



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310  
DENVER, CO 80204-3582

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July 25, 2022

Dr. Jacque Phillips, Executive Director  
San Luis Valley BOCES  
2261 Enterprise Dr.  
Alamosa, CO 81101

*By email only to xxx@xx.xxx*

Re: San Luis Valley BOCES  
OCR Case Number: 08-22-1209

Dear Dr. Phillips:

This letter advises you of the resolution of this complaint, filed against San Luis Valley BOCES (the BOCES). The complaint alleged that the BOCES discriminated against students on the basis of disability. Specifically, the complaint alleged that the BOCES discriminated against students in the Significant Support Needs classroom located at Centauri High School by segregating the students in a portable trailer. The complaint also alleged that the portable trailer used for the Significant Support Needs classroom has features that do not meet the required standards for accessibility.

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 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 BOCES is subject to these laws and regulations.

In the initial stage of investigating this case, OCR has reviewed information provided by the Complainant, interviewed the Complainant and witnesses suggested by the Complainant, reviewed information provided by the BOCES, and interviewed a teacher employed by the BOCES. After reviewing this information, OCR learned the following:

- The BOCES is comprised of 14 member school districts in southern Colorado, and provides exceptional student services to students with disabilities in those districts. Students residing in three of those school districts participate in the Significant Support Needs (SSN) classroom (also referred to as the Extended Services, or ES classroom) described in the complaint. The SSN classroom is a program of the BOCES, with a teacher employed by the BOCES.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

- Since 2004, the classroom has been located in a portable classroom unit (often referred to as a trailer). The portable classroom unit is owned by the BOCES, and is located on the grounds of Centauri High School in the North Conejos School District (which is a member of the BOCES). It is the only portable classroom unit at this location.
- The portable classroom unit has been described by the BOCES as “dilapidated” and out of compliance with accessibility standards. Photos provided by the Complainant appear to illustrate several potential accessibility concerns, including concerns with the ramp, the hallways, and the restroom.
- The eleven middle and high school students in the program are identified as having significant special needs. Four students have IEPs that call for less than 40% of time in general education, six students have IEPs that call for 40-79% of time in general education, and one student has an IEP that calls for at least 80% of time in general education. The BOCES provided copies of class schedules that show where each student spends each class period, whether in the SSN classroom or elsewhere. OCR verified that each student is assigned to general education classes appropriate to the percentage of time listed in their IEP.
- The four students whose IEPs include less than 40% in general education are not assigned to any general education classes. Based on our interview with the teacher, these students do participate in adaptive PE, which although it does not directly include non-disabled students, is held in the main high school gym and often includes interaction with other students who are also using the gym. The remaining students have between 2 and 5 periods each day (out of 7) assigned to general education. The teacher told OCR the students consistently attend their general education classes as assigned. Any exceptions would be infrequent, and based on the student’s needs (for example, a student who was experiencing a “melt down” might stay in the SSN classroom until they calmed down).
- The majority of the students participate in lunch in the middle or high school cafeterias either independently or with a paraprofessional. The teacher explained to OCR that three students need significant support to eat, and those students eat lunch in the classroom.
- Some students participate in extra-curricular programs, including track and field and chess.
- OCR interviewed parents or guardians of two students who attend the program, and both had concerns with the condition of the trailer and the separation from the rest of the school, but did not express concerns about their students’ participation in general education.
- For at least the past year, the BOCES has been exploring options for relocating the SSN classroom either within the North Conejos School District or in another member school district. The BOCES has reached a tentative plan with its member school districts to locate the program in the middle school in North Conejos for the 2022-23 academic year.

## **Analysis**

OCR considered the first allegation regarding segregation of the SSN classroom from two perspectives. First, we considered whether students with disabilities in the program were denied access to the general education environment required by their IEPs. Second, we considered whether the students with disabilities in the program were treated differently from other students

by being segregated from other students in a portable unit that is not comparable to the facilities provided to non-disabled students.

With regard to the first perspective, OCR confirmed through class schedules and an interview with the teacher that students are assigned to and regularly participate in general education classes (including for most students, lunch) as appropriate to their IEPs. The evidence OCR has reviewed does not support the statement in the complaint that students “spend most, if not all, of their school day with other students in the program and are afforded little to no opportunity to interact with peers who do not have disabilities.” While four of the students are not assigned to any general education classes, this is consistent with their individualized needs as expressed in their IEPs. OCR did not find a systemic concern that students in the program are not provided appropriate access to the general education environment.

With regard to the second perspective, that students in the program are segregated from other students in a portable unit that is not comparable to the facilities provided to non-disabled students, there is a potential compliance concern. While the use of a portable classroom unit is not, on its own, proof of discrimination, the evidence suggests that the specific portable classroom used in this case is not comparable to what is provided to non-disabled students at the same location. The BOCES itself acknowledges that the trailer is “dilapidated” and does not meet accessibility standards. At the same time, all of the other students who attend Centauri High School recently moved to a newly constructed school building. As a result, this presents a potential compliance concern, even if students have access to the general education environment to the extent required by their IEPs.

With regard to the second allegation, that the portable classroom unit has inaccessible features, the photographs provided by the complainant raise potential concerns that some elements do not meet any applicable accessibility standards, including the ramp, the hallways, and the restroom.

During the course of our investigation, the BOCES indicated its desire to voluntarily enter into an agreement to resolve the complaint allegations pursuant to Section 302 of our *Case Processing Manual*. On July 22, 2022, prior to OCR completing its investigation or making any findings of fact, the BOCES signed an Agreement which, when fully implemented, will address the issues raised in the complaint.

In accordance with Section 302 of OCR’s *Case Processing Manual* (CPM), the provisions of the Agreement signed by the BOCES, when fully implemented, will address all of the allegations investigated and are consistent with the information obtained during OCR’s processing of this case, and consistent with the applicable regulations. Therefore, OCR is closing this complaint investigation effective the date of this letter. OCR, however, will actively monitor the BOCES implementation of the Agreement until the BOCES fulfills the terms of the agreement and is in compliance with the statutes and regulations at issue in this case. If the BOCES fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the BOCES or resume its investigation of the initial allegations. A copy of the Agreement is enclosed.

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Please be advised that the 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 Complainant may file another complaint alleging such treatment. In addition, 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

If you have any questions, you may contact XXXX XXXX, the attorney assigned to this case, at (303) 844-XXXX or xxx.xxxx@ed.gov.

Sincerely,

/s/

Sandra J. Roesti

Supervisory Attorney

cc: Resolution Agreement