



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1009

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March 14, 2023

Via Email Only to: jonartjm@bsd1.org

Ms. Judy Jonart
Superintendent
Butte School District No. 1
111 N. Montana Street
Butte, Montana 59701

Re: Butte School District No. 1
OCR Reference No. 10221363

Dear Superintendent Jonart:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Butte School District No. 1, opened for investigation on December 16, 2022. OCR investigated whether the District discriminated against a student (hereinafter, “the Student”), on the basis of disability, by prohibiting him from attending two school field trips on XXXXX and XXXXXX.

OCR investigated this complaint under OCR’s authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and their respective implementing regulations, at 34 C.F.R. Part 104 and 28 C.F.R. Part 35. These federal civil rights laws prohibit discrimination based on disability in programs and activities receiving federal financial assistance and by public entities, respectively. The District is a public entity and is a recipient of federal financial assistance from this Department and is thus subject to Section 504, Title II, and their implementing regulations.

Prior to OCR completing its investigation, the District expressed an interest in voluntarily resolving the complaint, and signed the attached Voluntary Resolution Agreement (Agreement) to address the complaint allegations.

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

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. The Section 504 implementing regulation, at 34 C.F.R. § 104.33(b), states that, for the purpose of this subpart, 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 handicapped persons as adequately as the needs of non-handicapped persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

The Section 504 implementing regulation at 34 C.F.R. § 104.37(a) states that a recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. Non-academic and extracurricular activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. Title II has regulations that are interpreted consistent with Section 504 and its implementing regulations.

OCR's investigation to date indicates that the Student was confirmed eligible for special education services by the school and placed on an Individualized Education Program (IEP) on XXXXX. The IEP indicates that the Student's behavior impedes his learning or the learning of others and that the Student struggles to regulate his emotions. There is no information in the IEP that addresses the Student's eligibility to participate in field trips.

OCR's investigation also revealed that all XXXX grade students at XXXXXXXXXXXX were scheduled to attend a picnic in XXXXXXXXXXXX on XXXXXXXXXXXX, as well as a trip to the XXXXXX in XXXXXXXXXXXXXXXX on XXXXXXXXXXXX. The Student was prohibited from attending both field trips due to missing assignments and his behavior. The complainant asserts that the missing work and behavioral issues are both attributable to the Student's disability. OCR has a concern that the District may have discriminated against the Student by prohibiting his participation in the two school field trips.

According to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during an investigation. In this case, the District requested to resolve the allegations before OCR concluded its investigation. Based on the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR has determined that it is appropriate to enter into a Voluntary Resolution Agreement. Subsequent discussions with the District resulted in 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 complaint. The complainant may have a 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 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. If 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 District’s implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in this case. As noted in the Agreement, the District’s first monitoring report to OCR is due by **April 1, 2023**.

If you have any questions about this letter, please contact Andrew Jennings, Attorney, by telephone at (206) 607-1606, or by e-mail at andrew.jennings@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Patrick Fleming, District Counsel
Via E-mail Only to: ptf@flemingandolearylaw.com

Honorable Elsie Arntzen
Superintendent of Public Instruction
Via E-mail Only to: Sarah.Swanson@mt.gov