



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

January 6, 2023

Terry Croy Lewis, Executive Director
Colorado Charter School Institute
1600 Broadway, Suite 1250
Denver, Colorado 80202

by email only to XXXX@XXXX

Re: Colorado Charter School Institute
OCR Case 08-22-1596

Dear Terry Croy Lewis:

This letter is to notify you of the disposition of the above-referenced case stemming from a complaint filed with the U.S. Department of Justice on September 2, 2022 and forwarded to the U.S. Department of Education (Department), Office for Civil Rights (OCR) on September 14, 2022. On October 7, 2022, OCR opened an investigation into whether Coperni 2 (School), a Colorado Charter School Institute (CSI) school, subjected the Student to discriminatory different treatment when it denied him admission or enrollment because he has a gastrostomy tube and needs feeding assistance.

OCR conducted this investigation under Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulations, 28 C.F.R. Part 35, which prohibit discrimination based on disability in programs or activities receiving federal financial assistance and public entities, respectively. As recipients of federal financial assistance from the Department and public entities, the School and CSI are subject to Section 504, Title II, and their regulations.

Based on information from the Complainant and School, documentary evidence, and interviews of the Complainant and the School's former principal (Principal),¹ OCR found, by a preponderance of the evidence, that the School, prior to finalizing the Student's enrollment: (a) impermissibly inquired about "health concerns" and medications and requested a copy of the Student's individualized education program (IEP); and (b) counseled the Complainant out of enrolling the Student in the School because of the Student's disability or disability-related needs.

¹ The Principal was in her position at the School during the relevant time period for this case; however, she no longer worked at the School at the time OCR opened an investigation of the allegation.

I. Legal Standards

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

Recipients are prohibited from discriminating on the basis of disability in application and enrollment processes, including through use of criteria that screen out or tend to screen out applicants with disabilities. Therefore, any pre-enrollment inquiry about disability during the charter school application and admissions process is generally prohibited as unnecessary different treatment on the basis of disability under Section 504 and Title II.² Examples of impermissible pre-enrollment inquiries include an inquiry, during an informal conversation with a prospective student's parent, about whether the student has an IEP or a request for a student's current IEP. Additionally, it is not permissible for a charter school to counsel a prospective student's parent against enrolling in a charter school because of the student's disability, because the student currently has an IEP, or because the recipient does not want to incur costs that are necessary to provide services or accommodations to a prospective student with a disability. This practice is commonly referred to as counseling out.

II. Background

CSI authorizes Colorado charter schools that are not authorized by traditional school districts.³ It oversees over 40 charter schools that serve over 20,000 students.⁴ CSI authorized and oversees the School.⁵ The School, located in Colorado Springs, serves students in kindergarten through eighth grade.⁶ The School is operated by Third Future Schools, a network of charter schools in Texas and Colorado.⁷

The Student is in kindergarten. He is dependent on a gastrostomy tube (g-tube) and needs to be fed by a nurse at School once per day.

² The exceptions to this prohibition apply where the charter school is using that information solely to enhance the chances for a student with a disability to be admitted or enrolled for required remedial action or permissible voluntary action, or where a school is chartered to serve the educational needs of students with a specific disability and the school asks prospective students if they have that specific disability.

³ C.R.S. § 22-30.5-501(2)(a).

⁴ "CSI Overview," <https://www.csi.state.co.us/wp-content/uploads/2022/07/CSI-Overview.pdf> (last visited Nov. 18, 2022).

⁵ CSI Portfolio of Schools, <https://www.csi.state.co.us/schools/> (last visited Nov. 18, 2022).

⁶ Coperni 2, <https://www.coperni2.org/> (last visited Nov. 18, 2022).

⁷ Third Future School, <https://www.thirdfuture.org/> (last visited Nov. 18, 2022).

III. Findings of Fact

On March 9, 2022, the Complainant completed the School's online application/registration form. The form asked for basic information, such as parent names and contact information, emergency contact information, and student date of birth, grade, sex, and last school attended. The form also asked about student interests, whether the student has been expelled within the last school year, what "attracted" the family to the School, and how the family heard about the School.

