



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

August 3, 2017

Dr. Betsy Hargrove
Superintendent
Avondale Elementary School District
295 W. Western Ave.
Avondale, AZ 85323

Re: Avondale Elementary School District
Case Number: 08-16-1396

Dear Dr. Hargrove:

On July 1, 2016, we received a complaint alleging that Avondale Elementary School District (the District) discriminated on the basis of disability. In her complaint, the Complainant alleges that the District failed to fully implement an IEP for her son (the Student). Specifically, the Complainant alleges that the District did not administer daily breathing treatments to the Student during several periods of nursing staff turnover, in violation of the Student's IEP.

Because the complaint was filed in a timely manner, we conducted an investigation of the complaint 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 U.S. Department of Education (Department) and by public entities, respectively. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to these laws and regulations.

During our investigation, we interviewed the Complainant and obtained information from her. We also received the District's response to our Data Request. Our review of the data indicated that while the Student's IEP does contain language that provides the Student with breathing treatments as needed, the IEP does not explicitly require District staff to provide the Student with breathing treatments on a daily basis or with any particular frequency. We have determined that the language in the Student's IEP regarding breathing treatments is vague, especially as it relates to the frequency with which treatments should be administered.

The data provided by the District also indicates that the Student received breathing treatments on most days he was in school. However, the data also shows that he did not receive daily breathing treatments as the Complainant expected. Moreover, the records provided by the District that document when the Student received breathing treatments are inconsistent with each other. Additionally, these documents indicate that during the period under investigation, the Student's health aide and nurse were absent on some of the days the Student was present. Based on the information obtained from the District, it is uncertain whether a substitute health aide or nurse was present on these days to attend to the Student's health needs, and whether these substitutes provided the Student with breathing treatment.

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

During an interview with the Complainant, we asked about specific instances when the Student went to the nurse's office to receive breathing treatments and was unable to receive them as a result of the nurse's absence. The Complainant was unable to provide any dates. However, the District also did not provide us with sufficient information to find that the District always provided the Student with breathing treatments when he needed them. Consequently, without further investigation, we are unable to determine whether the District failed to implement the Student's IEP as alleged.

The District expressed an interest and willingness in resolving the complaint through a voluntary agreement with OCR. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate and the remedies align with the allegations.

On August 1, 2017, we received the District's signed Resolution Agreement (Agreement). OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Section 504 and its implementing regulation. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

OCR routinely advises recipients 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.

Please also note that the Complainant has the 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. 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 or concerns, please feel free to contact Michael Germano, Attorney Advisor and primary contact for this case, at XXXX or by email at XXXX, or me at XXXX.

Sincerely,

/s/

Thomas M. Rock
Supervising General Attorney

Enclosures – Copy of Resolution Agreement