



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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October 27, 2023

Michael Gaal, Superintendent
Colorado Springs School District 11
1115 N. El Paso St.
Colorado Springs, CO 80903

by email only to: [redacted content]

Re: Colorado Springs School District 11
OCR Case 08-23-1320

Dear Superintendent Gaal:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation stemming from a complaint, filed on March 20, 2023, against Colorado Springs School District 11 (District) at [redacted content] (School). The Complainant alleged that the District discriminated against his daughter (Student) on the basis of her disability. Specifically, the Complainant alleged that the District failed to implement the Student's Section 504 Plan during a School-sponsored after school program, during school year (SY) 2022-2023.

OCR enforces 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 financial assistance; 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 included interviewing the Complainant, the School's director of the Program (Director), the School's principal (Principal), and the School Psychologist/Section 504 Coordinator (504 Coordinator). OCR also reviewed records from the District and the Complainant. Based on information and records from the Complainant and District, and interviews of the Complainant and District staff, OCR found, by a preponderance of the evidence, that the District discriminated as alleged.

During the course of OCR's investigation, OCR identified additional violations of Section 504. OCR found by a preponderance of the evidence the District has not adopted Section 504 policies and procedures pertaining to the identification, evaluation, and placement of students with disabilities and the District's grievance procedures and procedural safeguards are not in compliance with Section 504 and its implementing regulation. OCR also identified a compliance concern during the course of its investigation. Specifically, OCR is concerned that not all individuals tasked with the implementation of Individualized Education Programs (IEPs) and Section 504 Plans (e.g., paraprofessionals) have

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adequate access to the IEPs and Section 504 Plans of the students they work with. The reasons for OCR's conclusion are set forth in this letter.

I. Alleged Failure to Implement the Student's Section 504 Plan

a. Legal Standards

Under the Section 504 regulation, 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 that receives Federal financial assistance. The Title II regulation, 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 disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient public school districts to provide a free appropriate public education (FAPE) to all qualified 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 34 C.F.R. §§ 104.34-36. The educational and related services offered as a part of FAPE must also be provided without cost to the person with a disability or to his or her parents or guardian, except for those fees that are imposed on persons without disabilities or their parents or guardian. 34 C.F.R. § 104.33(c). Conversely, a recipient's failure to implement an IEP or Section 504 Plan may result in the denial of FAPE. OCR interprets the Title II regulation, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require public school districts to provide a FAPE at least to the same extent required under the Section 504 regulation.

b. Findings of Fact

The District launched an after-school enrichment program (Program) at the School during SY 2022-2023. According to the District, the Program had an average of four staff members and 30-45 students per day. The staff members consisted of paraprofessionals, lunchroom staff, the 504 Coordinator and a School counselor (Counselor).

The Student attended the Program during SY 2022-2023. In November 2022, following a number of behavioral incidents in the Program, the Student was evaluated and determined to be eligible for a 504 Plan. The Student's 504 Plan was designed to address the Student's behaviors in the Program. According to the District and Complainant, the Student did not have frequent behavioral issues during the regular school day and her behaviors were limited to the Program.

The Student's November 30, 2022 504 Plan, required the District to provide non-verbal strategies for the Student to express her frustration and to indicate when she needs a break. Specifically, the 504 Plan states, "implement self-monitoring strategies as needed-[Student] wears a lanyard to indicate when she needs a break. It is important for her to have non-verbal ways to indicate that she is frustrated or how she is feeling." All parties reported that the 504 Plan required the Student to wear a

lanyard daily during the Program. The lanyard was to be stored at the Program and Program staff were tasked with providing the lanyard to the Student at the beginning of the Program and collecting it from the Student at the end of the Program, each day. According to the parties, the lanyard had a card on it and one side of the card indicated if the Student needed a break and the other side indicated that the Student did not need a break. If the Student used the lanyard to indicate she needed a break, she would receive a break that would provide her with space to de-escalate.

