



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 29, 2017

Mr. John Deeder
Superintendent
Evergreen School District No. 114
P.O. Box 8910
Vancouver, Washington 98668-8910

Re: Evergreen School District No. 114
OCR Reference No. 10165001

Dear Superintendent Deeder:

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 compliance review against the Evergreen School District No. 114 (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 issue in the compliance review.

The compliance review assessed whether the district discriminates against students with disabilities who use specialized transportation services, by providing the students a shorter school day than their peers, because the special buses arrive at school later than and/or depart school earlier than the buses for the general education students.

OCR is authorized to review this matter 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 the 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. The district is a recipient of federal financial assistance from this Department and is a public entity.

The regulation implementing Section 504 at 34 CFR 104.4(a) and 104.4(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 28 CFR 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.

During the investigation, OCR conducted an on-site in the district and identified concerns that some

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specialized buses serving special education students arrived at schools late, or departed schools early. However, OCR would need to gather additional information to make a compliance determination.

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 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 district will take under the agreement include:

- the district will review its policies and procedures to ensure that students with disabilities are not treated differently from non-disabled students with respect to the length of the school day, unless a shortened school day is determined as necessary to meet the individualized needs of a particular student with a disability consistent with Section 504 and Title II regulatory requirements for making such decisions;
- the district will provide training and notice to all employees regarding the applicable policies and procedures;
- the district will conduct transportation monitoring for all disabled students who use special transportation services during the 2017-2018 and 2018-2019 school years to ensure that the students do not receive less instructional time than their general education peers, due to transportation schedules for buses serving those students or other administrative reasons; and
- the district will provide compensatory education services to any eligible students.

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 this matter. 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, compliance review, or monitoring process. If this happens, the individual may file a 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 on November 1, 2017.

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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
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Honorable Chris Reykdal, Superintendent of Public Instruction