



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 30, 2020

Sent by email only to: colt.gill@state.or.us

Honorable Colt Gill
Deputy Superintendent of Public Instruction
State Department of Education
255 Capitol Street NE
Salem, Oregon 97310-0203

Re: Oregon Department of Education
OCR Reference No. 10171027

Dear Deputy Superintendent Gill:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Oregon Department of Education (ODE) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that ODE discriminates against disabled students at Three Lakes High School (Three Lakes), located in the Oak Creek Youth Correctional Facility, by failing to provide them with special education and related aids and services in accordance with each student's Individualized Education Program (IEP).

As explained below, prior to completion of OCR's investigation, ODE expressed an interest in voluntarily resolving the complaint and signed the accompanying 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 and Title II of the Americans with Disabilities Act of 1990 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. ODE is a recipient of federal financial assistance from this Department and is a public entity.

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires a recipient to provide a free appropriate public education (FAPE) to each qualified individual with a disability in the recipient's jurisdiction. An appropriate education is defined as regular or

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special education and related aids and services that are designed to meet individual educational needs of the individual with a disability as adequately as the needs of nondisabled persons are met, and that are based upon adherence to the procedures identified in Section 504. Section 504 also requires, at 34 C.F.R. §104.35(c), that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that 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, and (4) ensure that the placement decision is made in conformity with 104.34.

The Title II regulation at 28 C.F.R. § 35.130 prohibits a public entity from excluding an individual from participating in or denying the benefits of the services, programs, or activities of the public entity.

The Oregon Youth Authority is the entity that has physical and legal custody of the students in close custody, and ODE is responsible for their education program. ODE contracts with the Multnomah Education Services District to provide a full range of education services, including special education and related services, to students at Three Lakes High School. The investigation to date indicated that in some instances during the 2016-2017 school year, students with disabilities were not provided with specially designed instruction as specified in their IEPs, that accommodations listed on students' IEPs were not implemented, and that some services were removed from students' IEPs altogether without following procedural requirements of Section 504 because those particular services were not available at Three Lakes.

The ODE has agreed to enter into a resolution agreement under Section 302 of OCR's *Case Processing Manual* to resolve the allegation.

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 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 ODE requested to resolve the complaint prior to the conclusion of OCR's investigation. Based on the ODE's willingness to address the potential compliance concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the ODE resulted in the ODE signing the enclosed agreement.

Under the agreement, the ODE will take steps to ensure that ODE will review and revise as necessary its Section 504 policies and procedures utilized at Three Lakes in the Oak Creek Youth Correctional Facility to ensure that students with disabilities are provided a FAPE, that students will receive all services listed in a student's Section 504 Plan or IEP unless a placement decision consistent with the procedural requirements of Section 504 has been made that a particular service is no longer necessary or appropriate, that adequate notice is provided to the parents or legal guardians of student subject to a placement decision, and that the evaluation and placement procedures of Section 504 are followed prior to significantly changing the educational placement and program of students with disabilities. The ODE has also agreed to ensure that training is provided to all Three Lakes employees who provide special education and related aids and services to students with disabilities regarding their obligation to consistently implement a student's Section 504 Plan or IEP. Finally, the ODE has agreed to identify the students with disabilities who, during the 2016-2017 school year, may have been denied a FAPE and take steps to determine appropriate compensatory services and amounts for each eligible student.

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 ODE 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 January 31, 2021.

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 Timothy L. Sell, Senior Attorney at (206) 607-1639 or at timothy.sell@ed.gov.

Sincerely,

Sukien Luu
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement
Cc: Jake Hogue, Oregon Department of Justice (*by email only*)