



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 25, 2019

Dr. Mike Musick
Superintendent
Lake Oswego School District No.7J
P.O. Box 70
Lake Oswego, Oregon 97034-0070

Re: Lake Oswego School District No. 7J
OCR Reference No. 10171298

Dear Superintendent Musick:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Lake Oswego School District No. 7J (the district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint allegation was that, during the 2016-2017 school year, the district discriminated against a student (hereinafter, “the student”), on the basis of his disability when the district failed to implement the student’s Individualized Education Program by regularly removing him from his mainstream classroom.

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 complaint allegation.

OCR investigated this case 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 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 and is therefore subject to Section 504 and Title II.

The Section 504 implementing regulation at 34 C.F.R. 104.33 requires recipients that operate a public elementary or secondary education program or activity to provide a free appropriate public education to each qualified disabled person in the recipient’s jurisdiction. The regulation 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; and (ii) are based upon adherence to the procedural requirements contained in Subpart D of the Section 504 regulations. Implementation

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of an Individualized Education Program (IEP) consistent with the Individuals with Disabilities Education Act (IDEA) is one means for a recipient to meet its obligations under this regulation. Title II is interpreted consistently with Section 504 regarding the provision of a free appropriate public education.

The investigation to date indicated that the student was at least occasionally removed from his mainstream classroom to the hallway or another room where he received one-on-one instruction from his aide. The student's placement as stated in his IEP was in the regular education classroom.

In accordance with Section 302 of the *OCR Case Processing Manual*, a complaint may be resolved at any time when, before OCR's final determination, the recipient expresses an interest in resolving the complaint allegations 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 OCR's final determination. 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. When fully implemented, the agreement will address all of the allegations and OCR will monitor the implementation of the agreement.

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 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.

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 3, 2019.

Page 3 – OCR Reference No. 10171298

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 Ellen Chestnut, Attorney, by telephone at (206) 607-1605, or by e-mail at ellen.chestnut@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Honorable Colt Gill, Deputy Superintendent of Public Instruction