



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 2, 2021

Via E-Mail Only to: gmt@msd321.com

Dr. Geoffrey Thomas
Superintendent
Madison School District 321
P.O. Box 830
Rexburg, Idaho 83440-1520

Re: Madison School District 321
OCR Reference No. 10201147

Dear Superintendent Thomas:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced complaint against the Madison School District 321 (the district). 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 issue in the complaint. The complainant alleged the district discriminated against a former student in the district, on the basis of disability, during the 2019-2020 school year, by prohibiting the student from participating in the open enrollment process that is available to all other non-resident students because the student was on an Individualized Education Plan (IEP).

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), 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. §104.4(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 an aid, benefit or services on the basis of disability, or to provide different aids, services, or benefits to students with disabilities unless such action is necessary to ensure they are as effective as those aids, services or benefits 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 aid, 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 others. 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 indicated that the district has an open enrollment policy which allows all in-district and out-of-district patrons to choose among the district's schools under specified conditions. However, the policy also states that due to exceptionally high caseloads for special services staff, out-of-district students who are on an IEP will not be accepted into the district. The investigation to date does not suggest that the district has any policy or practice of making an individual determination on a case-by-case basis regarding whether the educational needs of an open enrollment applicant with a disability can be served in the district's program prior to denying enrollment. Thus, OCR has a concern that the district's open enrollment policy is not narrowly tailored so as to unnecessarily exclude students with disabilities from participating in open enrollment.

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 and OCR determines that it is appropriate to resolve the complaint with a voluntary resolution agreement. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation and OCR has determined that it is appropriate to resolve the complaint with an agreement. 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 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,

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compliance review, or monitoring 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. The first report under the agreement is due to OCR on April 28, 2021.

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

Sincerely,

Sarah Dunne
Chief Attorney

Enclosure: Voluntary Resolution Agreement

cc: Bret Walther, Attorney (via email only: bwalther@ajhlaw.com)