



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII

ARIZONA  
COLORADO  
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UTAH  
WYOMING

April 10, 2020

Superintendent Raquel Reedy  
Albuquerque Public School District  
P.O. Box 25704  
Albuquerque, NM 87125-8864

*Sent via email only to XXX@XXX; XXX@XXX; & XXX@XXX*

Re: Albuquerque Public School District  
Case Number: 08-20-1013

Dear Superintendent Reedy,

On October 15, 2019, the United State Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging Albuquerque Public School District (District) discriminated on the basis of disability. Specifically, the Complainant alleged that the District discriminated against her Son (Student) when the District failed to ensure that the Student has equal access to all activities related to his participation in the Builders' Club, an after-school program the Student participates in the District. In particular, the Complainant identified the District's refusal to accommodate the Student for his participation in Builders' Club activities at the Joy Junction homeless shelter on October 27, 2019, the Doggie Dash and Dawdle on November 3, 2019, and other similar activities.

OCR initiated an investigation of this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

Investigation Summary & Facts

OCR notified the District and the Complainant on January 8, 2020, that OCR opened the above complaint allegation for investigation. On February 5, 2020, the District provided its response to OCR's data request. While OCR was conducting this review, the District expressed an interest in voluntarily entering into an agreement with OCR prior to OCR interviewing district staff.

OCR's initial review of the information revealed that during the 2019-2020 school year, the Student attended XXXX (DRMS), a school in the District, and had an Individualized Education Program (IEP) on the basis of multiple disabilities.

DRMS provides a variety of OST (Out of School Time) after-school programs, including the Builders' Club. The Student registered for and participates in the Builders' Club as one of his after-school activities. The Builders' Club meets at DRMS from 3:15 p.m. - 4:15 p.m. every first and third Tuesday of the month. Additionally, the Builders' Club participates in events for community organizations such as Joy Junction, Big Brothers and Big Sisters, Habitat for Humanity, and the Ronald McDonald House.

It is undisputed that the District has been providing the Student with adult supervision when the Builders' Club meets from 3:15 p.m. - 4:15 p.m. at DRMS. It is also undisputed that the District notified the Complainant that it would not provide the Student with adult supervision for optional, off-campus projects or fundraiser for the Builders' Club. The District provided OCR with copies of email communications denying accommodations outside of the Builders' Club meeting hour at DRMS two times a month.

Specifically related to the Builders' Club activities at the Joy Junction homeless shelter on October 27, 2019, and the Doggie Dash and Dawdle on November 3, 2019, the Complainant requested that the District provide the Student with adult supervision, and the District denied her request. Related to the Builders' Club's Bell Ringing Event on December 13, 2019, the Complainant directly requested from Kiwanis International that Kiwanis provide the Student with accommodations for his participation in the event. On December 13<sup>th</sup>, Kiwanis' Corporate Risk Officer emailed the Complainant, denying providing the Student with any accommodations for the Student. The District notified OCR that it is aware of these communications and provided a copy of the communications to OCR.

In the District's position statement to OCR, the District explained that the weekend, off-campus events were optional volunteer opportunities and were not district organized events. Instead these events were organized by the Kiwanis Club adult volunteers.

DRMS's school website<sup>1</sup> states, "These programs are made possible by your tax dollars, and a partnership between APS, XXXX, and the ABC Community School Partnership in collaboration with the City of Albuquerque." The website also provides that students participating in any of the OST programs and activities must complete an "OST Registration Form" and complete a "Transportation Release Form." Finally, the website provides a link to the OST programs flyer.

The OST Registration Form<sup>2</sup> includes Albuquerque Public School District's logo, along with the logos for the other members of its partnership. The form inquires if the student requires any "medical or behavioral accommodations." It states, "If yes, the *school* [emphasis added] will be contacting you to set up meeting to discuss further." The form also requires parents/guardians to initialize acknowledgement of various terms, including the authorization of the release of the student's academic records, including attendance, behavior, and academic records and data. It

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<sup>1</sup> XXXX (February 1, 2020)

<sup>2</sup> XXXX

also requires parental/guardian permission to be granted to the program and service providers to use the student’s records. It states, “I understand that my child may engage in conversations with internal program providers about academic performance, to support my child’s development in school.”

The OST programs flyer<sup>3</sup> titled, “XXXX OST After-School Programs,” related to the Builders’ Club states, “Builders’ Club allows middle school students to gain leadership experience by helping others. Students plan and implement service events for community organizations such as Joy Junction, Big Brothers and Big Sisters, Habitat for Humanity, and the Ronald McDonald House. Activities are designated to provide students a fun experience that is hands-on and interactive. Builders’ Club partners with the Kiwanis Club International.”

DRMS’s website provides a link directly to the Builders’ Club webpage.<sup>4</sup> The Builders’ Club webpage states that the club is sponsored by DRMS and the District, along with their other partners.

On February 21, 2020, before OCR had completed its investigation, the District notified OCR that it was interested in resolving this complaint. Further investigation is necessary in order for OCR to make findings on the allegation.

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 April 10, 2020, OCR received the District’s signed Resolution Agreement (enclosed). 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 recipient’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 allegation will have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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.

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<sup>3</sup> XXXX

<sup>4</sup> XXXX

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, OCR will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Michael Germano, Attorney and primary contact for this case, at (XXX) XXX-XXX or by email at XXX@ed.gov, or me at (XXX) XXX-XXX or by email at XXX@ed.gov.

Sincerely,

/S/

Michael D. Todd

Supervisory Attorney

Enclosure – Resolution Agreement

cc w/out enclosure:

Christopher Ruskowski (Secretary NMPED) via email at XXX@state.nm.us