



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

October 28, 2022

Dr. Tracey Kinney, Superintendent
Otis R-3
518 Dungan Street
Otis, Colorado 80743

By email only to: office@otisr3.com

Re: Otis R-3
OCR Case Number: 08-22-1373

Dear Superintendent Kinney:

On May 2, 2022, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint of discrimination against Otis R-3 (District). The Complainant alleged that staff at Otis Elementary (School) denied her son (Student) a Free Appropriate Public Education from January 2022 to April 2022 when they did not implement his Individualized Education Program (IEP) by not providing:

- The Student with two staff members at all times for safety;
- The Student with potty training;
- The Student with a communication device;
- Progress reports to the Student's parents, and
- When School staff allowed the Student to watch videos without earning it as a reward.

The Complainant also alleged that the Student was subjected to different treatment based on disability when School staff did not include him in a field trip to the aquarium that was scheduled for May 2022.

Finally, the Complainant alleged that during March 2022, School staff reported her to the Colorado Department of Human Services, Division of Child Welfare, and during the 2021-2022 school year School staff retaliated by not including the Complainant in any parent/teacher conferences in retaliation for advocating for the Student's special education needs.

We are 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 on the basis of disability in programs and activities that receive Federal financial

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

assistance 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 on the basis of disability by public entities. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from retaliation, intimidation, or coercion by 34 C.F.R. Section 104.61, as it incorporates 34 C.F.R. Section 100.7(e), and by 28 C.F.R. Section 35.134. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

On August 12, 2022, 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 OCR's review, OCR learned the following:

- The Student had an IEP active for the 2021-2022 school year containing the identified provisions.
- The Complainant had discussions with School staff regarding the implementation of the identified provisions.
- Documentation indicates that the identified provisions were not consistently provided from January 2022 to April 2022.
- The Student was not scheduled to attend the trip to the aquarium.
- A report from the Colorado Department of Human Services, Division of Child Welfare, suggests that the reporting party was a School staff member knowledgeable about the Student. The report was made on March 24, 2022.
- The Complainant did not attend any parent/teacher conferences.

Based on this information, OCR has concerns that the Student's IEP may not have been fully implemented from January 2022 to April 2022 at the School, and that the Student was not scheduled to attend the aquarium trip. OCR also has concerns about the Complainant not attending parent/teacher conferences and the report sent to the Colorado Department of Human Services, Division of Child Welfare. Although the District indicated in its submission to OCR that its staff members deny having made a report to the Division of Child Welfare, OCR reviewed a copy of the report and noted that it appears to have been made by a District employee. Prior to and after receiving data from the District, 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 October 12, 2022, we sent the District a proposed Agreement. The District sent OCR a signed Agreement on October 28, 2022. A copy of the signed Agreement is enclosed.

When fully implemented, the Agreement will resolve all of the allegations raised in this complaint. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issued in the case. 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.

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 and is in compliance with Section 504 and Title II. When the monitoring phase of the case is complete, OCR will close case number 08-22-1373 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.

If you have any questions, please contact XXXX, Equal Opportunity Specialist, the OCR person assigned to this complaint, at (303) 844-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Enclosure – Resolution Agreement

cc: XXXX, Attorney at Law, *by email only*

Katy Anthes, Commissioner of Education, *by email only*