According to the District, the Student did not always wear the lanyard, for a variety of reasons including: the Student's good behavior, the Student losing the lanyard at home, and the Student refusing to wear the lanyard. The Complainant told OCR that the Director told him there were also times Program staff did not implement the Student's 504 Plan because of staffing issues. The District's position statement on this issue was contradictory. The District stated, "[i]t is possible there were a few occasions where the 504 Plan could not be implemented because of the large number of students in the Program, the small number of regularly assigned staff, and the needs of other students." However, the District also denied the same allegation in its position statement by stating, "[i]f that were the case, the District could have removed the Student from the Program because hiring one or more additional staff members for the Program would not be reasonable and would require the District to fundamentally alter the nature of the program." During an interview, the Director told OCR that there were days when there were very few staff members and so many students that the staff would forget to provide the Student with her lanyard. The Director also said that this scenario came up "quite often."

Additionally, according to the District, the Director told the Complainant, "that she did not follow the 504 Plan on occasions when Student was behaving well since doing so was not necessary." The Director told OCR that the Student did not like to wear her lanyard so there were times she did not have the Student wear her lanyard if she was behaving well. The Director said she would not require the Student to wear the lanyard, nor would she provide the lanyard to the Student to wear if the Student behaved well the previous days. The Director told OCR her understanding was that the goal of a 504 Plan is to have a student "graduate off of a 504" so that the student will no longer need a 504 Plan and she believed the Student did not need to wear the lanyard when she was doing well.

Furthermore, the District and Complainant told OCR there were times the Student did not have the lanyard because she accidentally brought it home the day before and left it at home. The Principal told OCR the implementation of the Student's 504 Plan became inconsistent because the Student refused to wear the lanyard at times and took the lanyard home and lost it. The Complainant believed it was the Program staff's responsibility to remind the Student to take off the lanyard each day. The Director told OCR that on the days the Student did not have the lanyard, she instructed the Student to tell Program staff verbally if she needed a break. The Student's 504 Plan, however, required the District to provide the Student with non-verbal ways to indicate that she is frustrated, and the District did not provide alternate non-verbal strategies on the days she did not have the lanyard.

The Student's behaviors continued in the Program throughout the school year. According to the District and the Complainant, the School contacted or attempted to contact the Complainant on several occasions to pick the Student up early from the Program due to her behaviors. The District stated, "on occasions when Student was violent, Program staff had called her parents to pick her up early, but her parents eventually stopped answering their telephones, even though, on information and belief, one parent works from home." The Director estimated that she attempted to contact the

Complainant five times throughout the school year to request that they pick up the Student early from the Program due to her behaviors. The Principal told OCR that she also contacted the parents several times to request that they pick the Student up early from the Program due to her behaviors. The Principal told OCR that on average she contacted the parents once per week either to have them speak to the Student to help her de-escalate, to report her behavioral incidents, or to request that they pick the Student up early from the Program.

According to the School, the Student was suspended for an estimated eight days from the Program during the school year following behavioral incidents. The District did not specifically track the number of times they contacted or attempted to contact the Complainant to pick the Student up from the Program early or the dates and reasons why the Student was suspended from the Program. The District did not request that the Complainant pick the Student up early from the regular school day, nor did the District suspend the Student from the regular school day because of behaviors in the Program. The Complainant told OCR, due to the District's failure to implement the Student's 504 Plan, they were not going to place the Student in the Program for the 2023-2024 school year.

c. Analysis

The Student qualified for a 504 Plan which was designed to address behavioral issues the Student was experiencing in the Program as a result of her disability. The Student's Section 504 Team determined that in order for the Student to receive a FAPE, it was necessary for the Student to have a non-verbal strategy to notify Program staff when she needed a break. The Team identified the use of lanyard as the means of implementing that strategy and included the use of lanyard in the Student's IEP.

