



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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September 19, 2019

Drea O'Donnell
Superintendent
Shepherd School District
7842 Shepherd Road
Shepherd, Montana 59079

Re: Shepherd School District No. 37
OCR Reference No. 10191107

Dear Superintendent O'Donnell:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Shepherd School District (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the District discriminated against a student at XXXXXXXX (Student A), on the basis of disability, by:

1. Failing to evaluate him for an IEP during the 2018-2019 school year; and
2. Failing to implement his Section 504 plan during the 2018-2019 school year.

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 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 the Department and is a public entity.

The regulation implementing Section 504 at 34 C.F.R. § 104.35 states that a recipient shall conduct an evaluation in accordance with the requirements of paragraph (b) of the section 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

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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 a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

The investigation to date indicated that during the 2018-2019 school year the parent of Student A (Parent) requested that the District conduct an evaluation of Student A to determine his eligibility to receive special education, but that the District did not conduct the evaluation after the Parent's request despite information that may have indicated that Student A needed disability-related services. The investigation also indicated that in implementing Student A's 504 plan during the 2018-2019 school year the District may not have fully implemented a provision of the plan regarding regular communication with the Parent.

In accordance with Section 302 of the OCR Case Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, 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

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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 October 7, 2019.

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 David Kauffman at (206) 607-1603 or at david.kauffman@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement
CC: Hon. Elsie Arntzen, Superintendent of Public Instruction