



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SEATTLE, WA 98174-1099

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September 27, 2019

Dr. Kenneth C. Hurst, Sr.  
Superintendent  
Othello School District No. 147-163  
1025 South 1<sup>st</sup> Avenue  
Othello, Washington 99344

Re: Othello School District No. 147-163-55  
OCR Reference No. 10191187

Dear Superintendent Hurst:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the referenced complaint against the Othello School District No. 147-163-55. OCR investigated whether the district discriminated against a student, on the basis of disability, by failing to implement his Section 504 plan by (1) failing to provide the student with monthly check-ins with an occupational therapist during January, February, March and April 2019; (2) failing to provide the student with extra time to speak and respond in his Biology and English classes from December 4, 2018 to May 10, 2019; and (3) failing to repeat directions to the student and check for his understanding in his Biology and English classes from December 4, 2018 to May 10, 2019.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). The regulations that implement Section 504 and Title II prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance and in public entities, respectively. The district receives Federal financial assistance from the Department and is a public entity and is required to comply with these Federal civil rights laws.

The regulation implementing Section 504 at 34 C.F.R. § 104.4(b) prohibits a recipient from denying a qualified disabled person the opportunity to participate in or benefit from the recipient's aids, benefits, or services, and prohibits a recipient from affording a qualified disabled person an opportunity to participate in or benefit from aids, benefits, or services that are not equal to that afforded to others. The Section 504 regulation at 34 C.F.R. § 104.33(b) requires a recipient to provide an appropriate education to disabled students by providing regular or special education and disability-related aids and services designed to meet the educational needs of disabled students as adequately as the need of non-disabled students. The regulation implementing Title II at 28 C.F.R. § 35.130 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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Based on the investigation to date, which included information provided by the complainant and the district, OCR has a concern that the district may have failed to completely implement the student's Section 504 plan during the 2018-2019 school year.

In accordance with Section 302 of the OCR Case Processing Manual (CPM), a complaint may be resolved at any time when, prior to the point a final determination is issued, the recipient expresses an interest in resolving the complaint allegation with a Voluntary Resolution Agreement (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 investigated in the referenced complaint, the district expressed an interest in voluntarily resolving the complaint. 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.

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 December 20, 2019.

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. 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.

Thank you for your assistance in resolving this matter. If you have any questions, please contact me at (206) 607-1612 or at [paul.goodwin@ed.gov](mailto:paul.goodwin@ed.gov).

Sincerely,

Paul Goodwin  
Supervisory Attorney

Enclosure: Resolution Agreement