



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 9, 2018

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Dr. Christina Kishimoto
Superintendent
Hawaii Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804-2360

Re: Hawaii Department of Education
OCR Reference No. 10151163

Hawaii Department of Education
OCR Reference No. 10161066

Dear Superintendent Kishimoto:

This letter is to inform you of the disposition of the above-referenced complaints filed against the Hawaii Department of Education (Hawaii DOE) with the Office for Civil Rights (OCR) of the U.S. Department of Education (Department). The first complaint (OCR Reference No. 10151163) was filed on March 23, 2015, and contained the allegations that Hawaii DOE discriminated against a XXXXXXXXXXXX Elementary School (school) student (student), on the basis of disability, by:

- denying the student the disability-related accommodations he needed to participate in the Kama'aina Kids A + Program held at the school during the 2014–2015 school year; and
- excluding the student from the 2015 Kama'aina Kids intersessions and summer day camp programs held at the school because he has disabilities for which he needed disability-related accommodations.

The second complaint (OCR Reference No. 10161066) was filed on December 7, 2015, and contained the allegation that Hawaii DOE discriminated against the student, based on disability, by:

- denying him enrollment in the Fall 2015 Kama'aina Kids intersessions program held at the school after his mother requested disability-related accommodations to allow him to participate in the program.

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

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As described below, prior to completion of OCR’s investigation of the complaints, Hawaii DOE expressed an interest in voluntarily resolving the complaints and signed the enclosed resolution agreement (agreement) to address the complaints.

OCR investigated the complaints pursuant to its authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), and that statute’s implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also investigated the complaints pursuant to its authority to enforce Title II of the Americans with Disabilities Act of 1990 (Title II), and that statute’s implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities that operate elementary and secondary education systems and institutions. As a recipient of federal financial assistance from the Department, and as a public entity, Hawaii DOE is required to comply with these federal civil rights laws.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1) states in part that, in providing any aid, benefit, or service, a recipient of financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service (34 C.F.R. § 104.4(b)(1)(i));
- provide a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others (34 C.F.R. § 104.4(b)(1)(iii)); or
- aid or perpetuate discrimination against a qualified disabled person by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program or activity (34 C.F.R. § 104.4(b)(1)(v)).

In addition, the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(4) provides that a recipient of federal financial assistance from the Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, that:

- have the effect of subjecting qualified disabled persons to discrimination on the basis of disability; or
- have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program or activity with respect to disabled persons.

The Title II implementing regulation at 28 C.F.R. § 35.130 contains similar prohibitions applicable to public entities.

OCR's investigation to date indicated that the student was terminated from the Kama'aina Kids A+ Program in January 2015, after a series of behavioral incidents. The parents made a request for the program to reenroll the student and to provide accommodations from the student's behavior plan, and the program administration denied the parents' request. The evidence to date also indicated that the student was removed from the Kama'aina Kids intersessions and summer day camp programs after the summer 2014 program because of behavioral incidents. When attempting to enroll the student into those programs again in Fall 2015, the student's parent requested certain accommodations for the student, but the student's enrollment was denied based on his previous behavioral incidents. These facts raise potential compliance concerns that the student may have been denied services in violation of Section 504 and Title II. Further investigation would need to be conducted to make a final determination.

Pursuant to Section 302 of OCR's *Case Processing Manual*, complaints may be resolved at any time when, prior to a final determination by OCR, a recipient expresses an interest in resolving the complaint, and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation.¹ In this case, Hawaii DOE requested to resolve the complaints prior to the conclusion of OCR's investigation. In light of Hawaii DOE's willingness to enter into an agreement that, when fully implemented, will address all of the allegations investigated by OCR, OCR determined that entering into an agreement was appropriate. Subsequent discussions with Hawaii DOE resulted in Hawaii DOE entering into 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 the complaints. The complainants may have the right to file a private suit in court regardless of OCR's determination.

Please be advised that Hawaii DOE 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 harmed individual(s) may file a complaint with OCR 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.

¹ OCR's *Case Processing Manual* may be found on OCR's website at www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf.

OCR will monitor Hawaii DOE's implementation of the agreement and will close the complaints when OCR determines that the terms of the agreement have been satisfied. The first three reports required by the agreement are due by January 3, 2019.

Thank you for the cooperation Hawaii DOE and the Hawaii DOE civil rights compliance office director extended to OCR in resolving this complaint. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring Hawaii DOE's implementation of the agreement, by telephone at (206) 607-1632, or by e-mail at noel.nightingale@ed.gov.

Sincerely:

Paul Goodwin
Team Leader

Enclosure: Resolution Agreement

cc: Ms. XXXXXXXXXXX
Director
Civil Rights Compliance Office
Hawaii Department of Education
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Honolulu, Hawaii 96804