



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

February 24, 2016

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Ms. Diane Wiscarson, Esquire
C/O Wiscarson Law
510 SW 3rd Avenue, Suite 439
Portland, Oregon 97204

Re: Beaverton School District
OCR Reference No. 10151271

Dear Ms. Wiscarson:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has obtained a voluntary agreement to address the allegations in your complaint against the Beaverton School District (the district). In the complaint, you alleged that a student had been discriminated against, on the basis of disability, when the district treated him differently than non-disabled students and denied him a free appropriate public education (FAPE) due to the district's bus schedules. Specifically, the complaint alleged that because the student was released early to load on school busses with the self-contained classroom, the student was denied instructional time along with time related to his Individualized Education Program (IEP) goals and objectives. Additionally, the complaint alleged that other similarly disabled students at district schools were also denied FAPE and treated differently from non-disabled students as a result of daily early dismissals for self-contained classroom students, so that these students could board the busses before the general education students were dismissed.

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

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act (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 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.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives financial assistance from the Department. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), contains a similar provision. The regulations implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(ii)-(iv), and the ADA, at 28 C.F.R. § 35.130(b)(ii)-(iv), provide that a recipient may not, on the basis of a person's disability, [a]fford a qualified disabled person an opportunity to participate in or benefit from [an] aid, service or benefit that is not equal to that afforded others; [or] provide different or separate aid[s], benefits or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid[s], benefits, or services that are as effective as those provided to others. Transportation of a student with a disability should not be provided in a manner that results in the student having a shorter school day than nondisabled students, unless necessary to meet the student's individualized needs pursuant to his or her IEP or Section 504 plan. Administrative convenience is not a permissible reason to shorten the instructional time for students with disabilities.

The investigation data viewed to date indicated that several of the district's special education bus routes were leaving school concurrent to the school's dismissal time or prior to the official dismissal time, during the 2014-2015 school year. The investigation to date also indicated that disabled students in some district high schools were released prior to their general education peers during the 2015-2016 school year.

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: a review of district policies and procedures related to nondiscriminatory practices for transportation and length of school day for students with disabilities; a review of district policies and procedures to ensure that 504 and IEP plans for all students are implemented fully; notice and training to all district teachers who work with self-contained classrooms regarding the aforementioned policies and procedures and the changes made to district policies and

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procedures; and 15 hours of compensatory education services for each student currently attending the district who was in a self-contained classroom and utilizing special transportation services during the 2014-2015 school year or into the 2015-20016 school year.

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 was due by February 19, 2016 and has been received by OCR. If you have any concerns about the district's implementation of the agreement, please raise those concerns with OCR.

Thank you for bringing these concerns to our attention. If you have any questions regarding this letter, please feel free to contact attorney Claudette Rushing by telephone at 206-607-1606 or by e-mail at claudette.rushing@ed.gov .

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Goodwin", with a stylized, cursive script.

Paul Goodwin
Team Leader

Enclosure: Voluntary Resolution Agreement

VOLUNTARY RESOLUTION AGREEMENT

I. INTRODUCTION

The Beaverton School District 48J (the district) enters into this agreement to resolve the allegations in a complaint (OCR Reference No. 10151271) filed with the U.S. Department of Education, Office for Civil Rights (OCR), under section 504 of the Rehabilitation Act of 1973 (Section 504) and title II of the Americans with Disabilities Act of 1990 (Title II).

II. GENERAL PROVISIONS

- A. This agreement resolves the allegations in OCR Reference No. 10151271 and does not constitute an admission by the district of any violation of Section 504 or Title II or any other law.
- B. OCR agrees to discontinue its investigation of OCR Reference No. 10151271 based upon the district's commitment to take the actions specified in this agreement which, when fully implemented, will resolve the allegations in this case.
- C. The district understands and acknowledges that, if it does not fully implement this agreement, OCR will take appropriate measures within its authority to effect compliance and that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR shall give the district written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.
- D. The district understands that by signing this agreement, it agrees to provide OCR data and other information in a timely manner. Further, the district understands that during the monitoring of this agreement, OCR may visit the district, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the district has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 and Title II, at 34 C.F.R. 104.4(a); 28 C.F.R. 35.130(a); 34 C.F.R. 104.4(b)(1)(ii)-(iv); 28 C.F.R. 35.130(b)(ii)-(iv); and, 34 CFR 104.33 which were at issue in this case.
- E. The district understands that OCR will not close the monitoring of this agreement until OCR determines that the district has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 and the ADA at 34 C.F.R. 104.4 (a); 28 C.F.R. 35.130(a); 34 C.F.R. 104.4(b)(1)(ii)-(iv); 28 C.F.R. 35.130(b)(ii)-(iv); and 34 CFR 104.33.

