



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 14, 2016

Mr. John Bash
Superintendent
Tumwater School District No. 33
621 Linwood Avenue SW
Tumwater, Washington 98512

Re: Tumwater School District No. 33
OCR Reference No. 10161118

Dear Superintendent Bash:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Tumwater School District No. 33 (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 complaint allegation.

The complainant (hereinafter referred to as "the parent") alleged that:

1. The district discriminated against a student, when it failed to implement the student's Individualized Education Program (IEP), by failing to provide the student's IEP accommodations during the 2015-2016 school year.
2. The student has been discriminated against, as a result of his disability, because the district required him to miss the last 10 minutes of his 6th period class each day, so that he could load and ride the special education bus.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 (Section 504) as amended, 29 U.S.C. §794, and its implementing regulation and title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §12131, *et. seq.*, and its implementing regulations. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the U.S. Department of Education and by public entities, respectively. The district is a recipient of federal financial assistance from this Department and is a public entity.

Regarding the allegation that the district failed to implement the student's IEP, the regulation implementing Section 504 at 34 CFR 104.33 requires districts to provide disabled students with a

free appropriate public education. The regulation defines an appropriate education as the provision of regular and special education and related aids and services that are designed to meet individual educational needs of disabled students as adequately as non-disabled students and are based on the procedures contained in the Section 504 regulations.

The investigation to date indicated that the student received a number of failing course grades (Ds and Fs) in his general education classes during the fall of 2015, that the student missed some class time due to transportation issues, and that the parent raised concerns at an IEP team meeting about the student not getting his IEP accommodations.

Regarding the allegation that the district's transportation resulted in the student missing more class time than his non-disabled peers, the regulations implementing Section 504 at 34 CFR 104.4(a) and 104.4(b) prohibit districts, on the basis of disability, from excluding students from participation in, denying students the benefits of, or otherwise subjecting students to discrimination under any program or activity which receives federal financial assistance. Additionally, districts may not provide a qualified person with a disability with an aid, benefit, or service that is not as equal to that afforded to others. The regulation implementing Section 504 at 34 CFR 104.37(a) requires that recipients shall provide non-academic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. The regulation implementing Title II at 25 CFR 35.130(a) requires that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The investigation to date indicated that the student missed some instructional time from at least September 16 to November 4, 2015, when the student was required to leave his 6th period class early in order to board the special education bus. The investigative materials noted that seven other students rode the same bus as the student. The investigation to date also indicated that the district had no policies or procedures related to the transportation of students with disabilities.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegations or any information obtained during the discontinued investigation and must be consistent with applicable regulations. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

The actions the district will take under the agreement include: (1) the district will review and revise, as necessary, its policies and procedures to ensure that students with disabilities are not treated differently from non-disabled students with respect to the length of the school day, unless a shortened school day is determined as necessary to meet the individualized needs of a particular student with a disability; (2) the district will also review and revise, as necessary, its policies and procedures to ensure the implementation of students' IEPs and Section 504 plans; (3) the district will train its staff on these required changes to its policies and procedures; (4) the district will offer additional instructional time to any student with a disability who utilized specialized transportation during the 2015-2016 school year, and, because of

transportation provided by the district, received less instructional time than the instructional time received by students attending general education classes at the same school.

Remedies for the specific student at issue in this case include: the district will offer compensatory education to the student for any missed instructional time in his 6th period math class during the 2015-2016 school year, by sending a written offer to the student's parent to reimburse the parent for 7 hours of tutoring in mathematics, to be provided to the student in the student's new locale. The district will similarly reimburse the parent for an additional 15 hours of private tutoring for English, Biology, World History, and Mathematics.

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 complainant may file another 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 by September 30, 2016.

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 Claudette Rushing, Attorney, by telephone at (206) 607-1606, or by e-mail at claudette.rushing@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Randy Dorn, Superintendent of Public Instruction