



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

October 18, 2013

SENT VIA EMAIL: superintendent@cherrycreekschools.org

Superintendent Harry Bull, Jr., Ed.D.
Cherry Creek School District
4700 S. Yosemite St.
Greenwood Village, CO 80111

Re: Cherry Creek High School Discrimination on the Basis of Sex and Pregnancy

Dear Superintendent Bull:

I am writing to inform you that Cherry Creek High School (CCHS) is discriminating against a pregnant student on the basis of sex and pregnancy, in violation of federal law. Mia Lopez, a junior at CCHS, is pregnant and due to deliver at the end of October. Her family reached out to the ACLU after being informed by representatives of CCHS in late September that, should Mia be required to take a maternity leave of more than three weeks, she would suffer serious academic consequences, including loss of credits. CCHS's position is directly contrary to the dictates of Title IX of the Education Amendments Act of 1972, which requires schools to accommodate a student's maternity leave for as long as her doctor determines is medically necessary.

Mia's family informed CCHS of Mia's pregnancy in May 2013 and made arrangements with her fall semester instructors to allow her to complete additional assignments so as not fall far behind in her schoolwork while away on maternity leave. Rather than allowing her studies to lapse during her pregnancy, Mia has taken this life-changing event as an opportunity to dedicate herself to building a bright future for herself and her baby. Mia voluntarily signed up for summer school, during which she completed one semester of Algebra II. Throughout the summer and the current fall semester, Mia has studied tenaciously and raised her grades substantially, which is reflected in the fact that she currently has all As and Bs in her fall semester classes. In some classes, Mia has taken the initiative to do additional work to allow her to get ahead in her school work prior to maternity leave. Mia fully expects to continue with her school work during her maternity leave, which she hopes will allow her to return to school on the right academic track.

In late September, however, CCHS administrators informed Mia and her family that Mia would suffer serious academic consequences if she took more than a three-week maternity leave. Under those circumstances, CCHS would require that Mia either take on-line courses through an

alternate school or accept a significant loss of credit for the fall semester at CCHS. Further, according to school administrators, after three weeks leave, Mia would receive only half credit for two of her classes and would be forced to drop chemistry altogether, because the school would not allow her to make up the labs she would miss while out on leave. School administrators encouraged Mia to take an on-line chemistry class instead – a semester-long class that she would be forced to complete in a quarter. School administrators said they would not honor the arrangements that Mia had made with her teachers to ensure she completed all of her coursework by the end of the semester and would not lose credits. These administrators attempted to justify their position by stating that it would be too burdensome for the school to arrange for Mia to do all of her make-up work should she miss more than three weeks of school.

Mia and her family were shocked and deeply concerned by CCHS's refusal to accommodate Mia's maternity leave if it should last more than three weeks. Mia's baby is due in less than two weeks; so, at this point in time, Mia does not and cannot know what length of maternity leave her physician will determine is medically necessary. For instance, if labor complications require that Mia have a cesarean section, it is generally accepted that it will take four to eight weeks for Mia to heal.¹ In Colorado, 25% of women deliver their baby through cesarean section.² While Mia fully expects to do school work from home while she heals from delivery, regardless of whether she has a cesarean section, it is unreasonable to expect her to commit to returning to school within three weeks without knowing how her delivery will proceed. Returning to school requires Mia to climb stairs repeatedly, sit for extended periods of time, and carry books to and from classes. Such activities could be taxing should Mia have a complicated delivery that requires surgery.³ Ultimately, it is for Mia's doctor to decide what length of time Mia requires before she can return to school.

By academically penalizing Mia should she be required to take a maternity leave longer than three weeks, CCHS would violate federal law. Title IX declares that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."⁴ Under Title IX authority, the Department of Education issued regulations specifically regarding pregnant students, stating that schools:

...shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such

¹ See, e.g., Colorado Department of Public Health and Environment, THE HEALTH STATUS OF COLORADO'S MATERNAL AND CHILD HEALTH POPULATION, Ch. 4, at 50 (June 2010), available at <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadername1=Content-Disposition&blobheadername2=Content-Type&blobheadervalue1=inline%3B+filename%3D%22Chapter+4+-+Infant+and+Postpartum+Health.pdf%22&blobheadervalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251817032001&ssbinary=true> ("Unlike vaginal delivery in which recovery takes a few weeks, recovery from cesarean section can take twice as long (four to six weeks)."); Children's Hospital Colorado, CESAREAN SECTIONS, Recovery, available at <http://www.childrenscolorado.org/wellness/info/parents/49869.aspx> ("After about 6 to 8 weeks, the uterus is usually healed and you can probably get back to your normal routine.").

² See Colorado Department of Public Health and Environment, CESAREAN SECTION DELIVERIES AND INDUCTIONS OF LABOR IN COLORADO: AN ANALYSIS OF CURRENT TRENDS AND DEMOGRAPHICS, at 2 (Nov. 2011), available at <http://www.chd.dphe.state.co.us/Resources/pubs/Cesarean81.pdf>.

³ See Children's Hospital Colorado, CESAREAN SECTIONS, Recovery, available at <http://www.childrenscolorado.org/wellness/info/parents/49869.aspx> ("After about 6 to 8 weeks, the uterus is usually healed and you can probably get back to your normal routine.").