The District acknowledged that Program staff was responsible for providing the lanyard to the Student, collecting it before she left, and storing it at the Program. Nevertheless, the District and School staff admitted that there were times the Student did not wear the lanyard, either because Program staff forgot to remind the Student to wear the lanyard, Program staff failed to collect the lanyard and the Student took it home, or the Student simply refused to wear the lanyard. Additionally, School staff told OCR that they did not require the Student to wear the lanyard during times she behaved well.

However, even on the days when the Student did not have the lanyard or was behaving well, the District was still required to implement the Student's Section 504 Plan and provide the Student with non-verbal strategies to indicate she needed a break, because as the Plan indicated, it is important for the Student to have non-verbal ways to indicate that she is frustrated. By the District's own admission, there were several instances when the Student was not provided with this accommodation, and when the lanyard was not available, the District did not provide alternative non-verbal strategies, instead, the Student was told to tell Program staff verbally when she needed a break. Accordingly, OCR finds that there is sufficient evidence to establish that the District failed to implement the Student's 504 Plan as alleged.

II. Additional Violations

a. Background

During OCR’s investigation of this case, OCR asked the District to provide copies of the District’s policies and procedures, and a description of its practices, regarding the evaluation and provision of services to students with disabilities, including implementation of Section 504 Plans in the Program. The District provided one board policy, sections of its “Comprehensive Plan,” as well as other documents related to Section 504, including the following:

- Board Policy IHBA: Special Education Programs for Students with Educational Disabilities (2017)
- Section 2: Child Find (2015)
- Section 3: Special Education Referral, Evaluation, Eligibility, Determination and Reevaluation Processes
- Section 4: Free Appropriate Public Education (FAPE)
- Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities - as published on the OCR webpage; and
- Denver Public Schools’ Section 504 Manual (2011)

b. Procedural Safeguards

i. Legal Standards

Section 104.36 of the Section 504 regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

ii. Findings of Fact

OCR inquired whether the District had procedural safeguards pertaining to Section 504 as they were not included in the documentation the District provided. During an interview, the 504 Coordinator told OCR that the District has procedural safeguards under the IDEA but not under Section 504. The Section 504 Coordinator also told OCR that the School does not provide procedural safeguards to parents with students on Section 504 Plans. According to the Coordinator, the School only provides parents with a copy of their student’s Section 504 Plan. Following interviews with District staff, the District provided OCR with a link to its published procedural safeguards pertaining to Section 504. The procedural safeguards pertaining to Section 504 are entitled “Section 504 Notice of Parent/Guardian and Student Rights” and are publicly available on the District’s website. The District’s Section 504 procedural safeguards include the right to notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel. The procedural safeguards do not include a review procedure.

iii. Analysis

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on

inappropriate selection, administration, or interpretation of evaluation materials. Recipients must establish standards and procedures for initial and continuing evaluations and placement decisions regarding persons who, because of a disability, need or are believed to need special education or related services.

A school district is also required to establish, implement, and inform parents about a system of procedural safeguards that are designed to help resolve FAPE-related disagreements regarding identification, evaluation, or educational placement of a student. As part of this system, a school must notify parents of any evaluation or placement actions and inform parents of their right to: (i) examine records or documents that the school relied on in making its decision about the student; (ii) request an impartial hearing that provides the parent with an opportunity to participate and permits representation by an attorney; and (iii) have an opportunity for review of the decision made at the hearing.

During its investigation, OCR requested copies of the District's policies and procedures, and a description of its practices, regarding the evaluation and provision of services to students with disabilities, including implementation of Section 504 Plans in the Program. The only materials the District produced were District Policy IHBA and the District's Comprehensive Plan. A review of these materials revealed that while the District Policy IHBA and the Comprehensive Plan both include information pertaining to special education and the Individuals with Disabilities Education Act (IDEA), neither reference Section 504. After reviewing publicly available information on the District's website, OCR was unable to locate any District policies or procedures pertaining to Section 504. Accordingly, OCR finds the District has not adopted nor published procedures regarding identification, evaluation, and placement of students with disabilities under Section 504.

While the District does have Section 504 procedural safeguards, those procedural safeguards do not provide a review procedure as required by Section 504. Additionally, the School's 504 Coordinator told OCR the District has procedural safeguards pertaining to IDEA but does not have procedural safeguards pertaining to Section 504 when in fact, the District does have procedural safeguards pertaining to Section 504. The School's 504 Coordinator also told OCR that procedural safeguards are not provided to parents of students with Section 504 plans. Accordingly, OCR finds the District's procedural safeguards are not in compliance with Section 504 and its implementing regulation.

c. Grievance Procedures

i. Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a recipient/public entity's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or

third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

ii. Findings of Fact

OCR inquired whether the District has grievance procedures pertaining to Section 504 as they were not included in the District's documentation. The 504 Coordinator told OCR the District has grievance procedures for IDEA but could not identify any specific District grievance procedures under Section 504. The 504 Coordinator said she would hope that a parent would come to the school level before contacting the District office with any concerns but could not specifically identify procedures for filing or handling complaints under Section 504. OCR reviewed the District's website and located a publicly available document entitled "Title IX and Section 504 Grievance Procedures." The grievance procedures provide for an investigation into complaints of discrimination under Section 504 and other civil rights laws. However, the District's grievance procedures do not incorporate any due process standard, identify who is subject to the grievance procedures, or provide for a reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence. The procedures are also missing designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Additionally, the District's grievance procedures identify the "Coordinator" as the individual responsible for investigating complaints of discrimination. The "Coordinator" is defined as "the District employee designated to coordinate the District's efforts to comply with nondiscrimination and facilitate the complaint process." The procedures further state, "[i]n most instances, this is the District's Equal Opportunity Programs & Ombudservices Office" (EOPO). It is unclear who the coordinator is, whether the Coordinator is an individual or the entire EOPO, and in which instances the EOPO is not considered the Coordinator.

iii. Analysis

School districts are required to establish grievance procedures for resolving complaints related to those cases where the complainants allege that employees, other students, or third parties engaged in discriminatory behavior. The grievance procedures must ensure that complaints are resolved in a prompt and equitable manner. In evaluating whether a school district's grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees of the school; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

The District has adopted and published grievance procedures for the processing of discrimination complaints pursuant to Section 504. The District's grievance procedures provide for notice of the

procedure to students, parents, and employees, including where to file complaint and notice to the parties of the outcome of the complaint. However, the District's grievance procedures do not include the applicable due process standard or provide for: the application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. Accordingly, OCR finds the District's grievance procedures are not in compliance with Section 504 and its implementing regulation.

III. Compliance Concern

During OCR's investigation, OCR identified an additional compliance concern. Specifically, OCR is concerned that not all individuals tasked with implementing students' Section 504 plans and IEPs have access to those documents. During interviews with OCR, School staff indicated that paraprofessionals are not trained on Section 504 and are not shown or given copies of the 504 Plans or IEPs for the students they support. OCR has concerns about the paraprofessionals' ability to adequately implement a students' 504 Plans or IEPs without having access to students' plans or being informed about what is included in the plans.

IV. Conclusion

Upon being advised of the violation findings and compliance concern, the District entered into a Resolution Agreement (Agreement) to resolve the matter. The Agreement requires the District to develop, implement, and train staff on policies and procedures consistent with Section 504, provide staff with consistent access to students' Individualized Education Programs and Section 504 Plans, meet with the Complainant to discuss remedial measures for the Student, and offer to re-admit the Student to the Program. 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 the District about the status of the Agreement terms. When fully implemented, the Agreement will address the violations and compliance concern identified by OCR. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms and the statutory and regulatory obligations under Section 504 and Title II that were at issue in the case.

This concludes OCR's investigation in this case 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 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.

This case is now in the monitoring phase. The monitoring 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 may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that the District 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, OCR 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 District's courtesy and cooperation during the investigation. If you have any questions, please contact the attorney assigned to this case, [redacted content].

Sincerely,

Daniel Contreras
Supervisory Attorney

Enclosure: signed Resolution Agreement

cc (via email): [redacted content]