



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VII
KANSAS
MISSOURI
NEBRASKA
OKLAHOMA
SOUTH DAKOTA

August 9, 2018

Sent via email only

XXXXXX XXXXXX, Esquire
XXXXXX XXXXXX, L.L.C.
XXXXXX XXXXXX
XXXXXX XXXXXX
XXXXXX XXXXXX
XXXXXX@XXXXXX.com

Re: Aberdeen 06-1 School District
OCR Case Number 07-16-1912

Dear Mr. XXXXXX:

On September 9, 2016, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint alleging discrimination on the basis of disability by your client, the Aberdeen 06-1 School District (District), Aberdeen, South Dakota. This letter is to confirm the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

OCR investigated whether the District:

1. discriminated against students on the basis of disability when it denied the students opportunities to participate in or benefit from aids, benefits, and services by harassing and inappropriately restraining and/or secluding them; and
2. discriminated against students on the basis of disability when it denied the students a free appropriate public education (FAPE) by:
 - a. failing to appropriately evaluate and/or re-evaluate students' individual educational needs with regard to behavior, and failing to create appropriate behavior plans to address those needs;
 - b. failing to appropriately implement the students' Section 504 plans, individualized education programs (IEPs) and/or behavior plans; and

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

- c. failing to educate the students with their non-disabled peers to the maximum extent appropriate.¹

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA from the Department and a public entity, the District is subject to these laws. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

This letter is to confirm the District voluntarily submitted a Resolution Agreement (Agreement) to resolve the complaints investigated by OCR.

Background

This complaint was filed on behalf of students with disabilities and parents of students with disabilities in the District. The complaint allegations in the written complaint and as clarified in OCR's evaluation process alleged the District harassed and improperly restrained students with disabilities in one of the District's self-contained classrooms throughout the 2015-2016 school year. The Complainants also alleged the District frequently secluded the students in rooms with poor conditions in terms of size and location away from their general education peers. The Complainants alleged students in seclusion were physically prevented from leaving the seclusion room by District staff members, were not provided breaks to use the bathroom or for lunch and were required to complete tasks that did not align with the students' IEP or behavior intervention plan goals. The Complainants alleged the District disregarded individualized behavior intervention plans in place for students and failed to implement students' IEPs when students were secluded. The Complainants also alleged District staff made verbally harassing comments to at least one student with a disability.

OCR issued notification letters to the parties and a data request to the District on February 1, 2017. The District submitted responsive data on February 23 and March 2, 2017. OCR conducted a joint site visit with DOJ to Aberdeen, South Dakota, for purposes of inspecting District facilities, and interviewing District witnesses and parents from May 15 through May 17, 2017. During the site visit to the District, OCR viewed the facilities at three elementary schools and one middle school. OCR interviewed fifteen (15) District witnesses: the Assistant

¹ OCR investigated the allegations of the complaint jointly with the U.S. Department of Justice (DOJ), including the U.S. Attorney's Office, District of South Dakota. As of the date of this letter, DOJ's investigation is ongoing. If you have questions regarding the DOJ's activities with regard to the allegations its office is investigating, please contact its office's Civil Rights Coordinator at (605) 357 2338. The reference number for the DOJ case is A.D.A. Investigation, D.J. No. 204-69-59.

Superintendent; Special Education Director; Elementary Special Education Coordinator; Secondary Special Education Coordinator; Principal, Teacher and Aide at May Overby Elementary School; Principal, Teacher and Aide at Lincoln Elementary School; Principal, Teacher 1 and Teacher 2 at Simmons Elementary School; Principal and Teacher at Simmons Middle School. OCR also interviewed the parents or legal guardians of five District students.

OCR reviewed of the information the Complainants and the Recipient provided and the information obtained from OCR's site visit and interviews. OCR reviewed the District's policies and procedures governing the use of restraint and seclusion on students identified as individuals with a disability. OCR also reviewed whether the District's training methodologies ensure employees know when and how to use restraint and seclusion techniques.

OCR reviewed documentation of restraint and seclusion incidents including, how the District documented the incidents and how the District communicated the incidents to parents or guardians of the student. OCR investigated whether the frequency or duration of restraint and seclusion instances triggered a reevaluation of students' educational placement, as the frequent use of such restrictive interventions may suggest that these strategies are not effective at changing or minimizing problematic behavior and that the student's current placement may not be appropriate. OCR also examined the physical spaces where the District places students who are restrained or secluded for size, space and design to determine whether the District is ensuring students who are restrained or secluded are in a safe educational environment.

Resolution Agreement

Prior to the conclusion of the investigation, the District expressed an interest in engaging in a voluntary resolution agreement pursuant to Section 302 of OCR's CPM, which states:

[a]llegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

On May 31, 2018, the District signed an Agreement (copy enclosed) that, when fully implemented, will resolve the allegations in this complaint preliminarily investigated by OCR.

Pursuant to the Agreement, the District agreed to conduct an individualized review of the special educational programs of every student who has been identified as exhibiting behaviors that impede their learning and every student who was the subject of a restraint or seclusion during the 2017-2018 school year. For students who have been the subject of restraint or seclusion in the past, as part of the individualized review the District will determine why the restraint and/or seclusion were necessary, and ensure the student's IEP and/or BIP are appropriately addressing those factors to reduce the need for restraint and/or seclusion as an emergency intervention over time. For students who exhibit behaviors that impede their learning but who have not been subject of restraint or seclusion, as part of the individualized review the District will ensure the student's IEP and/or BIP are appropriately addressing the student's behaviors to prevent any future need for restraint and/or seclusion as an emergency intervention. OCR will also monitor the District's use of restraint and/or seclusion throughout the 2018-2019 school year by reviewing the restraint and seclusion forms completed each time a student is subjected to restraint or seclusion. Please consult the Agreement for further details.

OCR considers the allegations of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized official and made available to the public. The Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against the complainants because he or she filed a complaint or participated in the complaint resolution process. If this happens, the complainants 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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact XXXXX XXXXX, Attorney, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

Anne Bradley
Acting Supervisory Attorney

Enclosure

cc: Ronald A. Parsons Jr.
United States Attorney
District of South Dakota

Alison J. Ramsdell
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District of South Dakota

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