



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 1, 2022

Via E-mail Only: uphamg@billingschools.org

Mr. Greg Upham
Superintendent
Billings Public Schools
415 North 30th Street
Billings, Montana 59101

Re: Billings Public Schools
OCR Reference No. 10201061

Dear Superintendent Upham:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Billings Public Schools (the District) with the U.S. Department of Education, Office for Civil Rights (OCR). The complainant alleged that the District discriminated against a student previously enrolled in another District, on the basis of disability, when the District revoked the student's out-of-district enrollment agreement at Billings Senior High School, during the 2019-2020 academic year, because of the student's disability.

As explained below, prior to completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504). This federal civil rights law prohibits disability discrimination in programs and activities receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities. The District receives federal financial assistance from this Department and is a public entity. Therefore, it is required to comply with these laws.

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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The regulation implementing Section 504, at 34 C.F.R. §104.4(a), provides that no qualified person shall, on the basis of disability, be excluded from participation, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance. The regulation implementing Section 504 at, 34 C.F.R. §104.4(b)(1), prohibits districts from denying students with disabilities the opportunity to participate in or benefit from aids, benefits, or services on the basis of disability, or to provide different aids, benefits, or services to students with disabilities unless such action is necessary to ensure they are as effective as those aids, benefits, or services provided to others. The regulation implementing Section 504 at, 34 C.F.R. §104.4(b)(4), states that a recipient shall not provide different or separate aids, benefits, or services to students with disabilities unless such action is necessary to provide such individuals with aids, benefits, or services that are as effective as those provided to other students. The Title II regulation, at 28 C.F.R. §35.130(b)(8), provides that a public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

The investigation to date indicates that the District has policies and procedures which allow for discretionary attendance of nonresident students seeking out-of-district enrollment subject to specific requirements outlined in the policies and procedures. The procedures state that a student requesting a transfer from outside the District must be in good standing in their current school, including academic standing, behavior, and attendance. The procedures also state that parents seeking out-of-district enrollment are required to provide complete information regarding their student so that the District can adequately assess whether the student can be served under the established procedures. In addition, the procedures state that the District will not admit nonresident students when doing so would require hiring additional staff or providing educational services not currently offered or would create crowding of existing classes.

The investigation to date indicates that in this particular case, the student, who was identified to the District as a student with a disability, was admitted to the District as a nonresident student for the 2019-2020 school year following an application process that included communication with the student's former high school regarding his behavior record and disability. It also indicates that the student's enrollment was subsequently revoked shortly after the school year began following a behavior incident, which may have been related to the student's disability, without an individualized assessment. OCR has a concern that the District may have revoked the student's enrollment based on the student's disability without making an individual assessment as to whether he met the criteria for continued enrollment as a nonresident student.

In accordance with Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved at any time when, prior to OCR issuing a draft letter of findings under CPM Section 303(b), the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement. In this case, the District requested to resolve the complaint with an agreement. In light of the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR has determined that entering into an agreement is appropriate. 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 the complaint. The complainant may have the right to file a private suit in federal 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 has 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.

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. Under the agreement, the District's first report to OCR is due by **February 15, 2022**.

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, by telephone at (206) 607-1623, or by e-mail at tania.lopez@ed.gov.

Sincerely,

Tina Sohaili
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Jeffrey Weldon, Attorney, (*Via E-mail Only to: JWeldon@feltmartinlaw.com*)