



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

October 29, 2021

Ken Witt  
Executive Director  
Education ReEnvisioned BOCES  
430 Beacon Lite Rd., Suite 135,  
Monument, CO 80132

Via email only to ken@edreenvisioned.org

Re: Education ReEnvisioned BOCES  
OCR complaint number 08-21-1351

Dear Director Witt:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint. On April 14, 2021, OCR received a complaint against the Education ReEnvisioned BOCES (BOCES, Recipient, or District). The Complainant alleges that District discriminated against the Complainant's daughter (the Student) on the basis of disability. Specifically, the Complainant alleged that the District through xxxxxxxxxxxxxxxx failed to hold an Individualized Education Plan (IEP) meeting to assess the amount of special education services to provide the Student in literacy and math from March 22, 2021, until the end of the 2020-21 school year.

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. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. 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. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

On July 14, 2021, OCR opened an investigation into the above allegations.

As part of its investigation, OCR reviewed information provided by the Complainant and District, conducted an interview with the Complainant and discussed the allegation with counsel for the District.

### **Legal Requirements**

OCR makes legal decisions based on a preponderance of evidence standard.

Section 504 § 104.35 (c)(1)(2)(3)(4) states that in interpreting evaluation data and in making placement decisions, a recipient shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and ensure that the placement decision is made in conformity with §104.34.

Section 504 § 104.36 states that recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

### **Background**

The Student previously attended the xxxxxxxxxxxxxxxxxxxxxxxx in the Denver Public Schools (DPS). Due to COVID 19 pandemic xxxxx went to remote learning but later returned to in school learning on March 22, 2021. XXXXXXXXX offered those parents and students who wished to continue online learning the option of continuing by enrolling in xxxxxxxxxxxxxxxxxxxx. XXXXXXXX is a part of the District. The Complainant choose to continue the Student's leaning online and enrolled in xxxxxx. The Student attended xxxxxx from March 22, 2021, until the end of the 2020-2021 school year. The Student enrolled in a different DPS school for the 2021-2022 school year.

### **Evidence Reviewed**

The District claims that the Complainant and other staff members were involved in drafting an Interim IEP dated from the time the Student transferred to xxxxxx on March 22, 2021 until an IEP meeting was held on April 21, 2021.<sup>1</sup> The plan shows that the Student was transferred to xxxxxx

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<sup>1</sup> The District could not provide proof of this claim.

on March 22, 2021. This plan states that a previous IEP evaluation and eligibility determination dated November 15, 2018, from Denver Public Schools (DPS) was reviewed but not adopted by xxxxxxx. The interim IEP states the Student is to received special education services for 360 minute per month directly and 40 minutes per month indirectly. The only signature on the interim IEP is that of the Case Manager. In an email dated September 4, 2021, the Complainant by her own admission received a copy of the interim plan on March 21, 2021.

In an email dated March 29, 2021, the xxxxxxxx Special Education teacher informed the Complainant that an interim plan was attached, and the plan would be in place until a meeting could be held on April 15, 2021. The IEP meeting was held within two days. The Complainant received an email dated September 4, 2021, attesting to participating online in the April 15<sup>th</sup> and April 21<sup>st</sup> meetings. The Complainant also attested to the fact that participants in these meetings were the “Academic Administrator at xxxxx, SPED Teacher, SPED Instructor and 6th grade ELA Teacher.” The Student’s xxxxx IEP was finalized on May 5, 2021. The Complainant asserted in an email dated September 4, 2021, that she never received a “full copy of the amended” finalized IEP. The Complainant further attested that she objected to the amount of services that the team decided to provide to the Student.

### **Legal Analysis**

Since the interim IEP created on March 21, 2021, did not appear to include a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, OCR determined that there were concerns that the March 21, 2021, was not developed pursuant to Section 104.35 (c)(3).

However, OCR determines that the subsequent IEP meetings held by xxxxxx on April 15th and 21st met the requirements of Section 104.35 (c)(3). These meetings included the Complainant, the Academic Administrator at xxxxx, SPED Teacher, SPED Instructor and 6th grade ELA Teacher, and covered appropriate subject matter. The Complainant’s main objection was that she did not receive the final amended copy of the IEP and was not satisfied with the team’s decisions.

September 15, 2021, the Complainant confirmed receipt of the District’s procedural safeguards by email. The Complainant’s dispute regarding the amount and type of services provided to the Student during her time at xxxxxx is ultimately a concern addressed through the Recipient’s due process procedures outlined in the procedural safeguards.

Before OCR completed its investigation, the District asked to voluntarily resolve the allegation under investigation pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), which provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. Although OCR had identified concerns regarding the identified issues under investigation, OCR had not yet reached a full compliance determination. On August 31, 2021, OCR determined that a resolution under CPM Section 302 was appropriate.

On October 26, 2021, the District voluntarily signed and submitted to OCR a Resolution Agreement (Agreement) to resolve the issue under investigation. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the allegations under investigation and appropriately resolves them. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under Section 504 and Title II with respect to the allegations under investigation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the District's implementation of the Agreement.

Effective the date of this letter, OCR concludes its investigation of the above referenced allegation. This letter should not be interpreted to address any issues other than those addressed therein.

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.

Please be advised that a recipient 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, an individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, OCR will seek to protect to the extent provided by law personal information that if released, could constitute an unwarranted invasion of privacy. Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

If you have any questions about this letter, please contact Mr. David Sumners, the investigator assigned to this complaint, by telephone at (303) 844-4512 or by email at [david.sumners@ed.gov](mailto:david.sumners@ed.gov). You may also reach me at (303) 844-6086 or via email at [michael.todd@ed.gov](mailto:michael.todd@ed.gov).

Sincerely,

Michael D. Todd  
Supervisory Attorney  
Office for Civil Rights  
Denver Office

cc: Mr. Bryce Carlson, Outside Counsel by email at [bryce@millerfarmerlaw.com](mailto:bryce@millerfarmerlaw.com)  
Enclosure: Resolution Agreement