



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 9, 2018

Mr. Stewart McDonald
Superintendent
North Slope Borough School District
P.O. Box 169
Utqiagvik, Alaska 99723

Re: North Slope Borough School District
OCR Reference No. 10181029

Dear Superintendent McDonald:

This letter is to inform you of the disposition of the above-referenced complaint filed against the North Slope Borough School District (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that, during the 2017-18 academic year, the district discriminated against students with disabilities by failing to provide them instructors qualified to provide special education instruction; and failing to implement their 504 or individualized education plans (IEP) with respect to special education instruction.

As explained below, prior to completing OCR's investigation, the district requested to resolve the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) that, when fully implemented, will address all of the complaint allegations.

OCR has the authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). These federal civil rights laws prohibit disability discrimination in programs and activities receiving federal financial assistance and by public entities, respectively. The district receives federal financial assistance from this Department and is a public entity. Therefore, it is required to comply with these laws.

The regulations implementing Section 504 at 34 C.F.R. § 104.4(b)(1)(ii) and Title II at 28 C.F.R. § 35.130(b)(iii) provide that a recipient may not provide services to students with disabilities that are less effective than those provided to students without disabilities. OCR has interpreted these regulations to apply to the provision of qualified teaching staff. In addition, the regulation implementing Section 504 at 34 C.F.R. § 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 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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Before the conclusion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint. OCR's investigation to date showed that during parts of the 2017-2018 school year, the district did not have a special education instructor for secondary students with disabilities that was qualified to provide them special education instruction. As a result, OCR identified a concern that the provisions of their IEPs were not being implemented because there was no qualified special education instructor. OCR also had a concern regarding whether the district was discriminating against students with disabilities by failing to provide them a free appropriate public education.

In accordance with Section 302 of the OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the point OCR issues a final determination, a district expresses an interest in resolving the complaint allegations, and OCR determines that it is appropriate to resolve the complaint allegations with a voluntary resolution agreement. OCR determined that a voluntary resolution agreement was appropriate in this case. Subsequent discussions with the district resulted in the district signing the Agreement, which when fully implemented, will resolve the allegations in the complaint. OCR will monitor the implementation of the Agreement until the district fulfills the terms of the Agreement. Under the agreement, the district's first report to OCR is due by June 15, 2018.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. 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.

Please be advised that the district 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 occurs, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, OCR 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.

Thank you for the cooperation that you and your staff extended to OCR in resolving this complaint. If you have any questions about this letter, you may contact Tina Sohaili, Attorney, by telephone at (206) 607-1634, or by e-mail at tina.sohaili@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc Honorable Michael Johnson, Commissioner of Education and Early Development