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June 30, 2023

Via e-mail only to: bernalcnwasco.k12.or.us

Dr. Carolyn Bernal
Superintendent
North Wasco County School District No. 21
3632 West 10th Street
The Dalles, OR 97058

Re: North Wasco County School District No.21
OCR Reference No. 10231132

Dear Superintendent Bernal:

This letter is to inform you of the disposition of the above-referenced complaint filed against the North Wasco County School District (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that the District discriminated against a student on the basis of disability by failing to evaluate the student for special education and/or related services and failing to accommodate her disability related absences and unenrolling her from the District.

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 allegation.

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 from the U.S. Department of Education and by public entities, respectively. The District is a recipient of federal financial assistance from this Department and is a public entity.

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

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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 is not equal to that afforded to others.

Additionally, Section 504 regulation, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. The Section 504 regulation, at 34 C.F.R. § 104.35(a), states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The regulation implementing Title II, at 28 C.F.R. § 35.130(a), 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 regulation at 28 C.F.R. § 35.130(b)(7) requires a public entity 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.

The investigation to date reflects that the student enrolled as a first grader in January 2022 at the District's virtual elementary school. During the enrollment process, the student's parent provided written documentation to the District about the student's disabilities and prior hospitalization related to her disabilities.

OCR reviewed District records which indicate that the student's parent made a formal written request for evaluation of the student on at least three occasions, most recently in XXXXXXXXX. These records also indicate that the student's parent was never provided with consent for evaluation or prior written notice.

District records further reflect that in XXXXXXXXXX the student was out of school for more than ten days due to another disability related hospitalization. District records show that despite being aware that the student was out due to her disability the District unenrolled the student and required her to reenroll before being able to attend virtual classes again. District records indicate that the student was unenrolled in this same pattern five additional times, the latest of which occurred in XXXXXXXXXXXXX.

During interviews with District staff, the staff indicated that after the student reenrolled the District did not revisit previous request(s) for evaluation.

Based on the foregoing, OCR has a concern that the District may have discriminated against the student by failing to respond to requests for evaluation for this student. OCR also has a concern that the District may have discriminated against the student by failing to provide appropriate accommodations for her disability related absences and repeatedly unenrolling her. As a result of these actions, the student has missed months of school during the last two school years and according to the student's parent, has not made appropriate academic progress.

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 information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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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 September 1, 2023.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please contact me at 206-607-1608 or brittany.whittle@ed.gov.

Sincerely,

Brittany Whittle
Attorney

cc: Colt Gill, Deputy Superintendent of Public Instruction

Enclosure: Voluntary Resolution Agreement