



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

December 21, 2021

Dr. Chris Fiedler, Superintendent
Educational Services Center
18551 E. 160th Avenue
Brighton, CO 80601

By email only to XXX@XXX

Re: OCR Complaint No. 08-21-1310
27J Schools

Dear Dr. Fiedler:

On July 6, 2021, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against 27J Schools (the District). The Complainant alleges that the District discriminated against her son (the Student) on the basis of disability. Specifically, the Complainant alleges that the District:

- 1) Failed to implement portions of the Student's Individualized Education Program (IEP) during the 2020-21 school year, which resulted in a denial of a free appropriate public education (FAPE);
- 2) Failed to reevaluate the Student (a) when the Complainant reported that the Student had been diagnosed with other conditions (including autism, episodic ataxia, and gastrointestinal issues), (b) when the Student was not making expected progress, or (c) when the Student was diagnosed with cancer in XXX, which resulted in a denial of FAPE; and
- 3) Failed to provide adequate procedural safeguards.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the

Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In August 2021, we formally notified the District that OCR opened an investigation regarding the above-listed allegations. We also requested information from the District. OCR reviewed information from the District and from the Complainant. During the course of these investigative activities, OCR learned the following:

- The Student transferred to XXX (XXX) from another district with an IEP for developmental delay. XXX was aware that the Student had also been diagnosed with autism, episodic ataxia, and gastrointestinal issues. In XXX, XXX learned that the Student had been diagnosed with neuroblastoma.
- The Student was retained, although the Student's December 2020, March 2021, and May 2021 IEP Progress Reports checked the "Adequate Progress Made" box for all annual goals: 1) Number and Quantity goal, 2) Geometry goal, 3) Reading goal, 4) Fine and Visual Motor Skills goal, 5) and 6) Communication – Articulation Skills goals, 7) Communication – Receptive Language goal, and 8) Communication – Expressive Language goal.
- The Student's IEP Team was not consulted as part of the retention decision process.

After discussing the information learned by OCR, the District indicated that it wanted to take voluntary action to resolve the allegations. Based on the information provided by the District and the Complainant thus far, we determined that voluntary resolution of the allegations was appropriate, pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Section 302 provides that allegations may be resolved with a voluntary Resolution Agreement (Agreement) before completing a full investigation when identified concerns can be addressed through an Agreement. On November 26, 2021, we sent the District a proposed Agreement. The District sent OCR a signed Agreement on December 21, 2021. A copy of the signed Agreement is enclosed.

When the Agreement is fully implemented, the allegations opened for investigation 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 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. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring

phase of the case is complete, OCR will close case number 08-21-1310 and will send a letter to the Complainant and to the District stating that the case is closed.

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.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint 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 note the Complainant may have 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.

We thank the District for being willing to voluntarily address the allegations raised by the complaint. We appreciate the District's attention to this matter and the help of Melissa L. Barber. We look forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XXX, the OCR attorney assigned to this complaint, at XXX or XXX@XXX.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Melissa L. Barber, Caplan & Earnest LLC (by email only)
Katy Anthes, Commissioner of Education (by email only and without enclosure)