



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 18, 2019

Mr. Guadalupe Guerrero
Superintendent
Portland School District 1J
501 North Dixon Street
Portland, Oregon 97227

Re: Portland School District 1J
OCR Reference No. 10161263

Dear Superintendent Guerrero:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), is discontinuing its investigation of the above-referenced discrimination complaint against Portland School District 1J (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 complainant alleged that the district discriminates against students with disabilities by treating them differently on the basis of disability and by denying them a Free Appropriate Public Education (FAPE). Specifically, the complainant alleged that students with disabilities in self-contained or life skills classrooms are denied instructional time related to their Individualized Education Program (IEP) goals and objectives when they are dismissed early to load buses before general education students are dismissed.

OCR accepted this complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1972 (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 and by public entities, respectively. Because the district is a recipient of federal financial assistance from the Department and is a public entity, it is subject to these federal civil rights laws.

The regulations implementing Section 504, at 34 C.F.R. § 104.4(a) and (b), prohibit districts, on the basis of disability, from excluding students from participation in, denying students the benefits of, or otherwise subjecting students to discrimination under any program or activity which receives federal financial assistance. Additionally, districts may not provide a qualified person with a disability with an aid, benefit, or service that is not equal to that afforded to others. The regulation implementing Title II, at 25 C.F.R. § 35.130(a), requires that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

OCR's investigation to date indicated that, during the 2015-2016 school year, students with disabilities in self-contained classrooms who rode specialized buses at 21 district schools departed school earlier than the buses transporting their general education peers. For example, students who received specialized transportation at Grout Elementary School loaded their bus at 2:06 p.m. before the final release bell at 2:15 p.m. Likewise, students who received specialized transportation at Woodrow Wilson High School loaded their buses at 3:05 p.m., 10 minutes before the final release bell at 3:15 p.m. OCR has identified a concern that the early departure times for the students with disabilities resulted in less instructional time for these students than received by their peers in general education classrooms without an individualized determination that this was appropriate for each student with a disability.

In accordance with Section 302 of the *OCR Case Processing Manual*, a complaint may be resolved at any time when, before OCR issues a final determination, the institution expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issue under investigation through an agreement. 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 concern identified by OCR comprehensively without further investigation, OCR determined that entering into an agreement was appropriate. Subsequent discussions with the district resulted in the district signing the enclosed agreement.

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 the complaint. 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.

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 **September 30, 2019**.

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 Catherine Fawley, Attorney, by telephone at (206) 607-1609, or by e-mail at catherine.fawley@ed.gov.

Sincerely,

Sukien Luu
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Honorable Colt Gill, Deputy Superintendent of Public Instruction