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OFFICE FOR CIVIL RIGHTS

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July 25, 2018

Dr. Douglas Howell
Superintendent
Pocatello/Chubbuck School District No. 25
3115 Pole Line Road
Pocatello, Idaho 83201

Re: Pocatello/Chubbuck School District No. 25
OCR Reference No. 10181089

Dear Superintendent Howell:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Pocatello/Chubbuck School District No. 25 (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district discriminated against a student (hereinafter, “the student”), by failing to provide him with a free appropriate public education when it failed to consider adjustments to its attendance policy for the student’s disability-related absences and late arrivals.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504). This statute prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. OCR also has authority to enforce Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits discrimination on the basis of disability by public entities. Because the district receives federal financial assistance from this Department and is a public entity, it is required to comply with these laws.

As explained below, prior to completion of OCR’s investigation, the district expressed an interest in voluntarily resolving this allegation, and signed the enclosed Voluntary Resolution Agreement (agreement), to address the complaint allegation.

The regulation implementing Section 504 at 34 C.F.R. §104.4, requires that, “No qualified disabled person 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 or activity which receives federal financial assistance.” The Section 504 regulation at 104.33 further requires recipients that operate public elementary or secondary education programs to provide a free appropriate public education to each qualified disabled person within the recipient’s jurisdiction. Title II is interpreted consistently with Section 504 with regard to the provision of a free appropriate public education.

The investigation to date indicated that the student has severe diabetes with flare-ups of symptoms that are difficult for the student and his parent to control. These flare-ups likely resulted in the student being

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unable to attend school or being late in his arrival to school. The district applied its regular attendance policy to the student, and at least some of the student's absences were recorded as unexcused absences.

In accordance with Section 302 of the *OCR Case Processing Manual*, a complaint may be resolved at any time before OCR issues a final determination, when 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 allegations 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 to resolve the allegations.

This concludes OCR's investigation of the complaint. 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.

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 30, 2018**.

If you have any questions regarding this letter, 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: Counsel for the District
Honorable Sherri Ybarra, Superintendent of Public Instruction