



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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June 1, 2020

Ms. Adrea Bogle
Exceptional Student Services Executive Director
San Juan Board of Cooperative Educational Services
2003 Industrial Park Road
Cortez, Colorado 81321

via email only to XXXX@XXXX

Re: **San Juan Board of Cooperative Educational Services**
OCR Case 08-20-1358

Dear Director Bogle:

We write to inform you of the resolution of the above-referenced complaint, filed on January 7, 2019, against San Juan Board of Cooperative Educational Services (BOCES), alleging discrimination based on disability and race. Specifically, the Complainant alleged that BOCES: (1) denied students with disabilities placed at New Wings a free appropriate public education (FAPE), including by failing to implement their individualized education programs (IEPs); and (2) subjected American Indian students to different treatment based on race by disproportionately placing them at New Wings.

The Office for Civil Rights (OCR) of the U.S. Department of Education ("Department") is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination based on disability in any program or activity operated by recipients of federal funds from the Department;
- Title II of the Americans with Disabilities Act of 1990 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities, regardless of whether they receive federal financial assistance; and
- Title VI of the Civil Rights Act of 1964 ("Title VI"), and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance from the Department.

As a recipient of federal financial assistance from the Department and a public entity, BOCES is subject to these laws and regulations.

On April 28, 2020, we notified BOCES that OCR was opening an investigation of the allegations.

According to the Complainant and other information: (a) New Wings is coordinated by BOCES and school districts that refer students to the program, including the Montezuma-Cortez School District RE-1; (b) New Wings was staffed by a director, who is a social worker, and two paraprofessionals; (c) the base/home school for most students at New Wings is Manaugh Elementary School; (d) no teacher was

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assigned to New Wings for much of the 2019-2020 school year; (e) the students at New Wings are disproportionately American Indian, relative to their proportion of the total student population; and (f) one student was on a significantly shortened school day schedule. Additionally, it was alleged that: (a) students did not receive academic services during afternoons; (b) students did not attend the program on Wednesdays or did not receive academics on Wednesdays; (c) students have not received special education services since the program closed due to COVID-19; and (d) the program closed at the end of the 2019-2020 school year.

Prior to OCR issuing a data request, BOCES expressed an interest in taking voluntary action to resolve the Complainant's allegations. We determined that it was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), to resolve the allegations with an agreement ("Agreement") without conducting an investigation. On May 13, 2020, we sent BOCES a proposed Agreement. BOCES sent OCR a fully executed Agreement on May 29, 2019. Enclosed is a copy of the signed Agreement.

When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, Title VI, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from BOCES demonstrating that the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The Complainant will be copied on our monitoring letters. If BOCES fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegations and should not be interpreted to address BOCES compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that the Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that BOCES 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 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. In the event that 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 prompt attention to this matter and cooperation. If you have any questions or concerns, you may contact Jason Langberg, the attorney assigned to this case, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Lori Haukeness, Superintendent, Montezuma-Cortez School District RE-1
Darryl L. Farrington, Attorney for BOCES, Semple, Farrington, Everall & Case, P.C.
Katy Anthes, Colorado Commissioner of Education