⁴ 20 U.S.C. § 1681(a). CCHS is an institution that is covered by Title IX and its corresponding regulations because the school is part of a district that receives federal funds.

student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.⁵

The regulations mandate that a school must treat pregnancy and childbirth the same way it treats any other temporary disability, and the school must offer pregnant students the same benefits, plans, and services that it offers to temporarily disabled students.⁶ In addition, a school must allow students an excused leave of absence for pregnancy and childbirth “**for so long a period of time as is deemed medically necessary by the student's physician.**”⁷ At the conclusion of the leave, the student must be “reinstated to the status which she held when the leave began,”⁸ which “should include giving her the opportunity to make up any work missed.”⁹ Moreover, while “a school may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave,” it is required that the “*student should be allowed to choose how to make up the work.*”¹⁰

CCHS's temporal limitation on the amount of leave Mia can take, and the school's refusal to allow Mia to make up all of her class assignments if she misses more than three weeks of school, violates Title IX and its regulations. The length of Mia's medically necessary maternity leave must be determined by Mia's physician, not school administrators. Furthermore, no one can predict Mia's medically necessary recovery time until after she has given birth and begun the recovery process – certainly a cesarean section or other traumatic birth experience could influence a physician's opinion as to the length of leave that Mia requires. CCHS's arbitrary decision to limit Mia to three weeks of excused absence unjustifiably fails to leave room for Mia's physician to determine the appropriate recovery time for Mia based on her childbirth experience.

Additionally, by encouraging Mia to go to an alternate on-line school in lieu of loss of credit, CCHS violates Title IX's mandate that pregnant students shall only participate in alternative schooling “voluntarily.”¹¹ While CCHS may provide information to Mia about alternative school options, “it may not pressure a pregnant student to attend that program. A pregnant student must be allowed to remain in her regular classes and school if she so chooses.”¹² Threatening Mia with loss of credit and refusing to permit her to do make up work certainly constitutes “pressure” to enroll in the alternate on-line program, thereby violating Title IX's requirement that any enrollment in an alternative program be completely voluntary.

⁵ 34 C.F.R. § 106.40(b)(1).

⁶ 34 C.F.R. § 106.40(b)(4).

⁷ 34 C.F.R. § 106.40 (b)(5) (emphasis added).

⁸ 34 C.F.R. § 106.40 (b)(5) (emphasis added).

⁹ U.S. Department of Education, Office for Civil Rights, SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, at 11 (June, 2013), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

¹⁰ U.S. Department of Education, Office for Civil Rights, SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, at 10 (June, 2013) (emphasis added), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

¹¹ 34 C.F.R. § 106.40 (b)(1).

¹² U.S. Department of Education, Office for Civil Rights, SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, at 7 (June, 2013), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

CCHS's actions have caused Mia to feel pressured to leave the school she loves or forego her federally guaranteed right to medically necessary maternity leave. Given that Mia cannot know how long a leave she will require until well into November, she feels she must decide now whether to enroll in the alternative program in order to avoid the possibility of loss of credit at CCHS. Should Mia wait until the middle or end of November to decide whether to enroll in the alternative program, she reasonably fears she will have too little time to complete a semester's worth of on-line work.

During the summer and fall semester, with the support of her family and teachers, Mia had come to believe that her pregnancy would not prevent her from accomplishing her life goals, beginning with graduating from CCHS. Now, the position of CCHS administrators has left Mia feeling doubtful that she can succeed. As you must know, pregnant and parenting teens face enormous challenges in accomplishing their educational goals. Young people have the right to complete their education regardless of their sex or whether they become pregnant. Instead of punishing pregnant and parenting teens, schools and their administrators should ensure that they provide the support services the young students need to complete their education.

As required by Title IX, I ask that CCHS allow Mia whatever leave her physician determines is medically necessary following the birth of Mia's baby. I also ask that she receive reasonable accommodations to permit her to keep up with her schoolwork while she is away on maternity leave. She should be given credit for the schoolwork she has already completed and the opportunity to make up any work she misses during her absence, including her chemistry lab instruction. The extra work Mia has done throughout last summer and this semester, as well as her current grades, reflect her willingness to continue to do whatever classwork is required to succeed. Requiring Mia to take online courses instead of classes in which she is currently enrolled unlawfully discriminates against her because of her pregnancy. Similarly, reducing her credits for the fall classes fails to ensure that Mia's status remains unchanged while on maternity leave.

I am hopeful that we can resolve this matter promptly and that you will be responsive to Mia's requests for accommodations. Given the short amount of time before Mia is expected to give birth to her baby, I ask that you respond to this letter no later than **October 23, 2013**. If I do not hear from you by this date, I will assume that CCHS's failure to comply with Title IX is still in effect, and will consider appropriate next steps, including filing a complaint with the U.S. Department of Education Office for Civil Rights.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Wallace". The signature is written in a cursive style and is contained within a rectangular box.

Rebecca Wallace
Staff Attorney, ACLU OF COLORADO

cc: Principal Ryan Silva - rsilva2@cherrycreekschools.org