



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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June 15, 2018

Mr. Chris Gdowski, Superintendent  
Adams County School District 12  
1500 East 128th Avenue  
Thornton, Colorado 80241-2602

*Via email only to [chris.gdowski@adams12.org](mailto:chris.gdowski@adams12.org)*

Re: **Adams County School District 12**  
OCR Case Number: 08-18-1235

Dear Superintendent Gdowski:

We write to inform you of the resolution of the above-referenced complaint, filed on February 25, 2018, with the Office for Civil Rights (OCR) of the U.S. Department of Education ("Department"), against Adams County School District 12 ("District"), alleging discrimination on the basis of disability. Specifically, the allegations that OCR accepted for investigation were whether the District, at Stargate School ("School"), denied the Complainant's son ("Student") a free appropriate public education (FAPE) by failing to:

- implement the Student's Section 504 plan;
- implement the Student's individualized education program (IEP);
- conduct a manifestation determination before significantly changing the Student's placement; and
- evaluate and place the Student in a timely manner.

We investigated the allegations pursuant to: Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipients of Federal financial assistance from the Department and public entities, the District and the School (collectively, "Recipients") are subject to these laws and regulations.

Based on a preponderance of the evidence standard, we found insufficient evidence to support the allegations that the School failed to conduct a manifestation determination and evaluate and place the Student in a timely manner. However, our investigation did establish, by a preponderance of the evidence, that the School failed to implement parts of the Student's Section 504 plan and IEP. Additionally, during the course of our investigation, we identified concerns regarding the use of restraint on the Student. Our concerns are described in further detail in Section IV below. Upon being advised of the two violation findings and our concerns related to the use of restraint, the Recipients voluntarily

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entered into a resolution agreement to resolve the matters. A signed copy of the agreement is enclosed with this letter. The reasons for our conclusions are set forth in this letter.

#### **I. Legal Standards**

The Section 504 regulations, at 34 C.F.R. Section 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of Sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

##### **a. Implementation**

Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA), or implementation of a Section 504 plan developed in accordance with the procedural requirements cited above, are two means of meeting the FAPE requirement. OCR considers failure to implement an IEP or a Section 504 plan to be a denial of FAPE.

##### **b. Manifestation Determination**

The Section 504 regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a student with a disability without reevaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to act consistent with the Section 504 regulations in disciplining students with disabilities.

The exclusion of a student with a disability from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

##### **c. Evaluation**

The Section 504 regulations, at 34 C.F.R. Section 104.35(a), require school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under Section 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (*i.e.*, decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the

placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

## II. OCR's Investigation

Our investigation involved requesting from the Recipients and then reviewing: all relevant communications; the Student's discipline, attendance, and special education records; the School's special education policies and procedures; and narratives of the Recipients' positions regarding the allegations. Additionally, we interviewed:

- the Complainant;
- the Complainant's attorney;
- the School's executive director ("Director");
- the School's elementary principal ("Principal");
- the School's elementary learning specialist ("Learning Specialist");
- the School's psychologist ("School Psychologist");
- the School's speech-language pathologist ("Speech-Language Pathologist");
- the School's elementary counselor ("School Counselor");
- the Student's math teacher at the School ("Math Teacher");
- the Student's literacy teacher at the School ("Literacy Teacher");
- the Student's homeroom, social studies, and science teacher at the School ("Homeroom Teacher");
- two former teachers of the Student at the School;
- a former guidance counselor at the School; and
- a former school psychologist at the School.

Finally, we provided the Complainant with an opportunity to rebut information provided by the School.

## III. Evidence and Analysis

The School is chartered by and located in the District. The School currently serves gifted and talented elementary and secondary students. During the 2017-2018 school year (SY), the Student was [REDACTED] at the School. He has been a student at the School since matriculating as a kindergarten student for the [REDACTED]

### a. Implementation of the Student's Section 504 Plans

The Student's Section 504 plan applicable to this case was dated October 27, 2017. It specified the following accommodations for the Student:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

5. all [REDACTED]
6. a [REDACTED]
7. [REDACTED]
8. a [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED] ole,
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. ch [REDACTED] nd
17. [REDACTED]

Additionally, a behavioral intervention plan (BIP), dated November 2, 2017, directed the Student's teachers to:

1. [REDACTED]
2. e [REDACTED]
3. [REDACTED]
4. re [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]

The Complainant alleged that the School failed to implement the Section 504 plan and accompanying BIP. In contrast, the School asserted to OCR that "the *vast majority* of the accommodations were provided the *vast majority* of the time" (emphasis added). After reviewing extensive records and conducting extensive interviews, we identified four instances in which the Student's Section 504 plan was not implemented.

