



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

November 25, 2014

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Dr. Marilyn McBride  
Superintendent  
Harney County School District 3  
550 North Court Avenue  
Burns, Oregon 97720-1590

Re: Harney County School District 3  
OCR Reference No. 10141327

Dear Superintendent McBride:

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 Harney County School District 3 (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 a student at XXXXXXXXXXXX was discriminated against, on the basis of her disability, when:

1. the district failed to follow Section 504 procedural requirements in the development of the student's Section 504 Plan, by failing to gather evaluative information about her disability in developing the plan;
2. in November 2013, the student was harassed on the basis of her disability and the district failed to take prompt and effective action to end this harassment;
3. in November 2013, the district failed to provide the student's parent with a grievance procedure that provided for a prompt and equitable resolution of her harassment and disability discrimination complaints; and
4. In October 2013, the district failed to take the actions necessary with regard to the student's disability to allow her an equal opportunity to benefit from a program or service, e.g., a multi-day, out-of-state field trip.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, 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, Section 504 regulation at 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 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. The applicable Title II regulatory provision is set forth at 28 CFR 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

Regarding allegation No. 2, above, disability discrimination is prohibited by the Section 504 and Title II regulations at 34 CFR 104.4 and 28 CFR 35.130, respectively. OCR recognizes disability harassment as a form of disability discrimination prohibited by Section 504 and Title II.

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the regulations implementing Section 504 and Title II. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the Individuals with Disabilities Act, as well as Section 504 and Title II. These laws require school districts to provide an appropriate special education and related services to students with disabilities that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's Individualized Education Program (IEP) or Section 504 plan. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

Educational institutions have a legal responsibility to prevent and respond to disability harassment. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects of the harassment.

For more detailed information about a district's obligation to respond to disability harassment, and provide FAPE to disabled students who are bullied or harassed, see OCR's October 21, 2014, Dear Colleague Letter, published on OCR's website on the "Reading Room" link at [www.ed.gov/ocr](http://www.ed.gov/ocr).

Regarding allegation No. 3, above, the Section 504 and Title II regulations at 34 CFR 104.7(b) and 28 CFR 35.107(b), respectively, state that recipients shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by these laws.

Regarding allegation No. 4, above, Section 504 regulation at 34 CFR 104.37(a)(1) states that a recipient 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. The applicable Title II regulatory provision is set forth at 28 CFR 35.130 and is interpreted consistent with the provisions of Section 504 mentioned above.

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 for responding to incidents of alleged disability harassment; (2) has a prompt and effective grievance procedure for students/parents with concerns regarding disability discrimination; (3) 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; 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) electronic or written notice regarding the new/revised disability harassment procedures and grievance procedures for resolving disability complaints together with information on how to obtain a copy of the grievance procedures to students and parents/guardians; and (3) training to the teachers and administrators at Burns High 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. The district will also offer the parent to convene a meeting to review the subject student's Section 504 Plan and Health Plan to determine if the plans are sufficient to meet the student's disability-related needs. If the parent requests the meeting, the district will schedule the meeting, and will ensure the participants at the meeting are knowledgeable about the student, the student's evaluation data, and placement options. If the district makes any changes to the student's plans, the district will promptly notify all staff responsible for implementing the plans of the changes to the plans.

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 15, 2015.

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 Mark Farr, Special Projects Coordinator, by telephone at (206) 607-1607, or by e-mail at mark.farr@ed.gov.

Sincerely,

/ S /

Paul Goodwin  
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Rob Saxton, Superintendent of Public Instruction