



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 9, 2018

Sean Gallagher
Superintendent
Brookings-Harbor School District 17C
629 Easy Street
Brookings, Oregon 97415

Re: Brookings-Harbor School District 17C
OCR Reference No. 10171242

Dear Superintendent Gallagher:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the referenced complaint against Brookings-Harbor School District 17C (district). The complaint alleged that the district discriminates against students with disabilities at Brookings-Harbor High School (high school) by inappropriately designating them for modified diplomas when they do not need them. As explained below, prior to the conclusion of OCR's investigation of the complaint, the district asked to voluntarily resolve 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 disability 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 required to comply with these laws.

The Section 504 and Title II regulations at 34 C.F.R. § 104.4(a) and 28 C.F.R. § 35.130(a), respectively, prohibit a school district from excluding a qualified individual with a disability from participating in, denying the individual the benefits of, or otherwise subjecting the individual to discrimination on the basis of disability under any of its programs or activities. A school district is also prohibited from providing qualified individuals with disabilities with different or separate benefits or services, unless such action is necessary to provide them with benefits or services that are as effective as those provided to others. See 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv).

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Additionally, under the Section 504 regulations at 34 C.F.R. § 104.33(a), a school district that operates a public elementary or secondary education program is required to provide a free appropriate public education to each qualified disabled student in its jurisdiction. The Section 504 regulations define 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 individuals as adequately as the needs of nondisabled individuals 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. See 34 C.F.R. § 104.33(b)(1). OCR interprets the Title II regulations consistently with the Section 504 regulations.

Based on OCR's investigation to date, which included reviewing documents and other information provided by the complainant, OCR has identified concerns that since the 2016-2017 school year, the district's high school may have inappropriately placed high school special education students on modified diplomas and may have discriminated against them on the basis of their disability in doing so.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before OCR issues a final determination, 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. 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 without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. On November 5, 2018, the district submitted the enclosed signed agreement which, when fully implemented, will address the complaint allegation.

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 1, 2019.

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 the individual file a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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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, OCR will seek to protect to the extent provided by the 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 about this letter, you may contact Amy Kim, attorney, at (206) 607-1621 at amy.kim@ed.gov.

Sincerely,

Kelli Lydon Medak
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Joel Hungerford, Attorney