First, the Student's Section 504 plan specified that he would be allowed to [REDACTED]. However, the School's narrative response to OCR read, "The Student has had routine access to [REDACTED]. These were not always the [REDACTED] identified in the Section 504 plan, but included other materials" (emphasis added). Additionally, the Math Teacher and Homeroom Teacher reported during interviews with OCR that the Student did not have [REDACTED].

Second, the Student's Section 504 plan called for staff to use a [REDACTED] regarding [REDACTED] for him. However, the Literacy Teacher reported to OCR that she does not use [REDACTED] (like the Student's other teachers), or any other [REDACTED] for the Student.

Third, the Student's Section 504 plan called for staff to encourage him to use a [REDACTED]. However, the Literacy Teacher reported to OCR that she stopped encouraging the Student to [REDACTED] because the Student would get upset about having to [REDACTED] and she had to pick and choose which battles to fight with him) and he was not having issues with turning in assignments.

Fourth, the Student's Section 504 plan specified that he would check in with the [REDACTED] twice per week. However, logs provided to OCR by the [REDACTED] show that she met with the Student: once during the week of October 30; not at all during the weeks of November 6, 2017 or November 13, 2017;<sup>1</sup> and only once during the week of November 27, 2017.

We did not find a preponderance of the evidence of any other failures to implement the Student's Section 504 plan or BIP.<sup>2</sup>

#### b. Implementation of the Student's IEPs

On December 11, 2017, the School found the Student eligible under the IDEA and developed an IEP for the Student. The IEP listed the following special education and related services: 40 minutes per month of [REDACTED]; 90 minutes per month of [REDACTED] with the School's [REDACTED] and 10 minutes per week of a special education teacher consulting with staff inside of the general education classroom.

During the school week following the IEP team meeting (December 18-22, 2017), the Student was out of School with his family (by choice; the School did not exclude him). Then, all students were out of School for winter break from December 23, 2017 to January 8, 2018.

The Student's [REDACTED] began on January 23, 2018. According to the [REDACTED] the Student was given two weeks to settle back into School before services began. According to service delivery logs, the School provided the following [REDACTED] 35 minutes in January (a shortened month, with only 18 school days); 45 minutes in February; 40 minutes in March; and 45 minutes in April (see Table 1 below). In her rebuttal, the Complainant indicated that the [REDACTED] "was properly implemented."

The [REDACTED] required by the Student's IEP did not begin until February 13, 2018. On March 23, 2018, the Student's IEP team met. The team discussed the delay in the initiation of the

<sup>1</sup> The week of November 30 was Thanksgiving break for all students.

<sup>2</sup> Evidence shows that incidents that would have violated the terms of the BIP occurred before the BIP was in place.

██████████ and the resulting need for compensatory services. The ██████████ wrote in an email to other school staff on March 23, 2018:

For making up his missed minutes from January 2018: with 90min per month, he should have received 270min by the end of March. As of today, 04/05/18, [the Student] has receive[d] 280 ██████████ minutes which catches him up through the end of March 2018. The parents where [sic] notified of the catch up, along with [the Student]'s ██████████ on 04/05/18.

According to logs provided by the School, ██████████ provided the following services: 115 minutes in February; 135 minutes in March; and 140 minutes in April (see Table 2 below).

At the Student's March 23, 2018 IEP team meeting, the team added to the IEP 45 minutes per week of "specialized instruction in ██████████" delivered by a special education teacher inside the general education classroom. The prior written notice from that meeting reads, in relevant part, "Direct instruction provided by the Special Education Teacher to support ██████████ such as ██████████"

The IEP read, "Services will be provided in a 1:1 inside of the general education classroom." The Student's specialized instruction began on April 4, 2018, after students were on spring break from March 24 – April 1. According to logs provided by the School the Learning Specialist provided 100 minutes of services in April (see Table 3 below).

