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March 27, 2018

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

Re: Adams County School District 12  
Case Number: 08-17-1361

Dear Superintendent Gdowski:

This letter updates the reporting requirements for the December 22, 2017 Resolution Agreement signed by Adams County School District 12 (District) and Stargate School (School) (collectively, Recipients). We have completed our review of the School's documentation received on January 9, 17 and 31, February 13 and 20, and March 12 and 19, 2018 on its actions to ensure compliance with:

- 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 U.S. Department of Education;
- Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), 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 and its implementing regulation at 28 C.F.R. Part 35 (Title II), which prohibit discrimination on the basis of disability by public entities.

Our review and analysis of the Recipients' progress in implementing the Agreement is summarized below. The relevant terms of the Agreement are provided below, in italics, for your reference.

We note that throughout the reporting period, the District expressed some concerns with, and suggestions for, the School's monitoring reports. As a courtesy, OCR provided extensions of time for the District and the School to collaborate. It appears in general the School is not amenable to the District's suggestions. As OCR explained to the School and District, the Resolution Agreement in this case – which both the School and District signed – requires the School to “simultaneously provide to the District a copy of each of its proposals/submissions and its monitoring reports to OCR.” Thus far, the School has complied with this provision. OCR is reviewing the materials the School submitted for their compliance with the terms of the

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Resolution Agreement. That said, OCR encourages the School and District to meaningfully collaborate with one another.

1. *The School's Board will administer a staff climate survey to assess staff perceptions of the retaliation at the School, including the presence and impact of any actual or perceived retaliation and suggestions for how to eliminate any actual or perceived retaliation. Based on the results of the climate survey, the Board will consider whether any further revisions to its nondiscrimination (including non-retaliation) policies, practices, or procedures, additional staff training, or other remedial measures are appropriate. If the Board determines that any remedial measures are appropriate, it shall take such measures no more than 90 days after the administration of the climate survey.*

*REPORTING REQUIREMENT A: By December 31, 2017, the Board will submit, for OCR review and approval, its proposed climate survey instrument; a list of all staff, by name and job title, to whom the survey will be administered; and a description of how and when the survey will be administered, including the identity of the person compiling the survey results. The Board will fully and promptly address any comments by OCR as to these documents and will continue to modify them until it receives final OCR approval.*

*REPORTING REQUIREMENT B: Within 15 days of OCR's approval of the above, the Board will administer the climate survey to staff, providing a period to respond of no fewer than 7 days. Within 45 days of the conclusion of the survey administration period, the Board will provide (1) the District a copy of the survey results, and (2) OCR documentation of (a) the survey results and (b) the Board's determination as to whether any further revisions to its nondiscrimination (including non-retaliation) policies, practices, or procedures, additional staff training, or other remedial measures are appropriate, and if so, a description of those measures, including a timeline for implementation, which shall be no longer than 90 days after the administration of the climate survey. The Board will fully and promptly address any comments by OCR as to the remedial measures and will continue to modify the remedial measures until it receives final OCR approval.*

*REPORTING REQUIREMENT C: Within 15 days of the last of any remedial measures being implementing, the Board will provide OCR documentation of its efforts to implement the remedial measures.*

The School provided its proposed climate survey instrument; a list of all staff, by name and job title, to whom the survey will be administered; and a description of how and when the survey will be administered. The School also indicated that it has hired a former Colorado school district human resources administrator as a consultant, to perform work to include reviewing the results of the staff climate survey, interviewing staff, and preparing a report for the Board on staff climate and culture. The School reported that it intends to use this consultant's report to inform its actions pursuant to Reporting Requirement 1(B).

OCR reviewed this information and, based on the information provided, has determined that the Recipients have complied with Reporting Requirement 1(A) of the Agreement. No further

monitoring submissions are due for Reporting Requirement 1(A). OCR asks that the School submit the consultant's report with its submission for Reporting Requirement 1(B).

