



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

May 16, 2016

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Mr. Andy Bellando
Superintendent
Silver Falls School District 4J
802 Schlador Street
Silverton, Oregon 97381

Re: Silver Falls School District 4J
OCR Reference No. 10151452

Dear Superintendent Bellando:

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 Silver Falls School District 4J (the district). The complaint alleged that students in the district with disabilities who rely on special buses for transportation are being discriminated against: (1) because they are provided a shorter school day than their non-disabled peers; (2) because they have separate areas at schools for loading and unloading school buses than their non-disabled peers; and (3) because they are escorted directly to their self-contained classrooms upon arrival at school instead of being able to play on the playground with their non-disabled peers.

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 of the ADA) 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.

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 allegations. As also explained below, OCR did not find that the district violated Section 504 or Title II with regard to allegations Nos. 2 and 3.

The regulation implementing Section 504 at 104.4(a) requires 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 federal financial assistance from this 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, afford 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 aids, benefits or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aids, 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 non-disabled students, unless his or her Individualized Education Program or Section 504 plan states otherwise.

Regarding the first allegation, OCR's investigation to date indicated that during the 2014-2015 and 2015-2016 school years, some students with disabilities who utilized specialized transportation received less instructional time than students attending general education classes in district schools. The district provided information to OCR which noted the district conducted its own internal investigation of special transportation services during the 2014-2015 school year, but that the district did not provide compensatory education to the students who received a shortened school day during that 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: individual compensatory education for each student who utilized special transportation and as a result received a shortened instructional day in district schools during the 2014-2015 or 2015-2016 school years; the review and revision of district policies and procedures related to special education transportation; and staff training to ensure that teachers, principals, and relevant administrators are aware of non-discrimination requirements found in Section 504 related to equitable transportation services and class time for students with disabilities.

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 July 11, 2016.

OCR did not find sufficient evidence of a violation for the second allegation, related to the use of separate loading and unloading areas for students with disabilities in district schools. The evidence established that only one school in the district, Eugene Field, had separate drop-off areas for disabled and non-disabled students. The district provided information showing that Eugene Field does not have any areas on campus for pick-up and drop-off of students, so instead it relies on rural roads and city streets for bus loading and unloading of general education students, and it has alternate loading and unloading areas for students with disabilities who use special transportation that is closer to the school building. The district stated that while there is not room in the closer area to handle all the buses for the school, it determined that the students with special needs would benefit from having the safer, closer, drop-off area, which is also closer to their self-contained classroom.

Although the district provided a different bus drop-off area for disabled students at Eugene Field, OCR has determined that the district provided a legitimate, non-discriminatory reason for the different treatment, namely that there was a closer drop-off area that was not large enough for all the school buses, but would provide a safer and closer drop-off area for students with disabilities using specialized transportation. Therefore, OCR determined that the evidence was insufficient to establish that the district violated Section 504 or Title II regarding this allegation, and OCR will be taking no further action regarding this allegation.

Additionally, OCR did not find sufficient evidence of a violation for the third allegation related to the self-contained students' use of the playground facilities, gym, or interaction with general education peers before the start of the school day. The district submitted bell schedules that indicated that students in self-contained or life skills classrooms who arrive to school early are allowed to choose to go to the playground, gym, cafeteria or classroom depending on their individual preference. Several school principals also indicated that students at their school in both general and special education may select to go to the playground, breakfast, classroom, or gym prior to the start of school if they arrive early. The superintendent stated that it is the district's practice to allow all disabled students in self-contained classrooms the opportunity to play on the playground every day before school, and that no disabled students in self-contained classrooms were denied the opportunity to play on the playground before school. There was no evidence that indicated that any disabled students were denied access to playground facilities, gyms, or other interaction with general education peers before the start of the school day. Because the evidence failed to establish that disabled students are treated differently from non-disabled students regarding access to playgrounds, gyms, or other areas to interact with non-disabled students, OCR determined that the evidence was not sufficient to establish a violation of Section 504/Title II with regard to this allegation, and OCR will be taking no further action regarding this allegation.

Regarding allegations Nos. 2 and 3, this letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the district's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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 allegations Nos. 2 and 3. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions regarding this letter, 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 Dr. Salam Noor, Deputy Superintendent of Public Instruction