



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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November 7, 2022

Ms. Becky Bonner
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cc:

Ms. Erin Kane
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Ms. Wendy Jacobs
Deputy General Counsel
Douglas County School District
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Via email only

Re: OCR Case No. 08221371-Douglas County School District

Dear Superintendent Kingsley:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint. On May 2, 2022, OCR received a complaint against the Douglas County School District (DCSD, District, or Recipient) from Complainants alleging that Platte River Academy (School) personnel discriminated against their son (Student) based on disability when it failed to evaluate or reevaluate the Student prior to making a change in placement. Specifically, Complainants allege that on April 29, 2022, the School principal stated that they would be required to participate in a daily meeting before the Student was permitted to attend class without properly evaluating the Student or convening his Section 504 plan/IEP team.

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

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance; Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. These statutes also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the Recipient is subject to these laws and regulations. Additional information about the laws OCR enforces is available on OCR’s website at <http://www.ed.gov/ocr>.

On September 14, 2022, OCR opened an investigation into the above allegation.

As part of its investigation, OCR conducted interviews with the Complainant and the PRA Director of Academics and Director of Operations, and reviewed over 100 pages of written data provided by the Complainant and the District/PRA, and discussed the allegation with District counsel.

The following facts are undisputed. OCR’s review indicates that the Student attended PRA, a charter school in DCSD, during the 2021-2022 school year as a 4th grader. The Student is a qualified individual with disabilities and had a 504 plan, and was being evaluated for an Individualized Education Program (IEP).

OCR spoke with the PRA Director of Academics (DA) and Director of Operations (DO) and reviewed data from the District and the Complainant, including correspondence from Friday, April 29, 2022, titled “Support Plan” for the Student. The Support Plan was drafted in response to an incident that occurred on that date where the Student laid on the floor between two classrooms. The Complainants were informed of the incident and asked to get the Student. In the interim, the DO and a school resource officer were able to deescalate the situation and the Student waited calmly in an office for the Complainants to pick him up. The Student was released from school early to the care of the Complainants.

OCR reviewed documentation from PRA that indicated the Student engaged in a number of behaviors over the previous weeks, including outbursts, dysregulation, non-compliance, damaging school property, and other behaviors PRA staff deemed to compromise the safety of the Student and his peers. Accordingly, the DO and DA, in the Support Plan, indicated that the Student “will not be reintegrated into the classroom until we see that he is responsive and compliant with PRA staff. We must ensure that [the Student] and all 4th grade staff and students are safe; this can only occur if [the Student] readily responds to adults.” To ensure this, the Support Plan indicated that, beginning Monday, May 2, 2022, “A parent will be required to bring [the Student] into school each day to meet in a designated space...At that time, we will check in to determine [the Student]’s attitude and mood to make sure he is ready for the day. If [the Student] does not demonstrate readiness for the learning environment, he will not be permitted to stay at school.”

The Complainants and PRA staff determined that the Student had enough credits to graduate from 4th grade and the Complainants decided not to bring the Student back to PRA for the remainder of the year. Accordingly, the Support Plan was never actually implemented. Shortly thereafter, the Student was withdrawn from PRA and now resides outside of DCSD and attends a school in his home district.

PRA did not convene a 504 team to draft or discuss the Support Plan. The Support Plan was drafted by the DO and DA. This is a concern to OCR because significant changes in placement for a qualified student with disabilities must be considered by a 504 team. Here, since the Student did not return to PRA after the Complainant's received notice of the Support Plan, it is unclear whether the Student's placement would have changed. Regardless, this is a concern for OCR.

After OCR communicated this concern to DCSD and PRA staff, the DCSD and PRA asked to voluntarily resolve the allegation under investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), which provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. Although OCR had identified a concern regarding the issue under investigation, OCR had not yet reached a full compliance determination.

On November 4, 2022, the District voluntarily signed and submitted to OCR a Resolution Agreement (Agreement) to resolve the issue under investigation. DCSD and PRA voluntarily agreed to audit its policies and procedures concerning evaluating or reevaluating students prior to a significant change in placement, and to train relevant personnel on its obligations under Section 504 and Title II to properly evaluate or reevaluate students prior to a significant change in placement and the prohibition of different treatment of individuals based on disability. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the allegation under investigation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that DCSD and PRA will fulfill its obligations under Section 504 and Title II with respect to the allegation under investigation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the District's implementation of the Agreement.

Effective the date of this letter, OCR concludes its investigation of the above referenced allegation. This letter should not be interpreted to address any issues other than those addressed therein.

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.

Please be advised that a recipient 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, an individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, OCR will seek to protect to the extent provided by law personal information that if released, could constitute an unwarranted invasion of privacy. Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

If you have any questions about this letter, please contact Mr. Craig Nydick, the attorney assigned to this complaint, by telephone at (303) 844-7104 or by email at craig.nydick@ed.gov. You may also reach me at (303) 844-6086 or via email at michael.todd@ed.gov.

Sincerely,

Michael D. Todd
Supervisory Attorney
Office for Civil Rights
Denver Office