



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

July 16, 2014

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Honorable Kathryn S. Matayoshi
Superintendent of Education
Hawaii State Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

Re: Hawaii State Department of Education
OCR Reference No. 10141323

Dear Superintendent Matayoshi:

The U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against Hawaii State Department of Education (HSDE). As explained below, prior to the completion of OCR's investigation, HSDE expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

The complaint alleged that a student at a district elementary school was being discriminated against on the basis of disability during the 2013-2014 school year. Specifically, the complaint alleged that the school failed to fully implement the provisions of the student's Section 504 plan with regard to ensuring that all homework assignments are written down and that all materials needed to complete the homework are packed in his backpack.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the U.S. Department of Education. HSDE is a recipient of federal financial assistance from this Department and is subject to these regulations.

The regulation implementing Section 504 at 34 CFR 104.33(a) requires a school district that operates a public elementary or secondary education program to provide a free appropriate public education to each qualified student with a disability within its jurisdiction. An appropriate education is defined as the provision of regular or special education and related aids and services that (1) are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met, and (2) which are based upon an adherence to Section 504 procedures. The applicable Title II regulatory provision is set forth at 28 CFR 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

The investigation to date indicated that there was a period of approximately 1-to-2 weeks during the end of the 2013-2014 school year, in which the student's teacher did not verify or document that homework assignments and appropriate materials/books were consistently placed in the student's backpack in accordance with the student's Section 504 plan. After HSDE became aware of the issue at the end of the school year, the student's Section 504 team reviewed the student's academic performance and determined that the student was not adversely affected by the short period of time when homework assignments and materials were not consistently placed in his backpack. However, there was no mechanism in place to ensure that the student's homework assignments and materials would be consistently placed in his backpack at the elementary school or when the student transitions to intermediate school in the upcoming school year.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, HSDE requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with HSDE resulted in HSDE signing the enclosed agreement.

The actions HSDE will take under the agreement include a review of the procedures and practices at the student's former school and his new school to ensure compliance with the Section 504 regulations at 34 CFR 104.33, including the obligation to consistently provide all services listed in Section 504 plans. A system of recordkeeping will also be developed at the student's new school to ensure that the provision of the student's Section 504 plan with respect to homework assignments and materials is consistently implemented.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by July 21, 2014.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Tania Lopez, Senior Attorney, at (206) 607-1623, or by e-mail at tania.lopez@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement