



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 23, 2017

Mr. Chris Gdowski, Superintendent
Adams County School District 12
1500 East 128th Avenue
Thornton, Colorado 80241-2602

Re: **Adams County School District 12**
OCR Case Number: 08-17-XXXX

Dear Superintendent Gdowski:

We write to inform you of the resolution of the above-referenced complaint, filed on February 28, 2017, with the Office for Civil Rights (OCR) of the U.S. Department of Education (“the Department”), against Adams County School District 12 (“the District”), alleging discrimination on the basis of disability. Specifically, the allegation that OCR accepted for investigation was whether the District, at Stargate School (“the School”), has admissions and enrollment policies and practices that result in the different treatment of and a disparate impact on students with disabilities.

OCR is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulation at 34 Code of Federal Regulations (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 (“Title II”), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As recipients of Federal financial assistance from the Department and public entities, the District and the School (collectively, “the Recipients”) are subject to these laws and regulations.

During the course of our investigation, and before interviews were conducted and additional data was requested, the Recipients indicated their desire to voluntarily enter into an agreement to resolve the Complainant’s allegation pursuant to Section 302 of our *Case Processing Manual* (CPM). We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details the applicable legal standards and the status of our investigation prior to receiving the Recipients’ request to enter into an agreement.

I. Legal Standards

Under the Section 504 regulations, 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 which receives Federal financial assistance. The Title II regulations, 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 or public school may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others.

The Federal civil rights laws, regulations, and guidance that apply to charter schools are the same as those that apply to other public schools. Section 504 applies to all of the operations of a recipient, including all of its admissions- and enrollment-related activities, such as the assembly of the applicant pool for admission to a charter school, the charter school selection and admissions process, and enrollment in charter schools. As a general rule, a school's eligibility criteria for admission must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. In addition, a charter school may not use admissions criteria that have the effect of excluding students on the basis of disability from the school without proper justification.

During the application and admission process, and before enrollment in the charter school, it is generally not permissible under Section 504 to ask a prospective student whether the student has a disability. 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. Upon enrollment (after the Student has been accepted for admission), it is permissible for the charter school to ask the student whether he or she has a disability in order to ensure that the school provides the student with a free appropriate public education (FAPE).

II. OCR's Investigation

Our investigation involved requesting from the Recipients and then reviewing: (a) relevant policies, procedures, forms, agreements, and internal communications; (b) data and records for students with disabilities who were denied admission to the School and who attend the School; and (c) a narrative of the Recipients' positions regarding the allegation.

III. Evidence

The School is chartered by the District. The School currently serves gifted and talented students in kindergarten through eleventh grade.¹

¹ The School plans to add twelfth grade for the 2018-2019 school year.

a. The School's Admissions Policy

The School's Admissions Policy for grades three through eight requires prospective students to submit an application with up to six parts: (1) an intelligence quotient (IQ) test; (2) a parent nomination; (3) a teacher nomination; (4) a self-nomination (for third grade and above); (5) the student's most recent report card (for second grade and above); and (6) normed assessments.

The Admissions Policy includes the following language:

[The School] will not reject a student for admission on the basis that a student is currently on an Individual [sic] Education Plan [sic] (IEP) as provided for by the Individuals with Disabilities [sic] Act (IDEA) or 504 Plan as provided for by the Americans with Disabilities Act (ADA), or on the basis of previously identified special needs, unless a review in cooperation with the [District] Special Education Director shows that [the School] would not be able to provide appropriate services without changing the fundamental nature of the [School] program or creating other undue hardships. The application packet includes a place for parent(s) to inform the school whether the student has previously identified special needs, including but not limited to a formal IEP or 504 Plan.

The Admissions Policy also includes the following "Equal Opportunity" statement: "[The School] will not deny any student admission on the basis of race, color, religion, sex, or national and ethnic origin." The statement noticeably omits disability.

b. The School's Admissions and Enrollment Forms

The School's middle school application for admissions includes the following question: "Is the applicant on a 504/IEP?" Immediately below the question, the application reads, "If yes, a copy is required prior to qualification for admission." The School's high school application for admissions includes similar language: "Does your student have a current Individualized Education Plan [sic] or 504 Plan? If yes, a copy is required prior to qualification for admission."

Additionally, the School's "New Student Enrollment Form" asks whether the student has "received services for" "Special Education" or "504 Plan." If the enrollee selects either "Special Education" or "504 Plan," the form then requires the enrollee to provide the grade, school, and year of the service(s).

Finally, the School's "K-12 Health Inventory" form asks about medication and a variety of diagnoses, including attention-deficit hyperactivity disorder (ADHD), autism, mental disorder, and traumatic brain injury.

c. The School's Admissions and Student Population Data

Data from the Colorado Department of Education make clear that the School has a disproportionately low percentage of students with disabilities relative to the District where the

School is located. On October 1, 2015, the School served 837 students; students with disabilities were only 2.4% of this total population. By comparison, students with disabilities were 8.0% of the District's total population at the same time.

The School provided to OCR a data analysis summary, which the School argued "strongly suggests (and may all but statistically prove) true neutrality with respect to disability in admission." The summary indicates that, during the 2015-2016 and 2016-2017 school years, the School found 64% of applicants "who appeared to be in regular education" and 63% of applicants "who were (or could have been) known to...be either on IEPs or on 504 Plans" to be "qualified" under the School's admission criteria.

We attempted to conduct our own analysis of admissions data using application records provided to OCR by the School. However, due to incomplete and missing records, as well as unavailable information, we could not complete the analysis. As discussed previously in this letter, during the course of our investigation and before interviews were conducted, additional data was requested, or rejected applicants were contacted, the Recipients indicated their desire to voluntarily enter into an agreement to resolve the Complainant's allegation. OCR determined that it was appropriate to pursue resolution of the complaint in this manner and negotiated a resolution agreement with the Recipients.

IV. Conclusion

We thank the Recipients for being willing to voluntarily address the allegation raised by the Complainant. A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the allegation 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 Recipients about the status of the Agreement terms. We will provide the Recipients written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the Recipients fail to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the Recipients' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase 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 Recipients, copied to the Complainant, stating that this case is closed.

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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and your staff extended to us during the investigation and resolution of this case. If you have any questions regarding this letter or the monitoring of this case, please contact the assigned attorney, Jason Langberg, at (XXX) XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

cc: Josh Cochran, Executive Director, Stargate School (via email)
William Bethke, Attorney for Stargate School, Kutz & Bethke LLC (via email)
Walt Kramarz, Deputy General Counsel, Adams 12 (via email)
Dr. Katy Anthes, Colorado Commissioner of Education (via mail w/o enclosure)

Enclosure: Resolution Agreement