For the 2022-23 school year (SY), the School reportedly offered seats to students on a first come, first served basis. According to the School, the Student was offered a seat, but that seat was not "locked in" until the Complainant "completed the admissions process," which included completing an enrollment packet. The School's "Enrollment Packet" for the 2022-23 SY read, in relevant part:

In order to complete the registration process, please provide the following items to school staff by the end of May 2022: ... 6) Copy of IEP or 504 (if applicable)[.]

If your student has an IEP (Special Education Services) or a 504 plan from a previous school, our school staff will review these documents to ensure that we can meet the educational plan of your student. We will require 10 business days for this process and will contact you directly upon review of records.

Failure to submit the documents may result in your child being taken off our enrollment list in order to make room for a student on the waiting list.

The forms in the packet inquired about health information, including whether the prospective student has been diagnosed with various "health concerns" (e.g., "ADD/ADHD," "AUTISM SPECTRUM," "Emotional Condition," etc.); whether the student takes medication; whether the student currently has an IEP or Section 504 plan; and for authorization to request the student's IEP and Section 504 plan.

The School's Enrollment Policy reads, "Families will be notified by email of the receipt of their application within three business days of submitting the completed application." The Principal shared with OCR that, consistent with the enrollment policy, the School sent an email to applicants/registrants to thank them for "expressing interest" in the School and to notify them of the required steps to finalize enrollment. The Principal also told OCR that, consistent with the "Enrollment Packet," the next steps for parents of prospective students included providing a copy of the student's IEP or Section 504 plan, if the student had one, because the School needed to know whether it could serve the student given its capacity and staffing levels. The School told OCR that it could not "retrieve the actual email" that was sent to the Complainant.

The School's narrative response to OCR indicated that the School has a practice "for all applicants in which the School's principal begins two-way communication between the School and the family at the earliest possible point in the relationship." Specifically, the narrative response explained, "The School principal calls all applicants to introduce him/herself, discuss the School's program, answer any questions, and otherwise make him/herself available to the

applicant.” The Principal similarly told OCR that she called applicant parents to introduce herself, offer the students a seat, discuss the School, answer any questions, and invite parents to go to the School to pick up and complete a registration packet.

The first person at the School with whom the Complainant spoke was a front office assistant (Assistant). They spoke via phone. The Complainant told the Assistant about the Student’s medical needs. The Assistant told the Complainant that she would share the information with the Principal, who would contact the Complainant. After receiving the information from the Assistant, the Principal consulted with her supervisor, Third Future Schools’ Executive Director of Schools (Director). The Principal wrote about her conversation with the Director, “I believe he had the same concerns that I did about not having a full time nurse on staff” The School wrote to OCR about the conversation, “[The Director] informed [the Principal] to get a copy of medical orders, 504, IEP, if they existed to review; this is the School’s standard operating procedure.”

On March 28, 2022, the Principal called the Complainant. The Complainant told the Principal that the Student is dependent on a gastrostomy tube (g-tube) and needed to be fed by a nurse at School once per day. The Complainant alleged to OCR that the Principal said that the School only has a nurse two days a week, and therefore, the School could not accommodate the Student’s needs and he could not attend the School. The Complainant also alleged to OCR that the Principal told her to consider another school for the Student. According to documentation provided by the School to OCR, the Principal told the Complainant that the School was “not equipped” to meet the Student’s medical needs. Similarly, the School’s narrative response to OCR read, “[T]he Parent was informed that the School does not currently have the discussed level of medical service.” The Principal wrote in a statement to OCR:

During our discussion [the Complainant] inquired about the level of nursing support at the school, and shared with me that her student had health concerns that required a feeding tube. I transparently shared that our current staffing model did not include a full time certified nurse on campus. I expressed that we did currently have self-contained classrooms and delivered instruction primarily in general education classrooms with supports for special needs as required. I did advise [the Complainant] that it would be worth comparing this level of service to others in the area if she was concerned about this model or not having a full time nurse on site.

