



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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October 3, 2022

Ms. Nichole Burgin
Interim Superintendent/Chief Academic Officer
Truth or Consequences Municipal Schools
910 North Date Street
Truth or Consequences, NM 87901

By email only to: nburgin@torcschools.net

Re: Truth or Consequences Municipal Schools
Case Number: 08-22-1315

Dear Superintendent Burgin:

On April 6, 2022, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging that Truth or Consequences Municipal Schools (District) discriminated on the basis of disability. Specifically, the Complainant alleged that the District, at Sierra Elementary Complex (School), failed to draft and implement a Section 504 Plan for her daughter (Student) after holding a Section 504 meeting on October 18, 2021.

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 pursuant to these laws. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

In her complaint, the Complainant alleged that in October 2021, the Student's educational team agreed to change the Student's placement from a Student Assistance Team (SAT) Intervention Plan to a Section 504 Plan, but the District failed to develop and implement the Section 504 Plan. After being notified of the complaint, the District expressed an interest in taking immediate action to resolve the complaint allegation through OCR's Rapid Resolution Process (RRP). OCR determined that such resolution was appropriate.

On September 7, 2022, the District provided to OCR documentation that shows it took action to address the Complainant's allegation. The documentation included copies of: the Student's October 29, 2021 SAT Intervention Plan; the Student's July 29, 2022 Section 504 Plan; the Student's August 31, 2022 Section 504 Plan; and Prior Written Notice from a meeting held on August 31, 2022.

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

The District demonstrated to OCR, and OCR confirmed with the Complainant, that on August 31, 2022, the Student's Section 504 Team, including the Complainant, met to discuss what occurred after the Student's October 19, 2021 meeting. During the August 31, 2022 meeting, the District clarified with the Complainant that the Student was placed on a SAT Intervention Plan from October 19, 2021 until January 22, 2022 and not a Section 504 Plan. The Student's Section 504 Team determined that the Student was denied a free appropriate public education (FAPE) from October 19, 2021 until January 22, 2022 because the supports both outlined in the Student's SAT Plan and actually provided were not appropriate for the Student. The Student's Section 504 Team agreed that the District would provide the Student with math tutoring services through a mutually agreed upon provider to make up for the period of time that the Student was denied FAPE. .

Under Section 110(d) of OCR's *Case Processing Manual* (CPM), OCR will dismiss a complaint when OCR obtains credible information indicating that the allegation(s) has been resolved, and there are no systemic allegations. Based on the foregoing information and documentation provided to OCR and confirmed by the Complainant, OCR has determined that the District has taken steps to address the individual complaint allegation raised in OCR Case Number 08-22-1315. Accordingly, consistent with Section 110(d) of the CPM, OCR is closing the individual complaint allegation as of the date on this letter.

During the course of OCR's handling of the complaint allegation, OCR identified concerns with the District's Section 504 Accommodation Plan Form. OCR informed the District of OCR's concerns. On September 25, 2022, the District told OCR that it wanted to proactively and voluntarily resolve the concerns OCR identified. Pursuant to Section 302 of the CPM, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement. OCR has determined that the concerns identified during the course of OCR's handling of this case can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint.

On October 3, 2022, OCR received the District's signed resolution agreement (Agreement), a copy of which is attached to this correspondence. Accordingly, this complaint investigation is closed as of the date of this letter, and OCR will monitor the Agreement to ensure compliance.

With this letter, OCR has closed the investigation of Case Number 08-22-1315. The case is now in the monitoring phase. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies, procedures, and practices are administered in a nondiscriminatory manner. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled the term of the Agreement and is in compliance with the statutory and regulatory obligations at issue in this case.

When the Agreement is fully implemented, all concerns will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. If the District fails

to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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 complainants 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, it will seek to protect, to the extent provided by law, personal information, which 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, please contact Rachel Phillips-Cox, Senior Equal Opportunity Specialist, at 303-844-4559, or by email at Rachel.Phillips-Cox@ed.gov.

Sincerely,

/signed/

Daniel Contreras
Supervisory General Attorney

Attachment: Resolution Agreement

cc: Kurt Steinhaus, New Mexico Secretary of Education (kurt.steinhaus@state.nm.us)