



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

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January 11, 2019

Mr. Steve Engebretson  
Superintendent  
Brockton School District  
P.O. Box 198  
Brockton, Montana 59213

Re: Brockton School District 55 & 55F  
OCR Reference No. 10191038

Dear Superintendent Engebretson:

This letter is to inform you of the disposition of the above-referenced complaint that was filed against the Brockton School District 55 & 55F (the district) with the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) on November 13, 2018. The complaint alleged that, during the 2018–2019 school year, the district has been failing to provide a XXXXXXXXXXXXXXXX student (hereinafter, “the student”) with a free appropriate public education by failing to re-evaluate her disability-related needs. As described below, prior to OCR completing its investigation of the complaint, the district expressed an interest in voluntarily resolving the complaint and entered into the enclosed Resolution Agreement (agreement) to address the allegation.

OCR investigated the complaint under 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 complaint under 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.<sup>1</sup> As a recipient of federal financial assistance from this Department and as a public entity, the district is required to comply with these federal civil rights laws.

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<sup>1</sup> Title II has similar requirements as those of Section 504. Violations of Section 504 that result from a covered entity’s failure to meet its Section 504 obligations also constitute a violation of Title II. To the extent that Title II provides greater protection than Section 504, a covered entity must also comply with the requirements of Title II. Because Title II and Section 504 provide the same or similar rights, OCR is only citing the Section 504 implementing regulations in this letter because the Title II implementing regulations applicable to free appropriate public education issues do not provide greater protection than the applicable Section 504 implementing regulations.

The Section 504 implementing regulation at 34 C.F.R. § 104.33 provides in part that:

- (a) General. A recipient of federal financial assistance that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.
- (b) Appropriate education.
  - (1) For the purpose of Subpart D regarding Preschool, Elementary, and Secondary Education, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of sections 34 C.F.R. §§ 104.34, 104.35, and 104.36.
  - (2) Implementation of an Individualized Education Program developed in accordance with the Individuals with Disabilities Education Act is one means of meeting the standard established in 34 C.F.R. § 104.33(b)(1)(i).

With regard to evaluation and placement of students with disabilities, the Section 504 implementing regulation at 34 C.F.R. § 104.35 provides the following in part.

- (b) Evaluation procedures. A recipient of federal financial assistance to which Subpart D of the Section 504 implementing regulations applies shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services which ensure that:
  - (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
  - (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
  - (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
- (c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient of federal financial assistance shall:
  - (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
  - (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered;

- (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and
  - (4) ensure that the placement decision is made in conformity with the Section 504 implementing regulation at 34 C.F.R. § 104.34, regarding educational setting.
- (d) Re-evaluation. A recipient of federal financial assistance to which the Section 504 implementing regulation at 34 C.F.R. § 104.35 applies shall establish procedures, in accordance with subsection (b) of 34 C.F.R. § 104.35, for periodic re-evaluation of students who have been provided special education and related services. A re-evaluation procedure consistent with the Individuals with Disabilities Education Act is one means of meeting this requirement.

OCR opened the complaint for an investigation to determine whether the district is in compliance with the applicable laws and regulations. The information obtained from OCR to date indicated that the student's parent reported to OCR that she had requested the district to conduct a re-evaluation of the student and update the student's Section 504 plan, at the end of August 2018 due to the student's changing disability-related needs. The district confirmed that, as of December 10, 2018, the district had not conducted a re-evaluation of the student.

In accordance with Section 302 of OCR's *Case Processing Manual*,<sup>2</sup> a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient of federal financial assistance expresses an interest in resolving a complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the district's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the district resulted in the district 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 complaint. The complainant may have the right to file a private suit in court regardless of OCR's determination.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, 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 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.

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<sup>2</sup> OCR's *Case Processing Manual* may be found on OCR's website at [www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf).

OCR will monitor the district's implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The district's first report under the agreement is due to OCR by February 15, 2019.

Thank you for the cooperation that the district and its counsel extended to OCR in resolving the complaint. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the district's implementation of the agreement, by telephone at (206) 607-1632, or by e-mail at [noel.nightingale@ed.gov](mailto:noel.nightingale@ed.gov). For questions about this letter, please contact me by telephone at (206) 607-1612, or by e-mail at [paul.goodwin@ed.gov](mailto:paul.goodwin@ed.gov).

Sincerely,

Paul Goodwin  
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Felt, Martin, Frazier & Weldon, P.C.  
Elsie Arntzen, Superintendent, Montana Office of Public Instruction