We identified three instances in which the Student's IEP was not implemented. First, the School failed to provide the number of minutes of ██████████ services, as scheduled, in the Student's IEP. His IEP called for 90 minutes per month of ██████████ services. However, the School failed to provide any ██████████ services for the Student for a five-week period (i.e., weeks of January 8th, 15th, 22nd, and 29th, and February 5th).<sup>3</sup>

Second, the School failed to provide the specialized instruction in the location specified in the Student's IEP. His IEP called for 45 minutes per week of specialized instruction in ██████████ inside the general education classroom. However, the Learning Specialist reported to OCR that she delivered the specialized instruction either in her own room or in the general education classroom, depending on the day. The Math Teacher and the Literacy Teacher confirmed, during interviews with OCR, that the Student was pulled out for at least some of the specialized instruction services.

Third, the School failed to provide the number of minutes of specialized instruction required by the Student's IEP. His IEP called for 45 minutes per week of "specialized instruction ██████████" ██████████ Logs of service delivery show that the Learning Specialist provided services to the Student for 40 minutes during the week of April 2nd; for no time during the week of April 9th; for 30 minutes during the week of April 16th; and for 30 minutes during the week of April 23rd.

<sup>3</sup> We acknowledge that the School provided the Student with compensatory ██████████. However, it is not for OCR to decide whether the services provided were designed to place the student in the position that the student would be in had the district provided the appropriate services in the first place. See Resolution Agreement.



**Table 1: Delivery of [redacted] pursuant to the Student's IEP (through April 2018)**

Date	Time (min.)	Summary	Description
12.18.17	n/a	Student absent	n/a
12.22.17-1.8.18	n/a	Winter break	n/a
Dec.	0		
1.23.18	20	One-on-one	[redacted]
1.30.18	15	Two-on-one	[redacted]
Jan.	35		
2.5.18	20	Small group	[redacted]
2.19.18	n/a	No school	[redacted]
2.27.18	25	Small group	[redacted]
Feb.	45		
3.5.18	20	Three-on-one	[redacted]
3.19.18	n/a	CMAS	[redacted]
3.22.18	20	One-on-one	[redacted]
Mar.	40		
4.2.18	25	Small group	[redacted]
4.16.18	n/a	No school	[redacted]
4.23.18	20	Three-on-one	[redacted]
Apr.	45		

**Table 2: Delivery of [redacted] pursuant to the Student's IEP (through April 2018)**

Date	Time (min.)	Goal or Activity
Jan.	0	
2.13.18	45	[redacted]
2.26.18	40	[redacted]
2.27.18	30	[redacted]
Feb.	115	
3.8.18	40	[redacted]
3.14.18	30	[redacted]
3.20.18	20	[redacted]
3.23.18	35	[redacted]
3.23.18	10	[redacted]
Mar.	135	
4.5.18	30	[redacted]
4.12.18	40	[redacted]
4.19.18	40	[redacted]
4.26.18	20	[redacted]
Apr.	140	

**Table 3: Delivery of specialized instruction pursuant to the Student's IEP (through April 2018)**

Date	Time (min.)	Goal or Activity
Mar.	0	
4.4.18	20	[redacted]
4.6.18	20	[redacted]
4.17.18	30	[redacted]
4.18.18	15	[redacted]
4.26.18	30	[redacted]
Apr.	100	

### c. Manifestation Determination

It is undisputed that, from the beginning of the 2017-2018 school year to the date the complaint was filed with OCR (February 25, 2018), the School had issued to the Student [REDACTED] total full schools days of out-of-school suspension (OSS): [REDACTED]

The Complainant alleged to OCR that the Student was also sent home early on four occasions: [REDACTED] [REDACTED] 2017. Except for Wednesdays (which are not involved here), the [REDACTED] dismissed at 3:00 p.m. With regard to [REDACTED] evidence shows that the Student was sent home at approximately 1:10 p.m., after a behavioral incident. With regard to [REDACTED] evidence shows that the incident occurred at approximately 2:25 p.m. According to the Principal, the Student was picked up by the Complainant after the end of the school day. With regard to [REDACTED], evidence shows that the incident began at approximately 2:11 p.m. and ended after 3:00 p.m. (i.e., after the end of the school day). Finally, with regard to [REDACTED] evidence shows that the incident occurred at approximately 1:00 p.m. According to the Principal, the Student was picked up at approximately 2:00 p.m.

