach the point of assessing the veracity of the information presented by the District; additional requests for data and records and additional interviews would have been requested in a full investigation.

Investigation to Date

During the course of the investigation, OCR learned the following:

The School is a neighborhood public school located in XXXX, Colorado. The School serves approximately X students from preschool through grade five. The District has a Director of Culturally and Linguistically Diverse Education, a Language Assessment Specialist, and an Assistant Superintendent for Opportunity and Access. The Assistant Superintendent for Opportunity and Access is a new position, created in 2022, with the mission of creating opportunity for all students and providing equitable access through clear systems.

The District's data response stated that, during the 2021-22 School Year (SY), the School had X EL students who received ELD services, X students who received special education services, and X students who received both ELD services and special education students. Students who receive both ELD services and special education services are dual services students.

Interviews with District staff confirmed that the School had X dual services students and that all X dual services students received both ELD services and special education services during the 2021-22 SY. The interviews clarified that the School determined that it will provide 30 minutes of daily pull-out direct ELD services to EL students who are in kindergarten and 45 minutes of daily pull-out direct ELD services to EL students who are in grades 1 through 5. According to the interviewees, all X dual services students received pull-out ELD services during the School's daily 45-minute "Enrichment Block," also called the "E Block," from a now-retired teacher with

a Culturally and Linguistically Diverse (CLDE) endorsement from the state of Colorado. All X dual services students also received special education services during the E Block. District staff noted that there was sometimes tension between the ELD services teacher and special education teacher regarding scheduling services because both ELD services and special education services were provided during the E Block. Although the ELD services teacher sometimes provided direct ELD services outside of the E Block and provided push-in direct ELD services in general education classrooms, there were some concerns that X or X of the dual services students did not receive the full amount of direct ELD services time. There were no concerns that the dual services students missed any special education services time. The School does not currently have a process that ensures that EL students receive the full ELD services that the School determined that the EL students need.

During interviews with District staff, OCR also learned that the School has had a Colorado CLDE endorsed teacher dedicated exclusively to providing direct ELD instruction since at least 2002. The School currently has a Colorado CLDE endorsed teacher dedicated exclusively to providing direct ELD instruction, in addition to general education teachers who also have Colorado CLDE endorsements. X of the X dual services students were in general education classrooms with teachers with Colorado CLDE endorsements. The general education teachers provided ELD support to EL students when able, but were not told whether dual services students required additional direct ELD services. The School does not have a plan specifying how or when general education teachers will deliver direct ELD services.

During interviews, District administrators highlighted that the School's EL students are high performers as measured by ACCESS scores; ACCESS tests a student's progress in learning English. District administrators also highlighted that all X dual services students made significant progress in achieving English language proficiency during the 2021-22 SY and that one dual services student made so much progress, that the student was identified as needing a Gifted and Talented programming assessment; the student had ACCESS growth in the X% percentile.

Based on the information learned through the interviews and data response, OCR noted concerns that there was ambiguity in how a dual services student would receive the full amount of ELD services if the amount of required ELD services and special education services exceeds the E block time and that it appeared that X or X of the dual services students may not have received the full amount of ELD services that the School determined the students needed.

Resolution

As previously noted, in a September 15, 2022 email, the District expressed a willingness to voluntarily resolve the complaint. OCR has determined that the concerns identified during the course of the investigation can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint. On October 6, 2022, we sent the District a proposed Agreement. The District sent OCR the enclosed signed Agreement on November 17, 2022. When fully implemented, the Agreement will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the

allegation and with the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statutes and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1272 and will send a letter to the Complainant and to the District stating that the case is closed.

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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testified, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Please note the Complainant 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for being willing to voluntarily address the allegation raised by the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XXXX, the OCR attorney assigned to this complaint, at XXX-XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Attachment: Resolution Agreement

cc: Katy Anthes, Colorado Commissioner of Education (*via email only and without attachment*)