



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 25, 2020

Mr. Chris Burr, Superintendent
Del Norte School District
770 11th Street
Del Norte, Colorado 81132

via email only to XXXX

Re: Del Norte School District
OCR Case 08-20-1287

Dear Superintendent Burr:

We have completed our investigation of the above-referenced complaint, filed on March 3, 2020. The Complainant alleged that during the 2019-2020 school year Del Norte School District (District), at XXXX School (School), discriminated against a son who was in XXXX (Student A) and another son who was in XXXX (Student B) on the basis of disability. Specifically, the Complainant alleged:

1. The District denied Student A and Student B a Free Appropriate Public Education (FAPE) when the School physically restrained them at various times during the 2019-2020 school year and failed to notify their parents.
2. The District denied Student B a FAPE when the School failed to implement his Behavior Intervention Plan (BIP) by not notifying his parents of a behavioral incident lasting more than 30 minutes.
3. The District treated Student A and Student B differently due to their disabilities when they were excluded from school trips and functions during the 2019-2020 school year.
4. The District treated Student A differently due to his disability when he was placed on a shortened schedule of only one-hour per day from October 28, 2019 through December 2019.

The Office for Civil Rights (OCR) is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, 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, 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.

OCR reviewed documents provided by the Complainant and District and conducted initial and rebuttal interviews with the Complainant. Prior to OCR issuing a final determination, the District expressed an interest in resolving the allegations being investigated. OCR determined that it was appropriate to resolve the allegations pursuant to Section 302 of our Case Processing Manual (CPM). The provisions of

the Agreement are tied to the allegations opened for investigation and evidence obtained during the investigation and are consistent with applicable regulations.

On March 13, 2019, while in XXXX, Student A qualified for an IEP under the disability category of XXXX. During the 2019-2020 school year Student A was enrolled in XXXX at the School. The Complainant revoked consent for Student A's IEP on September 4, 2019. In October 2019, Student A was placed on a shortened schedule where he attended school for one hour per day.¹ Student A was reevaluated for an IEP on December 17, 2019 and found not eligible for an IEP. The Complainant noted her dissent to the eligibility decision. Student A returned to a full-day schedule in January 2020. Student A was then found eligible for an IEP in February 2020. An email from the School Principal to the Complainant on January 23, 2020, informed the Complainant that the School applied a two-person hold on Student A for three minutes. Student A's class was eligible to attend two field trips during the school year, but the School did not allow him to attend either trip.

During the 2019-2020 school year, Student B was enrolled in XXXX at the School. Student B had an IEP under the eligibility category of XXXX. IEP documents indicate that the School physically restrained Student B on at least three occasions, September 24, 2019, October 15, 2019, and October 16, 2019. Student B's Behavior Intervention Plans from September 12, 2019, October 24, 2019, and November 21, 2019 each noted that if Student B's behavior remained elevated and dangerous to himself or others for longer than 30 minutes then his parents would be asked to pick him up. The behavior incidents on September 24 and October 16, 2019 each lasted more than 30 minutes and behavior detail reports indicate that the parents were contacted.² The Complainant alleged that Student B had a "mood incident" on February 26, 2020 that lasted longer than 30 minutes and the School did not contact her. OCR did not receive a behavior detail report for an incident involving Student B that occurred on February 26, 2020. Student B's class was eligible to attend two field trips and three ski trips during the 2019-2020 school year. Student B was not allowed to attend one field trip and did not attend the three ski trips. The Complainant alleged that she was intentionally not notified of the ski trips and the District asserted that it did notify the Complainant.

Interviews with District staff were needed to determine whether the District denied the students FAPE and treated them differently because of their disabilities. Interviews were not conducted because during our investigation and before we made findings regarding the complaint allegations, the District expressed a willingness to resolve the complaint. The District agreed to draft, adopt, publish, and disseminate new procedural guidance regarding shortened school day schedules, and train staff on the guidance. The District also agreed to train staff on the use, notice, and documentation of physical restraint. The District agreed to provide the Complainant with written reports of its use of physical restraint on Student A and Student B. Though the students were recently disenrolled from the District by the Complainant, the District agreed to hold an IEP meeting to discuss the use of physical restraint if they reenrolled at a later date, and if they reenrolled during the 2020-2021 school year the IEP meeting will also consider whether compensatory education services are required due to the previous uses of restraint. Lastly, the District agreed to fund alternate opportunities as replacements for the school activities that the students did not attend.

A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the

¹ The XXXX schedule at the School during the 2019-2020 school year would have typically been a full-day schedule.

² The behavior reports do not indicate whether the parents were informed of the physical restraints.

allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement. OCR will provide the Complainant with a copy of OCR's monitoring letters.

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please also be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

Thank you for your cooperation and attention to this matter, and for the assistance of Mr. Elliott Hood. If you have any questions, please contact XXXX at XXXX or by email at XXXX.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Angela Martinez-Gonzalez', with a stylized flourish at the end.

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

Cc (via email): Elliott Hood, Counsel for the District, Caplan and Earnest
Katy Anthes, Commissioner, Colorado Department of Education