We found that the Student was out-of-school suspended for [REDACTED] and sent home early on two occasions. Therefore, we find, by a preponderance of the evidence, that the School did not subject the Student to a "significant change in placement." Consequently, the School was not required to conduct a manifestation determination.

### d. Evaluation

The Complainant filed her complaint with OCR on February 26, 2018. Generally, OCR's investigates events that took place up to 180 day before the complaint was filed. Therefore, we did *not* investigate, and this letter does *not* draw conclusions about, whether the School failed to evaluate the Student prior to August 30, 2017.<sup>4</sup> Additionally, OCR does not have jurisdiction under the IDEA. Therefore, we did *not* investigate, and this letter does *not* draw conclusions about, whether the school failed to evaluate the Student consistent with the IDEA.

The School first found the Student eligible for a Section 504 plan on [REDACTED]. More recently, the School convened Section 504 team meetings for the Student on [REDACTED]. Then, the Student was evaluated for an IEP in [REDACTED] and found eligible on [REDACTED]. Based on a preponderance of the evidence standard, we found insufficient evidence to support the allegation that the School failed to evaluate (as defined in Section 504, at 34 C.F.R. Section 104.35) the Student in a timely manner during the 2017-2018 SY.

<sup>4</sup> See U.S. Dept. of Educ., Office for Civil Rights, *Case Processing Manual*, Section 106.

<sup>5</sup> Records indicate that the School may have also held a Section 504 meeting for the Student on November 26, 2017.



#### IV. Concern Identified During Investigation – Use of Restraint on the Student

OCR defines restraint as “restricting the student’s ability to move his or her torso, arms, legs or head freely.”<sup>6</sup> OCR defines physical restraint as “a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.” We do not consider physical restraint to include a physical escort – meaning a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location. The use of restraint could violate Section 504 in several ways – for example, if the restraint of a student with a disability: (a) constitutes unnecessary different treatment; (b) is based on a policy, practice, procedure, or criterion that has a discriminatory effect on students with disabilities; or (c) denies a student’s right to FAPE.<sup>7</sup>

The evidence shows that School staff subjected the Student to restraint, as defined by OCR, on at least [REDACTED] occasions, and possibly up to [REDACTED] during the 2017-2018 SY.<sup>8</sup>

On [REDACTED] School staff restrained the Student [REDACTED] times. First, the School Counselor “attempted to remove” the Student from [REDACTED]. She wrote, “[REDACTED]”<sup>9</sup> Second, the Director, according to one statement, “[REDACTED]” or according to another statement, “[REDACTED]” The Director wrote, “[REDACTED]” The Elementary Principal said that the Director “p[REDACTED]” Third, the Director and school resource officer (SRO) [REDACTED]. The Director held the Student from [REDACTED] while the SRO held [REDACTED]. Fourth, one staff member’s statement indicated that, once inside the School, the Director and SRO “[REDACTED]” On October 25, 2017, the District’s Director of Elementary Schools Student Support Services, wrote to other District staff:

It has come to our attention that there have been 2 inappropriate restraints conducted on a student by [the Director], the elementary counselor and the SRO. The first incident involved picking up a [REDACTED] student ([Student]) from the [REDACTED] and moving him behind the curtain in the [REDACTED] ... [The Director] “corralled” the student outside of the building. ... [The Director] and the SRO then picked the student up and took him inside. ... [The Principal] reported to [a District staff member] that the student was not in immediate danger, nor was the physical

<sup>6</sup> Notably, District Policy 5150 defines restraint as “any method or device used to involuntarily limit a student’s freedom of movement, including but not limited to bodily, physical force and seclusion.” The District exempts from this definition: “holding a student for less than five minutes to protect the student or others; brief holding of a student by an adult in order to calm or comfort; safely escorting a student using minimal contact; or using minimal contact to assist a student in completing a task or response.”