Next, according to the School’s narrative response to OCR, the Principal asked the Complainant to “provide a copy of the Student’s IEP so the School could fully evaluate.” The Principal told OCR that, if a parent indicated that their child has an IEP, she suggested reviewing the IEP to ensure that the School is “a good fit.”

OCR staff asked the Principal why she discussed the School’s staffing with the Complainant. She said that she tried to be transparent with parents about how the School did not have pull out programs, even for students with the highest needs. Additionally, OCR staff asked the Principal why she advised the Complainant to compare the School’s level of services to other schools in the area. The Principal explained that the Complainant needed to decide if the School was a good

option for the Student given that it does not have a full-time nurse on staff. Finally, OCR staff asked the Principal if she told the Complainant that the School could or would seek additional resources to serve the Student or if she reassured the Complainant that the Student could be served by the School. The Principal did not recall making any such statements.

The School's narrative response to OCR read, "... [T]he School acknowledges that the March 28, 2022 phone call between [the Principal] and the [Complainant] may have led to confusion on the part of the [Complainant]." As a result of her conversation with the Principal, the Complainant did not complete the School's enrollment process.

IV. Legal Analyses and Conclusions

Any pre-enrollment inquiry about disability during the charter school application and admissions process is generally prohibited under Section 504 and Title II. Yet, before the Student's enrollment in the School was finalized, the School inquired about the Student's disability. Specifically, the School sent the Complainant an email to the Complainant directing her to complete an enrollment packet that included requests for a Section 504 plan or IEP and questions about "health concerns" and "medications;" and the Principal requested a copy of the Student's IEP.⁸

Additionally, it is not permissible for a charter school to counsel a prospective student's parent against enrolling in a charter school because of the student's disability or because the recipient does not want to incur costs that are necessary to provide services or accommodations to a prospective student with a disability. Nevertheless, during their phone call on March 28, 2022, the Principal counseled the Complainant out of continuing the process of enrolling the Student in the School. The Principal did so by telling the Complainant that the School did not have the services or staffing in place to meet the Student's disability-related needs and that the Complainant should compare the School's level of services to other schools in the area. Additionally, the Principal never told the Complainant that the School would effort to secure additional services or staff for the Student, or that the School would discuss the appropriate placement for the Student after the Student's enrollment in the School was complete. After speaking with the Principal, the Complainant decided not to complete the enrollment process.

V. Conclusion

Upon being advised of the violation finding, CSI and the School entered into a Resolution Agreement (Agreement) to resolve the matters. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues 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 CSI and the School about the status of the Agreement terms. When fully implemented, the Agreement will address the violation identified by OCR. OCR will monitor the implementation of the Agreement until CSI and the School are in compliance with its terms and the statutory and regulatory obligations under Section 504 and Title II that were at issue in the case.

⁸ At this time, the School was unaware that the Student did not have an IEP.

This case is now in the monitoring phase. The monitoring of this case will be completed when OCR determines that CSI and the School have 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 CSI and the School stating that this case is closed.

This concludes OCR's investigation in this case and should not be interpreted to address CSI's or the School'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 determinations 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 CSI and the School must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 extended to OCR during the investigation and resolution of this case. If you have any questions, please contact the attorney assigned to this case, Jason Langberg, at XXXX@XXXX or (XXX) XXX-XXXX.

Sincerely,

/s/

Daniel Contreras
Supervisory Team Leader

Attached: Resolution Agreement (signed)

cc: Rafael Botello, Principal (XXXX@XXXX)
Zach Craddock, Executive Director of Schools (XXXX@XXXX)
Tim Farmer, Attorney for the School (XXXX@XXXX)
Joe Peters, Senior Assistant A.G./Attorney for CSI (XXXX@XXXX)
Katy Anthes, Colorado Commissioner of Education (XXXX@XXXX)