III. RESOLUTION PROVISIONS

A. Policies and Procedures

By May 4, 2016, in consultation with OCR as described in the reporting provisions below, the district will review and revise, as necessary, its policies and procedures to ensure that:

1. 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, and such decisions are made by a group of persons knowledgeable about the student, the student's disability evaluation data, and the placement options. In particular, the district's policies and procedures will ensure that students in the district's self-contained classrooms will not arrive to class later, or depart earlier, than students in the district's regular education program, due to general transportation schedules for buses serving students in those classrooms.
2. The Individualized Education Programs or Section 504 plans for students with disabilities are fully implemented.

B. Notice and Training

1. Within 30 days of receiving OCR's approval of the policies and procedures described in section III.A, above, the district will provide notice to all staff regarding the policies and procedures. The notice may be made electronically.
2. By September 2, 2016, the district will provide training to all teachers who teach in its self-contained classrooms that have students utilizing special education transportation, as well as the principals, vice principals, and any special education administrators at each of those schools.

C. Compensatory Education

Consistent with the method described in the reporting provision below, the district agrees to offer 15 hours of compensatory education to each student currently attending school within the district who was in a self-contained classroom and utilizing special education transportation services during the 2014-2015 school year or during the current school year.

V. REPORTING PROVISIONS

A. Policies and Procedures

1. By March 4, 2016, the district will provide OCR a copy of its draft revised policies and procedures, which it developed pursuant to section III.A of the agreement, for OCR's review and approval. OCR will review the policies and procedures and notify the district if OCR approves the policies and procedures, or whether OCR identifies any necessary revisions to the policies and procedures. If OCR identifies revisions, the district will submit revised policies and procedures within 30 days of receiving OCR's notice. OCR and the district will repeat this procedure until OCR approves the policies and procedures.
2. Within 30 days of receiving OCR's approval of the revised policies and procedures submitted pursuant to section III.A of the agreement, the district will provide OCR with documentation to substantiate that it has adopted the OCR approved policies and procedures.

B. Notice and Training

1. Within 45 days of receiving OCR's approval of the policies and procedures pursuant to section IV.A, above, the district will submit a report to OCR containing a copy of the notice sent to staff pursuant to section III.B.1, above.
2. By September 9, 2016, the district will submit a report to OCR describing the training provided pursuant to section IV.B.2, above. The report will contain, at a minimum:
 - a. the date and time of the training;
 - b. the name and qualifications of the person providing the training;
 - c. a copy of the materials used to provide the training;
 - d. a list of staff with position titles who attended the training; and
 - e. for any required staff who were not able to attend the training, a description of the district's plan to provide them with the training.

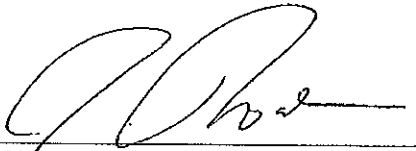
C. Compensatory Education

1. By February 19, 2016, the district will submit to OCR a report containing its plan to offer compensatory education services to students pursuant to section III.C, above. At a minimum, the plan will contain a draft of the notice the district will send to parents/guardians of the students with information

about the options for compensatory education for the students, and a specific date not less than 30 days for the parents/guardians to respond to the district if they intend for the student to participate in the compensatory education program. The district will send the letter to the parents/guardians within 14 days after receiving OCR's approval of the letter.

2. Within 14 days after the deadline for parents/guardians to respond to the district's letter described in section IV.C.1, above, the district will provide OCR with a report containing a list of the students that accepted the offer for compensatory education and the district's plan, with completion dates included, for providing the compensatory education.
3. Within 14 days of completing the provision of compensatory education to students, the district will submit a report to OCR containing a summary of the compensatory services provided to all students whose parents accepted the compensatory services. The report will include, at a minimum, the student's name, school of attendance, and dates and amounts of compensatory education provided to each student.

Signed:



Dr. Jeff Rose
Superintendent
Beaverton School District 48J

2/5/16
Date