2. *The School will create a written policy and procedure through which staff may file complaints of discrimination, including retaliation. The policy and procedure will provide for notice of the policy and procedure to staff, including where to file complaints; application of the policy and procedure to complaints alleging discrimination by staff, 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; written 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. The policy and procedure will also provide that the District will be notified of any complaints filed pursuant to the School's policy and procedure.*

*REPORTING REQUIREMENT A: By December 31, 2017, the School will submit, for OCR review and approval, its revised policies and procedures. The School will fully and promptly address any comments by OCR as to the procedure and will continue to modify the procedure until it receives final OCR approval.*

*REPORTING REQUIREMENT B: Within 15 days of OCR's approval of the procedure, the School will disseminate the procedure to staff. Within 30 days of OCR's approval of the procedure, the School will provide OCR documentation of its efforts to disseminate the procedure, including via email and any websites used to disseminate information to staff.*

The School provided its draft "Governance Board Communication and Complaint Policy." OCR has the following comments with respect to this policy's provisions for staff complaints of discrimination, including retaliation:

- notice of the policy and procedure to staff, including where to file complaints: is sufficiently provided by Section 1.9, "Notice of Communication Pathway and Complaint Procedure."
- application of the policy and procedure to complaints alleging discrimination by staff, students, or third parties: the scope of the policy is not made expressly clear. Please revise to expressly state that the policy applies to complaints (1) of discrimination, including retaliation, (2) by staff, students, or third parties.
- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence: is not sufficiently provided for.
  - The policy makes use of the School's Communications Pathway document a prerequisite to filing a complaint.
    - The Staff Communications Pathway provides communication avenues for issues involving "curriculum," "parents," and "related to other staff members." It does not make clear what to do with an issue involving discrimination, including retaliation. The School has indicated that it will add contacts for special education referrals, 504 coordinators and title IX coordinator before next school year. Therefore, please either provide an updated version of the Communication Pathways to explain how to raise



- an issue involving discrimination, including retaliation, or revise the proposed Board Policy to indicate that an exception exists.
- Either way, please add provisions for what to do in circumstances where the individuals in the complainant's chain of command in the Communications Pathway document are the subject of the complaint.
  - The policy envisions that a Board member will be assigned to review the complaint, obtain information, and report to the Board. The Board then "determines that a formal investigation is necessary." Please add detail as to how this decision will be made.
  - Where "a formal investigation is necessary," the complainant has the opportunity to present witnesses and other evidence in executive session. While this sufficiently allows for presentation of witnesses and evidence, it does not describe what the Board is obligated to do in response to any information presented. At no point does the policy create an express obligation to investigate beyond hearing the complainant out. Please add further provisions for investigation.
  - We note that the complainant's ability to present in executive session is subject to "applicable laws and regulations regarding confidentiality and public records." We may have concerns about this limitation. Please explain the concern behind this limitation and/or any information expected *not* to be subject to disclosure at executive session.
  - Section 1.7 provides for appeals, but does not provide detail on the process for review of appeals or how the outcome of appeals is communicated. Please add detail as to these issues.
- designated and reasonably prompt timeframes for major stages of the complaint process: is not sufficiently provided for. Some acceptable timeframes are set (e.g., complaints are acknowledged within ten days of receipt; within ten days of executive session, the Board is to provide notice of the outcome). However, most stages do not have a set timeframe. Please add designated and reasonably prompt timeframes to, for example, provisions: (1) that the Board member "responsible for reviewing the complaint, obtaining additional information as needed, and providing the information to the Communications Liaison"; (2) for the board to "determine[] that a formal investigation is necessary"; (3) for the process for review of appeals and how the outcome of appeals is communicated.
  - written notice to the parties of the outcome of the complaint: is sufficiently provided for only with respect to "formal investigations" that proceed to executive session. Please revise to provide for written notice of the outcome of complaints that are not deemed to merit formal investigation and for appeals.
  - an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects: is sufficiently provided for only with respect to "formal investigations" that proceed to executive session (where written notice of the outcome is required to provide the "outcome of the investigation, any corrective or remedial action necessary, assurance that steps will be taken to prevent recurrence and step to correct its effects."). Please clarify that this assurance applies to any situations where discrimination, including retaliation, is found, or any situations where the School is involved in creating a remedy.
  - The policy and procedure will also provide that the District will be notified of any complaints filed pursuant to the School's policy and procedure: is sufficiently provided for at page 3.

