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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

April 25, 2019

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Mr. Robert Watson
Superintendent
Bozeman School District No. 7
P.O. Box 520
Bozeman, Montana 59771

Re: Bozeman School District No. 7
OCR Reference No. 10181350

Dear Superintendent Watson:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Bozeman School District No. 7 (district). The complaint contained allegations that the district discriminated against a student on the basis of national origin by (1) requiring proof of citizenship status for registration and enrollment for the 2018-2019 school year; and (2) charging the student's temporary guardian tuition to enroll the student in school.

OCR initiated its investigation of this case under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the bases of race, color and national origin in programs and activities receiving federal financial assistance. The district receives federal financial assistance from the Department and is therefore subject to Title VI.

As explained below, regarding Allegation No. 1, prior to completion of OCR's investigation, the district expressed an interest in voluntarily resolving the complaint allegation and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation. Regarding Allegation No. 2, OCR determined that the evidence did not support a conclusion that the district failed to comply with Title VI with regard to the issue investigated. OCR's findings of fact and conclusion set forth below are based upon information and documents provided by the complainant and the district.

Allegation No. 1

The issue investigated was whether the district discriminated against the student on the basis of national origin by requiring proof of citizenship status for registration and enrollment for the 2018-2019 school year.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b), prohibits recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's race, color, or national origin. Specifically, the Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(2), provides that, in determining the types of services, financial aid, or other benefits . . . which will be provided... [recipients] may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. Pursuant to Title VI, although a recipient may require proof of residency within the district for enrollment purposes, districts may not seek such information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. As such, recipients may not require proof of citizenship for enrollment purposes.

OCR's investigation to date indicated that the district may have initially asked the student's temporary guardian to provide the student's permanent United States resident card or visa as a condition for allowing the student to enroll in a district school. This raised a concern for OCR regarding the district's compliance with the requirements of Title VI and its implementing regulations.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint allegation may be resolved at any time when, prior to the point OCR issues a final determination, the recipient expresses an interest in resolving the complaint allegation with an agreement and OCR determines that it is appropriate to resolve the issues under investigation with such an agreement. Prior to OCR making a final determination regarding the issue raised by Allegation No. 1, the district expressed an interest in voluntarily resolving the allegation. In light of the district's willingness to address the complaint allegation comprehensively, OCR determined it was appropriate to enter into an agreement to resolve Allegation No. 1. Subsequent discussions with the district resulted in the district superintendent signing the enclosed agreement, which when fully implemented will address the issue raised by Allegation No. 1.

Allegation No. 2- Findings of Fact

The district has policies and procedures (procedures) with respect to the charging of tuition for enrollment in the district's educational program. The procedures state that a student's residence for enrollment purposes is presumed to be the legal residence of the parent(s) or legal guardian(s) who have physical custody of the minor. The procedures state that a student who lives full time within the district boundaries but whose parents live outside the district may be admitted and charged tuition.

The district has procedures with respect to students residing in the district with an individual other than a parent or guardian. The procedures state that a student's relative may submit a Caretaker Relative Affidavit (affidavit) to enroll a student without payment of tuition. The affidavit states that all of the following requirements must be met for the affidavit to apply: (1) the parent expressed no definite time period in which the parent would return for the child; (2) the child is

residing with the caretaker relative on a full-time basis; (3) the caretaker relative is unable to contact either of the parents after the parents voluntarily leave the child with the caretaker relative or a parent whom the caretaker relative is able to contact is unable or unwilling to regain custody of the child; and (4) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child.

At the time of initial enrollment in the district, the student's temporary guardian (a relative) had a power of attorney for temporary guardianship of the student but had not yet been assigned as a legal guardian by a court. The complainant told OCR that he believed he met the requirements of a caretaker relative such that the district should not have charged tuition for the student. A review of district documents indicated that the student's temporary guardian completed an affidavit dated August 25, 2018. The complainant checked the boxes for items (1), (2), and (4) of the affidavit, but did not check item (3). It is the district's position that the student's temporary guardian did not qualify as a caretaker relative for tuition purposes because he did not meet the requirements as outlined in the affidavit because item (3) was not checked.

The student's temporary guardian was initially charged tuition for the student's enrollment until he obtained full court-appointed guardianship at the end of the fall 2018 semester. The district subsequently reimbursed the guardian for all tuition paid.

Allegation No. 2- Analysis and Conclusion

The issue investigated was whether the district discriminated against the student on the basis of national origin by charging the student's temporary guardian tuition to enroll in the district's educational program.

As previously stated, the regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b), prohibits recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's race, color, or national origin.

OCR found that the district had a specific written policy that applied to students who live within the district but whose parents live outside the district. That policy states that students will be charged tuition unless all four specific requirements in the affidavit are met. In this case, the evidence did not establish that, at the time of his initial enrollment, the temporary guardian provided the required information to the district indicating that either the student met the requirements to be considered a resident of the district or that the temporary guardian met the requirements of a caretaker relative for tuition purposes as defined by the district's established procedures. OCR also found no evidence that the district's enforcement of its caretaker tuition policy was a pretext for discrimination. Accordingly, OCR has determined that there is insufficient evidence to support a conclusion that the district failed to comply with Title VI with respect to the issue investigated.

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. The complainant has a right to appeal OCR's determination regarding Allegation No. 2 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 15, 2019.

Thank you for your assistance in resolving this matter. If you have any questions, please contact Tania Lopez, senior attorney, at (206) 607-1623 or at tania.lopez@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

cc: Honorable Elsie Arntzen, Superintendent of Public Instruction