



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 18, 2018

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Mr. Brian Aukland
Superintendent
Lopez Island School District No. 144
86 School Road
Lopez Island, Washington 98261

Re: Lopez Island School District No. 144
OCR Reference No. 10161070

Dear Superintendent Aukland:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Lopez Island School District No. 144 (the district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district discriminated against a student, on the basis of his disability, when it expelled him on November 17, 2015, without conducting a manifestation determination. As explained below, prior to completion of the investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

OCR investigated this case 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). These laws prohibit discrimination in programs and activities receiving federal financial assistance and by public entities, respectively. The district receives federal financial assistance from this Department and is a public entity, and is therefore subject to these laws.

The regulation implementing Section 504 at 34 C.F.R. §104.33(a) requires recipients that operate a public elementary or secondary education program to provide a free appropriate public education to each qualified person with a disability in the district's jurisdiction. The Section 504 regulation at 34 C.F.R. §104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that: (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §104.34, 104.35, and 104.36.

34 C.F.R. §104.35(a) and (c) require recipients to conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related aids and services before taking any actions with respect to the initial placement of the student in a regular or special education program and any subsequent significant change in placement. When interpreting evaluation data and making placement decisions, recipients must draw upon a variety of sources, ensure that all information is

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documented and carefully considered, and ensure that the placement decision is made by a group of individuals knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. §104.36 requires that a student’s parents or guardian be provided with notice and an opportunity to examine relevant records prior to any significant change in placement. The regulation implementing Title II at 28 C.F.R. §35.130 places requirements on public entities, such as the school, which are comparable to the Section 504 requirements.

It is OCR's policy that a “significant change in placement” is considered to be a suspension for more than 10 consecutive school days and a series of suspensions that are 10 days each or fewer in duration may create a pattern of exclusion that constitutes a significant change in placement requiring a prior evaluation. The determination of whether the series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors considered in determining whether a series of suspensions has resulted in a significant change in placement are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

The evidence collected by OCR to date reflects that the district has established policies and procedures for the identification, evaluation and placement of students who need or are believed to need special education or related aids and services under Section 504. The procedures state that the district will evaluate any student who needs or is believed to need special education or related aids and services prior to placement and before any subsequent significant change in that placement. The policy states that examples of significant changes in placement include expulsion and suspensions which exceed 10 consecutive days in a school year.

The district also has established policies and procedures regarding the disciplinary exclusion of students with disabilities. The procedures state that qualified disabled students should be recognized as having a disabling condition before discipline is imposed on them, especially before imposing long-term suspension (a suspension of more than 5 days duration) or regular expulsion that could constitute a significant change in placement. The procedures state that the school principal or educational staff person responsible for the imposition of discipline must ensure that a group of qualified professionals determine whether or not there is a causal relationship between the student’s misconduct and his or her disability.

During the 2015-2016 school year, the student who was the subject of this complaint was enrolled in the XXXXXXXX grade at XXXXXXXXXXXX. On XXXXXXXXXXXXXXXX, the district emergency expelled the student XX. On XXXXXXXXXXXXXXXX, the expulsion was converted to a long-term suspension. The district readmitted the student on XXXXXXXXXXXXXXXX. The student was suspended for a total of 49 school days during this period of time. The district did not conduct a manifestation determination to determine whether the student’s behavior that led to his suspension may have been caused by his disability.

It is the position of the superintendent and the principal XXXXXXXXXXXXXXXX that the student was not considered to be a student with a disability at the time of the student’s suspension and therefore no manifestation determination was required. It is the position of the superintendent and the principal that the student was previously on a Section 504 plan in the district until April 2015, at which time he was removed from the Section 504 system because he was doing well. However, there is no documentation that the student was removed from a Section 504 plan in accordance with established

Section 504 regulations such as a group-based decision and notice to the student's parents. Although OCR has not yet conducted interviews of the district staff, the data reviewed by OCR to date raises a concern that the student may not have been removed from a Section 504 plan in accordance with established Section 504 regulations and that the student's behavior in the months preceding his long-term suspension rose to the level of a suspected disability.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint allegation[s] and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the district requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the district's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

The actions the district will take under the agreement include the following:

- reviewing and revising its Section 504 policies, procedures, and practices to ensure that they comply with Section 504 regulations;
- providing written notice to all district administration and staff regarding the Section 504 requirements relative to the imposition of discipline for students with disabilities; and
- offering to conduct an evaluation to determine whether the student's behavior that caused the suspension was related to his disability and, if so, whether compensatory education is appropriate.

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 March 15, 2018.

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. 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.

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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, please feel free to contact Tania Lopez, Senior Attorney, by telephone at (206) 607-1623 or by e-mail at tania.lopez@ed.gov.

Sincerely,

Barbara Wery
Team Leader

cc: Honorable Chris Reykdal, Superintendent of Public Instruction

Enclosure: Voluntary Resolution Agreement