



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 29, 2021

*Via E-mail Only to: [samasoni.asaeli@doe.as](mailto:samasoni.asaeli@doe.as)*

Talauega Dr. Samasoni Asaeli  
Director of Education  
American Samoa Department of Education  
Pago Pago, American Samoa 96799

Re: American Samoa Department of Education  
OCR Reference No. 10151046

Dear Talauega Dr. Samasoni Asaeli:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced complaint against the American Samoa Department of Education (ASDOE). As explained below, prior to completion of OCR's investigation, the ASDOE expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the issues in the complaint.

The complainant alleged that ASDOE discriminated against a student (hereinafter, "the student"), on the basis of disability, when ASDOE failed to implement the student's Individualized Education Plan (IEP) by failing to provide the extended school year services his IEP team agreed he needed during summer 2014 and when it revised the student's IEP without involving the persons required to make the revision.

OCR is authorized to review this matter under the authority of Section 504 of the Rehabilitation Act of 1972 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II),

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and their implementing regulations. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance and by public entities, respectively. The district is a recipient of federal financial assistance from this Department and is a public entity.

The regulation implementing Section 504 at 34 C.F.R. §104.33, states that a district that operates a public elementary or secondary education program or activity shall provide for and implement a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap, in adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

The regulation implementing Title II at 28 C.F.R. §35.130(a) requires that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The investigation to date indicated that the student had an Individualized Education Program (IEP) for the 2013-2014 school year which included Extended School Year (ESY) services for summer 2014. The information suggests that the student was not provided ESY services during summer 2014 and instead was offered after school services. The information also suggests that the decision to provide after school services, rather than summer services, may have been decided unilaterally, rather than by a group of persons knowledgeable about the child, meaning of the evaluation data, and placement options.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to OCR issuing a final determination, 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, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

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.

This concludes OCR's investigation of this matter. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

Please be advised that the ASDOE may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution, compliance review, or monitoring process. If this happens, the complainant may file a 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 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.

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 to OCR within 30 days after the signing of the agreement.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions regarding this letter, please feel free to contact Ellen Chestnut, Attorney, by telephone at (206) 607-1605, or by e-mail at [ellen.chestnut@ed.gov](mailto:ellen.chestnut@ed.gov).

Sincerely,

Paul Goodwin  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Fainu'uulelei Falefatu Ala'ilima-Utu, Attorney General  
Office of the Attorney General of American Samoa  
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Dr. Herbert Boat, Assistant Director  
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