



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

November 10, 2015

Dr. Harry C. Bull, Jr.
Superintendent
Cherry Creek School District
4700 South Yosemite Street
Greenwood Village, Colorado 80111

Re: Cherry Creek School District
OCR Case Numbers: 08-14-1257 and 08-15-1125

Dear Superintendent Bull:

On September 8, 2014, we received a complaint (case number 08-14-1257) alleging that the Cherry Creek School District (the District) discriminated on the basis of disability. Specifically the Complainant alleged that the District discriminated against her and her son (the Student) by:

- Denying the Student a free appropriate public education (FAPE) by failing to fully implement his Section 504 Plan and Individual Health Plan (collectively, the Student's 504 Plan(s)) by failing to: provide accommodations for the Student to be able to attend extracurricular activities; provide accommodations during examinations and standardized tests; communicate with the Student's parents, such as when the glucose levels are outside a certain threshold or regarding assignments or extracurricular activities; implement academic accommodations, such as allowing the Student to make up exams and assignments he missed due to issues with his diabetes; allow the Complainant access to the Student's care logs; allow the Student to use Blue Loop; and contact the Student's bus driver regarding the Student's needs;
- During the spring semester of the 2013-14 school year, the Student's Spanish teacher fails to implement the Student's Section 504 Plans and harasses the Student on the basis of his disability;
- Failing to consider information from a variety of sources and include a group of persons knowledgeable about the Student when determining the Student's Section 504 Plans;
- Failing to provide the Complainant with an opportunity to examine records relevant to the Student's disability, diabetes treatment, and his accommodations at the School; and
- Retaliating against the Complainant and the Student by making a false allegation that the Student was at risk for self-harm; reporting the Complainant to County Human Services for alleged neglect or abuse; restricting her access to and ability to communicate with the Student's teachers and the school nurse; and declining to investigate Safe 2 Tell reports regarding the Student and threatening the family if future Safe 2 Tell reports are made.

On February 20, 2015, we received a second complaint from the Complainant (case number 08-15-1125) and against the District alleging that the District continued to discriminate on the basis of disability. The Complainant also alleged that the District discriminated on the basis of sex, and retaliated, including through different treatment. In the complaint, the Complainant alleged that the District discriminated when:

- The District continued to deny the Student a FAPE by failing to fully implement his Section 504 Plan on multiple occasions and including for extracurricular activities; failed to evaluate the Student for all suspected disabilities; failed to consider information from a variety of sources by a group of persons knowledgeable about the Student when developing or modifying the Student's

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

Section 504 Plan; attempted to evaluate the Student without consent; and failed to provide the Complainant an opportunity to examine relevant records as required by Section 504;

- Identified teachers harassed or continued to harass the Student on the basis of his disability;
- The District failed to provide a prompt and equitable response to her complaint that the Student was sexually harassed XXXX; and
- The District retaliated against the Complainant and the Student by; referring the Student to the Dean of Students and disciplining the Student for incidents for which other students were not disciplined, including actions related to the Student's disability-related needs and accusing the Student of sexually harassing a female student; requiring that the Complainant complete a "clean" waiver form for the Student's participation in an extracurricular trip, and not implementing the Student's 504 plan adequately during the trip; not allowing the Student to participate in identified extracurricular activities; and failing to timely process a waiver and appeal request relating to the Student's academic eligibility to compete on the wrestling team.

We initiated an investigation of the complaints under the authority of Section 504 and its implementing regulation, at 34 Code of Federal Regulations Part 104, 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 in programs or activities that receive Federal financial assistance from the Department and by public entities respectively, and Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e). Similarly, individuals filing a complaint, participating in an investigation, or asserting a right under Title II individuals are protected from intimidation or retaliation by 28 C.F.R. § 35.134, and under Title IX are protected from intimidation or retaliation by 34 C.F.R. § 106.71, which incorporates 34 C.F.R. § 100.7(e). As a recipient of Federal financial assistance and a public entity, the District is subject to these laws and regulations.

Initially, the Complainant and the District agreed to attempt to resolve the Complainant's allegations for both complaints through our Early Complaint Resolution process, but the attempt was not successful. Subsequently, on July 29, 2015, the District provided OCR with information requested regarding case 08-15-1125 and on August 26, 2015, prior to the delivery of the data for the allegations raised in case 08-14-1257, the District expressed an interest and willingness in resolving both complaints through a voluntary agreement with OCR. Pursuant to Section 302 of OCR's *Case Processing Manual*, resolution options were discussed with the District. The District has entered into the enclosed Agreement, which, when fully implemented, will resolve the concerns raised by the complaint. The provisions of the Agreement are aligned with the issues and allegations raised in the complaints and are consistent with the applicable regulations

We will monitor the District's implementation of the Agreement until all provisions have been satisfied. OCR has notified the Complainant that the District has entered into this Agreement, and we will provide the Complainant a copy of the Agreement. We will also keep the Complainant apprised of monitoring activities related to this case.

This concludes our investigation of the complaints. This letter addresses only the issues listed above and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504, Title II, Title IX, or any other federal law in any other respect. Accordingly, we are closing the investigation of the complaints effective the date of this letter.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. Additionally, the Complainant has a 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

Thank you for your cooperation and the District's attention to this matter. If you have any questions regarding this letter, please contact XXXX, Civil Rights Attorney, at (303) 844-XXXX or by email at XXXX@ed.gov. I can also be reached at (303) 844-6083 or at Angela.Martinez-Gonzalez@ed.gov.

Sincerely,

Angela Martinez-Gonzalez
Supervisory General Attorney

Enc. Resolution Agreement

cc: John Stanek, Esquire
Internal Legal Counsel
Cherry Creek School District

Dr. Elliot Asp
Interim Commissioner of Education
Colorado Department of Education