



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

November 17, 2021

Mr. John Ross Null, Superintendent
Artesia Public Schools
301 Bulldog Blvd.
Artesia, NM 88210

Sent via email only to jrnnull@bulldogs.org

Re: Artesia Public Schools
OCR Case Number: 08-21-1295

Dear Superintendent Null:

We write to inform you of the resolution of the above-referenced complaint, filed on June 11, 2021, against Artesia Public Schools (District) at XXXX (School), alleging discrimination based on disability. Specifically, the Complainant alleged that during the 2020-2021 school year, the District failed to implement the Student's May 2018 and February 2021 Section 504 Plans, resulting in the denial of a Free and Appropriate Public Education (FAPE). The Complainant further alleged that the District failed to adopt and publish grievance procedures to address complaints of disability discrimination. Finally, the Complainant alleged that the District failed to designate at least one person to coordinate its efforts to comply with Section 504 (often referred to as a Section 504 Coordinator).

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

On July 30, 2021, we notified the District that OCR was opening an investigation of the allegations and sent the District a data request. Before OCR completed its investigation or issued a draft letter of findings, the District expressed to OCR an interest in taking voluntary action to resolve the Complainant's allegations. OCR determined that resolving the allegations with an agreement (Agreement), without concluding the investigation, was appropriate pursuant to Section 302 of OCR's Case Processing Manual (CPM). On November 1, 2021, we sent the District a proposed Agreement. The District sent OCR a fully executed Agreement on November 17, 2021. Attached is a copy of the signed Agreement.

Legal Standards

The Section 504 regulations at 34 C.F.R. Section 104.33(b) states that the provision of a free and appropriate public education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities.

The Section 504 regulation at 34 C.F.R. Section 104.7(a) requires a recipient that employs fifteen or more persons to designate at least one person to coordinate its efforts to comply with Section 504. Section 104.7(b) requires a recipient that employs fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

The Title II regulation at 28 C.F.R. Section 35.107(a) requires a public entity that employs fifty or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its Title II responsibilities, including any investigation of any complaint communicated to it alleging its noncompliance with Title II or alleging any actions that would be prohibited by Title II. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. Section 35.107(b) requires a public entity that employs fifty or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

Background

During the 2020-2021 school year, the Student was in the XXXX grade at the School. On May 24, 2018, when the Student was in the XXXX grade, the District drafted a Section 504 Plan for the Student. The District drafted another Section 504 Plan for the Student on February 17, 2021. The Student's May 2018 Section 504 Plan was in effect during the 2020-2021 school year until the District drafted the Student's February 2021 Section 504 Plan. The February 2021 Plan was then in effect through the remainder of the 2020-2021 school year.

Allegation Details from the Complainant

The Complainant alleged that the District never implemented the Student's May 24, 2018 Section 504 Plan, including during the 2020-2021 school year. The Complainant also alleged that after the District drafted a new Section 504 Plan on February 17, 2021, the District failed to implement the following accommodations included in the Student's plan: (1) providing the Student with printed materials in history class, and during summer school 2021; and (2) providing the Student with a calculator in math class. Additionally, the Complainant alleged that the District failed to adopt and publish grievance procedures to address complaints of disability discrimination and failed to designate at least one person to coordinate its efforts to comply with Section 504.

Resolution Agreement

When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District. OCR will promptly provide written notice to the District of any deficiencies with respect to the implementation of the Agreement terms and will require prompt actions to address such deficiencies. The Complainant will be copied on OCR's monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegations and should not be interpreted to address the District's 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 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 a 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, releasing this document and related correspondence and records upon request may be necessary. If 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.

Thank you for the District's prompt attention to this matter and cooperation. If you have any questions or concerns, you may contact XXXX, the attorney assigned to this case, at XXXX or XXXX.

Sincerely,



Daniel Contreras
Designated Team Leader

Enclosure: Resolution Agreement

cc (via email): Jessica Terrazas, Attorney for the District, Ortiz & Zamora
Dr. Kurt Steinhaus, New Mexico Secretary of Education