- Additionally, OCR has a few minor comments:
  - A log in which complaints will be captured is referenced on pages 2 and 3. Please clarify what log this is.
  - Page 3 lists a toll-free number and TTY number for OCR, which are not correct. Please revise to the correct numbers, Telephone: 800-421-3481, TDD: 800-877-8339.
    - Rather than indicating "English/Spanish," please add that language assistance is available.
    - Please correct OCR's email address to "OCR.Denver@ed.gov" (the existing address omits the period).
    - Given this, the School may wish to check the other agencies' contact information. For example, the EEOC's email address is listed as "egov.eeoc.gov.eas."
  - The reporting form at page 5 states "List any Witnesses that were present." For clarity, we suggest deleting "that were present."

Therefore, in the School's next monitoring report, **due within 30 days of this letter**, please provide a revised draft of this policy.

5. *The School will provide training to all staff, including administrators, teachers, and related service providers, addressing:*
- a. *The fact that retaliation is a prohibited form of discrimination;*
  - b. *The School's prohibitions against retaliation, including its revised grievance procedure;*
  - c. *Examples of prohibited retaliation; and*
  - d. *Ways to avoid engaging in prohibited retaliation.*

**REPORTING REQUIREMENT A:** *Within 90 days of this Agreement, the School will provide OCR, for OCR's approval, its draft training materials; identify who will be providing the training, by name, title, and qualifications; and provide a list of personnel required to participate in the training, by name and title. The School will fully and promptly address any comments by OCR and will continue to modify the materials, trainers, or personnel list until it receives final OCR approval.*

**REPORTING REQUIREMENT B:** *Within 60 days of OCR's approval, the School will provide documentation demonstrating that the training was provided and a copy of the training sign-in sheets.*

The School provided its proposed training materials. OCR reviewed the materials for compliance with this Resolution Agreement and finds that the materials sufficiently address 5(a), (b), and (d). OCR requests that the materials more clearly state (c), examples of prohibited retaliation. OCR also reviewed the proposed trainer (the School's outside counsel) and list of personnel required to participate, and has no compliance concerns as to either. Therefore, in the School's next monitoring report, **due within 30 days of this letter**, please provide revised draft training materials.

6. *The School will provide the following individual remedies to the Complainant:*

- a. *The School will timely respond to all inquiries from prospective employers in a manner consistent with the Complainant's reference letter from the Elementary Principal dated April 4, 2017 and from the Director of Professional Development dated May 2, 2017. All reference requests shall be directed, by the Complainant and School, to the Elementary School Principal or her successor.*
- b. *The School will refund to the Complainant \$3,000 representing her annual health insurance deductible.*
- c. *The School will provide a payment to the Complainant representing lost wages in the gross amount of \$25,667, less applicable withholdings, which the School will report to the Internal Revenue Service as wage income to the Complainant on a Form W-2.*

*REPORTING REQUIREMENT A: By May 31 and December 31, 2018, the School will provide OCR, for OCR's approval, a list of all reference checks for the Complainant received during the relevant time period and a description of the School's response. The School will also provide OCR, for OCR's approval, all documents relating to such reference checks.*

*REPORTING REQUIREMENT B: By December 31, 2018, the School will provide OCR with documentation that it has made the payments to the Complainant provided in Terms 6(b) and 6(c).*

The School provided documentation that it made the payment to the Complainant provided in Terms 6(b) (\$3,000 representing her annual health insurance deductible) and 6(c) (\$25,667 representing lost wages). Therefore, based on the information provided, OCR has determined that the School has complied with Reporting Requirement 6(B) of the Agreement. No further monitoring submissions are due for Reporting Requirement 6(B). We look forward to hearing from you with respect to Reporting Requirement 6(A) as those reports come due.

#### *Conclusion*

We look forward to hearing from you with additional monitoring reports as those reports come due.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that the Recipients may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the 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 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.

We thank the Recipients for their commitment to completing the terms of the Agreement. If you have any questions, please contact the attorneys assigned to the case, Sarah Morris, at 303-844-3682 or Sarah.Morris@ed.gov or Jason Langberg, at 303-844-6299 or Jason.Langberg@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Martinez-Gonzalez', written in a cursive style.

Angela Martinez-Gonzalez  
Supervisory General Attorney

cc: Walt Kramarz, Deputy General Counsel, Adams County School District 12  
Josh Cochran, Executive Director, Stargate School  
Jan Kulmann, President, Stargate Governance Board  
Tony Dyl, Kutz & Bethke LLC, counsel for Stargate School  
Complainant