



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 18, 2019

Mr. Tony Warren
Superintendent
Turner Public Schools
P.O. Box 40
Turner, Montana 59542

Re: Turner Public Schools
OCR Reference No. 10171309

Dear Superintendent Warren:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Turner Public Schools (the district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that the district discriminated against the student on the basis of disability, during the 2016-2017 school, year by:

1. failing to conduct a timely evaluation in order to determine his disability-related needs, and to develop and implement a plan to provide any special education or related services determined to be necessary based on such an evaluation;
2. failing to appropriately respond to reports of disability harassment of the student by other students; and
3. treating the student differently by banning him from the May 2017 graduation ceremony.

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 allegations.

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 Action of 1990 (Title II), and their

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implementing regulations. These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department and by public entities, respectively. The district is a recipient of federal financial assistance from this Department and is a public entity.

The regulations implementing Section 504, at 34 C.F.R. § 104.35(a), require a recipient to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires the district to provide a FAPE to each qualified student within its jurisdiction. The regulation defines an appropriate education as the provision of regular and special education and related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of non-disabled students. Title II, at 28 C.F.R. § 35.130, includes similar requirements and is interpreted consistently with Section 504.

The regulations implementing Section 504, at 34 §§ C.F.R. 104.4(a) and (b)(1)(i), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program which receives federal financial assistance. The regulations implementing Title II, at 28 C.F.R. §§ 35.130(a) and (b)(1)(i) and (ii), contains similar prohibitions.

Disability-based harassment is a form of disability discrimination prohibited by Section 504 and Title II. Disability-based harassment creates a hostile environment when it is sufficiently serious that it denies or limits a student's ability to participate in or receive the benefits, services, or opportunities of a district's program. Under Section 504 and Title II, a district has a responsibility to respond promptly and effectively to disability-based harassment. This includes taking appropriate steps to investigate and otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

Regarding allegation no.1, the investigation to date indicated that the student first enrolled in the district in the fall of 2016 as a senior. Upon his enrollment in the district, the student did not request evaluation for special education or related aids and services and did not have a Section 504 Plan or Individualized Education Plan that accompanied him to the district. In April 2017, the student began having severe medical issues. The district stated to OCR that it was not aware of any disability requiring accommodation until just shortly prior to the end of the school year and graduation. OCR has a concern that the district may not have conducted a timely evaluation of the student. This concern is addressed in the agreement.

Regarding allegation no. 2, the student's mother told OCR that she met with the superintendent in Spring 2017 and reported that other students were telling the student that he was faking his illness which made his mental state much worse. According to the student's mother, the superintendent told the student he was welcome to come and talk to the superintendent about any issues with other students, but there was not much the superintendent could do. According to the district, there were no reports or complaints of disability-based harassment made by, or on behalf of, the student during the 2016-2017 school year. OCR has a concern that the district did not respond appropriately to reports of disability-based harassment of the student by other students. This concern is addressed in the agreement.

Regarding allegation no. 3, the complainant alleged that the student was treated differently in being banned from graduation for conduct when other similarly situated non-disabled students who engaged in similar conduct were not banned. According to the district, the decision to prohibit participation was entirely unrelated to the student's alleged disability and was instead based upon a violation of District policies. OCR has a concern that the student may have been treated differently than other non-disabled students. This concern is addressed in the agreement.

In accordance with Section 302 of the *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 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 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.

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.

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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 October 31, 2019. If you have any concerns about the district's implementation of the agreement, please raise those concerns with OCR.

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 Samuel Garcia, Equal Opportunity Specialist, by telephone at (206) 607-1676 or by e-mail at samuel.garcia@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement