

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 12, 2021

Via E-mail Only to: kmcneill@washoeschools.net

Dr. Kristen McNeill
Superintendent
Washoe County School District
425 East Ninth Street
Reno, Nevada 89512

Re: Washoe County School District
OCR Reference No. 10211124

Dear Superintendent McNeill:

This letter is to inform you of the disposition of the above-referenced complaint that was filed with the Office for Civil Rights (OCR) of the U.S. Department of Education against the Washoe County School District (the District). The complainant alleged that the District is discriminating against special education students with Individualized Education Programs (IEPs), based on disability, by requiring them to revoke their right to special education services before they are eligible to enroll in the District's adult education program and benefit from the diploma options only available through the Rise Academy. As described below, prior to completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint and signed the enclosed Resolution Agreement (agreement) to address the complaint.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), and the regulations that implement that statute, at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities of recipients of federal financial assistance. OCR also

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enforces Title II of the Americans with Disabilities Act of 1990 (Title II), and the regulations that implement that statute, at 28 C.F.R. Part 35, which prohibit discrimination based on disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from this Department and as a public entity, the District is required to comply with these federal civil rights laws.

OCR was investigating whether the District violated Section 504 and Title II, by treating students with disabilities with IEPs differently than their non-disabled peers or denying them an equal opportunity to pursue the adult diploma option offered through the Rise Academy, and whether denying an adult diploma option denied students a free appropriate public education in violation of Section 504 and Title II.

In providing any aid, benefit, or service, the Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1), prohibits recipients of federal financial assistance, directly or through contractual, licensing, or other arrangements, on the basis of disability, from:

- affording qualified disabled persons an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others;
- providing qualified disabled persons with an aid, benefit, or service that is not as effective as that provided to others;
- providing different or separate aids, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aids, benefits, or services that are as effective as those provided to others;
- otherwise limiting qualified disabled persons in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The Section 504 implementing regulation, at 34 C.F.R. § 104.38, prohibits recipients of federal financial assistance that provide adult education from, on the basis of disability, excluding qualified disabled persons and requires recipients to take into account the needs of such persons with disabilities in determining the aids, benefits, and services to be provided.

The Title II implementing regulation, at 28 C.F.R. § 35.130, contains similar prohibitions of disability-based discrimination by public entities as the prohibitions contained in the Section 504 implementing regulations. The Title II implementing regulation, at 28 C.F.R. § 35.130(b)(8), expressly prohibits public entities from imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability, or any class of individuals with disabilities, from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. Moreover, the Title II implementing regulation, at 28 C.F.R. § 35.130(b)(7)(i), requires public entities to make reasonable modifications in policies, practices, or procedures when the

modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

OCR's investigation to date indicated that an adult diploma is only available to District students through the Rise Academy. The evidence also showed that the Rise Academy requires students to revoke their right to receive special education services through an IEP prior to enrolling in the Rise Academy. OCR has a concern that this District practice results in denying students with disabilities, who wish to receive special education services through an IEP, the option to attend the Rise Academy and obtain an adult diploma.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the point when OCR issues a draft letter of findings, the recipient or public entity expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve the allegation because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the 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 comprehensively address the concerns identified by OCR, OCR determined that entering into a 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 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 individual may file a complaint with OCR alleging such treatment.

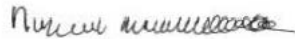
Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR will monitor the District's implementation of the agreement and will close the case when OCR determines that the terms of the agreement have been implemented. The District's first report required by the agreement is due to OCR by **November 19, 2021**.

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Thank you for the assistance the District extended to OCR in the resolution of the complaint. If you have any questions, please contact me by telephone at (206) 607-1632, or by e-mail noel.nightingale@ed.gov.

Sincerely,



Noel Nightingale
General Attorney (Civil Rights)

Enclosure: Resolution Agreement

Courtesy copy by e-mail only to:

Ms. Gina Session
Civil Rights Compliance Department Director
Office of the General Counsel
Washoe County School District
E-mail: GSession@WashoeSchools.net