



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

December 10, 2014

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Mr. Brian L. Flones
Superintendent
Wenatchee School District No. 246
P.O. Box 1767
Wenatchee, Washington 98807

Re: Wenatchee School District No. 246
OCR Reference No. 10141382

Dear Superintendent Flones:

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 Wenatchee School District No. 246 (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 complaint alleged that the district discriminated against a student at XXXXXX XXXXXX School (hereinafter, referred to as "the student"), based on disability, when:

1. the district failed to conduct an adequate evaluation of the student's disability-related needs during the 2013-2014 school year;
2. the district failed to provide special education or related aids and services to the student that addressed all of his disability-related needs during the 2013-2014 school year;
3. the district changed the student's placement by emergency expelling him on approximately March 21, 2014, and then limiting him to half days for most of the remainder of the school year, without conducting a prior evaluation under Section 504; and
4. the district treated the student differently from other students by not allowing him to ride the school bus to a class field trip near the end of the 2013-2014 school year.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 (Section 504) and title II of the Americans with Disabilities Act

of 1990 (Title II), and their implementing regulations. These statutes prohibit disability discrimination in programs and activities receiving 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 allegation No. 1, above, the Section 504 regulation at 34 CFR 104.35(c) requires recipients, when making placement determinations for students with disabilities, to gather all evaluative information necessary to determine a student's disability-related needs when developing a Section 504 plan or Individualized Education Program (IEP) for the student, and that in interpreting the evaluation data and in making placement decisions, the district shall: (1) draw upon information from a variety of sources as appropriate; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and (3) ensure the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Regarding allegation No. 2, above, the Section 504 regulation at 34 CFR 104.33(a) requires school districts to provide a free appropriate public education (FAPE) to each disabled student in the district's jurisdiction, regardless of the nature or severity of the student's disability. The Section 504 regulation at 34 CFR 104.33(b) states that 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 the individual educational needs of handicapped persons as adequately as the needs of non-disabled persons are met and (ii) are based upon the adherence to the procedural requirement of the Section 504 regulations at sections 34 CFR 104.34-104.36.

Regarding allegation No. 3, above, the Section 504 regulation at 34 CFR 104.35(a) requires school districts to conduct an evaluation before any significant change to a disabled student's placement. OCR policy provides that a significant change of placement includes when a disabled student (i) is excluded for more than 10 consecutive school days; or (ii) receives a series of shorter-term suspensions that, in the aggregate, amount to over 10 school days in the school year and creates a pattern of exclusions.

In order to implement an exclusion that constitutes a significant change in placement, a school district must first conduct a re-evaluation of the disabled student. As a first step in this re-evaluation, the school district must determine, using appropriate evaluation procedures that conform with the Section 504 regulations, whether the misconduct is caused by the student's disabling condition. If it is determined that the disabled student's misconduct is caused by the child's handicapping condition, the student may not be subjected to the disciplinary exclusion and the evaluation team must continue the evaluation, following the requirements of 34 CFR 104.35 for evaluation and placement, to determine whether the disabled student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly-situated non-disabled students are excluded.

Regarding allegation No. 4, above, the Section 504 regulation at 34 CFR 34 104.4(a) states that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of the recipient's programs or activities. While the Section 504 regulations allow a district to treat a disabled student differently from non-disabled student in order to provide FAPE to the student, those types of decisions must be made in accordance with the procedures in 34 CFR 104.35, including being based on evaluative information, and made by a group of people knowledgeable about the child, the evaluation data, and placement options.

The applicable Title II regulatory provisions are set forth at 28 CFR 35.130 and are interpreted consistent with the provisions of Section 504 mentioned above, pursuant to 28 CFR 35.103(a). 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.

Under the agreement, the district will take the following actions. The district will review and revise, if necessary, its written policies, procedures, and practices to ensure that the district: (1) has an effective procedure to identify transfer students who had an IEP or Section 504 plan from a previous school, and a method to ensure those students are evaluated as necessary in a timely manner to ensure they receive a FAPE at their new school; (2) gathers all evaluative information necessary to determine a student's disability-related needs when developing a Section 504 plan or IEP for the student in alignment with the requirements of Section 504 at 104.35; (3) will conduct an evaluation to determine whether a disabled student's misconduct is a manifestation of the student's disability when the student is suspended or expelled for more than 10 consecutive school days, or has a series of shorter term suspensions that combine to more than 10 school days and constitute a pattern of exclusions, and take appropriate action based on that determination; and (4) provides disabled students with an equal opportunity to participate in extracurricular field trips.

The agreement also requires the district to provide: (1) written notice of the policies and procedures to district employees; (2) update web site and printed materials with the policies and procedures as necessary; and (3) training to the teachers and administrators at XXXXXX XXXXXX School regarding the policies and procedures. With respect to the student who was the focus of the complaint, the district will send a letter of regret to the parent that outlines the steps the district is taking under this agreement and commits to providing the student with a FAPE. The district will also convene a meeting to review the subject student's Section 504 plan to determine if the plan is sufficient to meet the student's disability-related needs and determine whether compensatory or remedial services are appropriate for the student.

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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 February 27, 2014.

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 Paul Goodwin, Supervisory Attorney, by telephone at (206) 607-1612, or by e-mail at paul.goodwin@ed.gov.

Sincerely,

Sukien Luu
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Randy Dorn, Superintendent of Public Instruction
Danielle Marchant, Attorney