



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 9, 2017

Ms. Minerva Morales
Superintendent
Mabton School District No. 120
P.O. Box 37
Mabton, Washington 98935

Re: Mabton School District No. 120
OCR Reference No. 10171247

Dear Superintendent Morales:

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 complaint against the Mabton School District No. 120 (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 complaint.

The complaint alleged that the district discriminates against students with disabilities who use specialized school transportation, by providing the students a shorter school day than their peers, because their specialized buses are arriving at school later than and/or departing school earlier than the buses for their peers; and that the district denied an identified student with a disability (hereinafter, the student) and other disabled students in his program, a free appropriate public education (FAPE) when it failed to provide the students with instructional time related to their Individualized Education Program (IEP) goals and objectives, by releasing them from school early so that they could utilize specialized transportation.

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 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. The district 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. §104.4(a) and §104.4(b) prohibits 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 C.F.R. §35.130(a) requires that no qualified individual with a disability shall, on the basis

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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.

In addition, the Section 504 regulation at 34 C.F.R. §104.33 requires the district to provide a free appropriate public education to each qualified disabled student who is within the district's jurisdiction. The provision of an appropriate education is the provision of regular and special education and related aids and services that are designed to meet the individual needs of disabled students as adequately as the needs of non-disabled students and adhere to the Section 504 regulations. Title II is interpreted consistently with Section 504 with regard to the provision of a free appropriate public education.

During the investigation, OCR spoke with the district and identified concerns that some 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 determination regarding whether the different bus schedules were a result of individualized determinations regarding the disability-related needs of the students on those buses.

In accordance with Section 302 of OCR's *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 the 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 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 relevant employees regarding the applicable policies and procedures;
- the district will conduct an assessment of all disabled students who use special transportation services during the 2017-2018 and 2018-2019 school years to determine which students were provided a shortened school day and will ensure that those 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;
- the district will provide compensatory education services to any eligible student identified by the assessment; and
- for the student identified in the complaint, the district will determine whether it failed to provide appropriate regular and/or special education or related services as required in the student's IEP, due to a shortened school day since the beginning of the 2015-2016 school year, and will develop a plan for providing timely compensatory education and/or remedial services to address any missed services for the 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 this matter. 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, compliance review, or monitoring process. If this happens, the complainant 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 due to OCR on **December 15, 2017**.

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