



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 17, 2023

Via email only to: [greene.trevor@ysd7.org](mailto:greenetrevor@ysd7.org)

Dr. Trevor Greene
Superintendent
Yakima School District No. 7

Re: Yakima School District No. 7
OCR Reference No. 10221372

Dear Superintendent Greene:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the referenced complaint against Yakima School District, opened for investigation on October 28, 2022. OCR investigated whether the District discriminated against a student (the Student), on the basis of disability, during the 2021-2022 school year, by:

1. Denying the Student use of an accessible restroom and support for accessing restroom facilities; and
2. By failing to implement the Student's individualized education program (IEP) with regard to physical therapy.

OCR investigated this complaint under OCR's authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and their respective implementing regulations, at 34 C.F.R. Part 104 and 28 C.F.R. Part 35. These federal civil rights laws prohibit discrimination based on disability in programs and activities receiving federal financial assistance and by public entities, respectively. The District is a public entity and is a recipient of funds from the Department and is thus subject to Section 504, Title II, and their implementing regulations. Accordingly, OCR has jurisdiction to investigate and resolve this complaint under Section 504 and Title II.

Prior to OCR completing its investigation, the District expressed an interest in voluntarily resolving the complaint, and signed the attached Voluntary Resolution Agreement (Agreement) to address the complaint allegations.

Title II regulations require public entities, including school districts, to make reasonable modifications to 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

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modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i).

Section 504 regulations require a school district to provide a free appropriate public education (FAPE) to each qualified student with a disability in the district's jurisdictions, regardless of the nature or severity of the student's disability. 34 C.F.R. § 104.33. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements found in 34 C.F.R. §§ 104.34-36. Implementing an IEP that complies with the Individuals with Disabilities Education Act is one way to provide a FAPE. 34 C.F.R. § 104.33(b)(2). Title II contains similar prohibitions on disability discrimination and is interpreted consistently with Section 504.

OCR's investigation to date indicates that the Student XXXXXXXXXX, had an IEP and an Individualized Health Plan (IHP), and needed the assistance of XXXXXXXXXXXXXXXXXXXX. Following the Student's enrollment in the District, in January 2022, the District permitted the Student to use any restroom at his school. In March 2022, however, the District began limiting the restrooms the Student was allowed to use, resulting in the Student spending additional time out of class and in transit while using restroom facilities, and in the Student encountering difficulties using restroom facilities that were not physically accessible to him. OCR has a concern that the District may have failed to reasonably modify its policies, procedures, and practices as related to student restroom use. OCR also has a concern that the District, by limiting the Student's use of restrooms at his school, may have denied the Student a FAPE by failing to implement elements of the Student's IEP and IHP relating to this, and by requiring the Student to miss material amounts of instructional time while using restroom facilities and in transit to or from restrooms.

OCR's investigation to date also indicates that the District may not have provided all the services in the Student's IEP related to occupational and physical therapy. As a result, OCR has a concern that the District may have denied the Student a FAPE by failing to fully implement the Student's IEP.

According to § 302 of OCR's *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 an investigation. In this case, the District requested to resolve all of the allegations before OCR concluded its investigation. Based on the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR has determined that it is appropriate to enter into a voluntary resolution agreement. Subsequent discussions with the District resulted in the attached 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 this complaint. The complainant may have a 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 individual may file a 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. If 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 until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case. As noted in the Agreement, the District's first monitoring report to OCR is due by **March 18, 2023**.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions about this letter, please contact Isaac Conver, Attorney, at isaac.conver@ed.gov or 202-987-1413.

Sincerely,

David Kauffman
Supervisory Attorney

Attachment: Voluntary Resolution Agreement

cc: Honorable Chris Reykdal, Superintendent
via email only to: superintendent@k12.wa.us