<sup>7</sup> U.S. Dept. of Educ., Office for Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, pp. 2, 6 (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.

<sup>8</sup> Notably, a guidance counselor who left the school after the 2016-2017 school year reported that she had witnessed the Student being restrained by the Director “many times.”

<sup>9</sup> During an interview with OCR, the Guidance Counselor said that she did not literally “pick up” the Student.

management used as a last resort. [A District staff member] was extremely upset by the situation.

The School argued to OCR, regarding to the "two-person lift," that "the restraint was relatively minor." The School also argued that the purposes of that restraint – "student safety<sup>10</sup> and minimizing stigmatization of students in front of" students and parents<sup>11</sup> – were proper.

Then, on [REDACTED] School staff restrained the Student twice. [REDACTED]

[REDACTED] The paraprofessional [REDACTED]

[REDACTED] The Student next attempted [REDACTED]

[REDACTED]

We have three primary concerns related to the use of restraint at the School. First, some staff do not know whether the School has a restraint policy. We asked current School staff, during interviews, whether the School has a policy about restraining students. Two staff members said they did not know, one said she assumed so, one said she believed so, the Principal avoided and did not answer the question, one confused policy with Crisis Prevention Institute (CPI) training, and the Director said the School uses the District's policies and protocols.

Second, the School did not document the use of restraint until *after* the Student was restrained. According to the Principal, the School began using the District's "Documentation for Use of Restraint" form after (and because) the Student was restrained.<sup>12</sup>

Third, at least one School staff member who was not certified in the use of restraint was involved in restraining the Student. The School does not maintain an up-to-date list of who are certified in nonviolent crisis intervention, including the use of restraint. At the time of the aforementioned [REDACTED] incident, neither the Director nor the School Counselor was up-to-date on their CPI training. During an interview with OCR, the Director reported that he was CPI-trained by the District. We asked the District to confirm the Director's claim. The District responded that it has no record, from at least the past four years, that the Director was CPI-trained. The School's attorney reported to OCR that the Director could not find his training certificate and that the School was unable to obtain verification from the CPI. The attorney acknowledged that the Director's "certification had lapsed at the time of this event" and that "there is no paper in the record concerning the Executive Director's previous training."<sup>13</sup> Finally, the School did not know, at the time of our visit to the School, whether the SRO was properly trained.<sup>14</sup>

## V. Conclusion

We thank the Recipients for being willing to voluntarily address the violations found and our concerns

<sup>10</sup> The Student was sitting in front of the School at the time of the restraint, but the Director "was concerned that the student might bolt into traffic."

<sup>11</sup> However, in lieu of an in-school suspension classroom, students are sometimes sent to sit at the front desk, near the receptionist.

<sup>12</sup> Notably, during an interview with OCR, the Director reported that there was no documentation of restraints because none of the incidents rose to the level of sitting on students or holding feet or ankles.

<sup>13</sup> Notably, during an interview with OCR, the Director demonstrated a fundamental misunderstanding of CPI. He said there have been "no CPI incidents" and that he has "never had to restrain using CPI tactics."

<sup>14</sup> To date, we do not know whether the SRO is properly trained in the use of restraint on children.

about the use of restraint. A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the Recipients about the status of the Agreement terms. We will provide the Recipients written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the Recipients fail to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the Recipients' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the Recipients, copied to the Complainant, stating that this case is closed.

This letter sets forth OCR's determination in an individual OCR case. 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and your staff extended to us during the investigation and resolution of this case. If you have any questions regarding this letter or the monitoring of this case, please contact the assigned attorney, Jason Langberg, at (303) 844-6299 or [jason.langberg@ed.gov](mailto:jason.langberg@ed.gov).

Sincerely,



Angela Martinez-Gonzalez  
Supervisory General Attorney

cc (via email): Josh Cochran, Executive Director, Stargate School  
William Bethke, Attorney for the School, Kutz & Bethke LLC  
Walt Kramarz, Deputy General Counsel for the District  
Dr. Katy Anthes, Colorado Commissioner of Education

Attachment: Resolution Agreement