



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 28, 2018

Ms. Deborah LeBeau
Superintendent
Clover Park School District No. 400
10903 Gravelly Lake Drive SW
Lakewood, Washington 98499-1341

Re: Clover Park School District No. 400
OCR Reference No. 10171198

Dear Superintendent LeBeau:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Clover Park School District No. 400 (the district). OCR investigated whether the district discriminated against a student at XXXXXXXXXXXX (the school), on the basis of disability, by failing to consistently provide him with resource room services that were listed in the student's Individualized Education Program (IEP) from October 5, 2016, to June 14, 2017. 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).

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), and their implementing regulations. These laws prohibit discrimination based on disability 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, required to comply with Section 504 and Title II.

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. 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. 28 C.F.R. §35.130 states, "... (a) 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. (b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or

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through contractual, licensing, or other arrangements, on the basis of disability ... (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.”

OCR’s investigation to date indicates that the district experienced challenges in retaining a resource room teacher, during the 2016-2017 school year, and may not have consistently provided resource room services to students at the school during the time period of the complainant’s allegations.

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 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 which, when fully implemented, will address the allegation raised in this complaint.

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

- The district will review and revise, as needed, its Section 504 policies, procedures, and practices at the school to ensure that all provisions contained in Section 504 plans or IEPs that are to be implemented in a resource room setting are consistently provided.
- The district will provide written notice to all instructional and administrative staff at the school which informs staff that: (a) the district is committed to complying with Section 504 and Title II, including the obligation to consistently provide all services listed in Section 504 plans/IEPs; (b) staff should promptly report to school and district administrators any concerns regarding the implementation of a student’s education program; and (c) school or district administrators will take responsive action to ensure that concerns regarding proper implementation of a student’s educational program are resolved as promptly as possible.
- The district will convene a team of knowledgeable persons to determine whether any compensatory education should be provided to the student who was the subject of this investigation to remedy the effects, if any, of any resource room services or accommodations not provided to the student during the 2016-2017 school year under the provisions in the student’s IEP.

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 **May 1, 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 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.

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

Enclosure: Voluntary Resolution Agreement

cc: Executive Director for Student Support
Director of Special Education
Honorable Chris Reykdal, Superintendent of Public Instruction