

LAW OFFICES OF
MALCOLM B. HIGGINS, II
ATTORNEY AND COUNSELOR AT LAW
641 LYNNHAVEN PARKWAY
SUITE 200
VIRGINIA BEACH, VIRGINIA 23452-7307

TELEPHONE
(757) 463-9000

FACSIMILE
(757) 463-5274

July 3, 2002

Pamela Wright
P.O. Box 1008
Deltaville, VA 23043

Re: Office of Civil Rights Complaint filed by P.I.E.R. December 9, 1998

Dear Pam:

Following up on your June 24, 2002 e-mail, I am pleased to enclose the information you requested. Enclosed are:

- Pages*
1-19
20
21-24
25-26
1. Discrimination Complaint Form (OCR), with 12 page addenda and copy of Virginia Beach City Public Schools IEP page dealing with transportation and "full day (5.5 hours) program". *1-6*
 2. April 30, 1999 P.I.E.R. follow-up letter to OCR containing additional observations of bus departure times. *7-19*
 3. November 3, 1999 OCR resolution letter with Resolution Agreement submitted by VBCPS. *21-22*
 4. Press release posted by P.I.E.R., November 8, 1999. *23-24*

Thank you for recalling the complaint and working on reposting it to the Wrightslaw site.

Hope you and Pete are having a great summer. Look forward to seeing you sometime this year.

Sincerely yours,

Malcolm B. Higgins, II

MBH/tmr
Enclosures

Happy 4th of July!

NOTE FROM
WRIGHTSLAW

This file is 27 pages long. Each section is identified by the page numbers above. They are located at the bottom center of each page.

DISCRIMINATION COMPLAINT FORM

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
DISTRICT OF COLUMBIA OFFICE
TEL # (202) 208-2545

1100 PENNSYLVANIA AVE., N.W., RM. 316
P.O. BOX 14620
WASHINGTON, DC 20044-4620
FAX # (202) 208-7797; TDD (202) 208-7741

This form is not required to file a complaint with OCR; however, the information requested for items one through eight and item thirteen must be provided, whether or not the form is used. Please type or print all information and use additional pages if more space is needed.

1. Name of person filing this complaint:

(Mr./Ms.) Hollowell Maureen Sue
(Last) (First) (Middle)

ADDRESS: Protecting Individuals with disabilities Education Rights
(PIER)

PO Box 12951
CITY & STATE: Norfolk, VA 23502
(Zip Code)

TELEPHONE #: 757-499-5393 (Home)
757-461-8007 (Work)

2. Name of person discriminated against (if other than person filing):

(Mr./Ms.) on behalf of students with disabilities attending
Virginia Beach City Public Schools
(Last) (First) (Middle)

ADDRESS: _____

CITY & STATE: _____
(Zip Code)

TELEPHONE #: _____ (Home)
_____ (Work)

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3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and public entities that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

NAME OF INSTITUTION: Virginia Beach City Public Schools

ADDRESS: P O Box 6038

CITY & STATE: Virginia Beach VA 23456
(Zip Code)

DEPT./SCHOOL: Dr. Timothy R. Jenney

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, or age. Please indicate the basis of your complaint:

Discrimination based on race (specify)

Discrimination based on color (specify)

Discrimination based on national origin (specify)

Discrimination based on sex (specify)

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Discrimination based on disability (specify)

Section 504 of the Rehabilitation Act

104.4(b)(1)(i); 104.4(b)(1)(ii); 104.4(b)(1)(iii); 104.4(b)(1)(iv);

104.4(b)(1)(vii)-; 104.4(b)(2); 104.10(a); 104.37(a)(1)

Discrimination based on age (specify)

Americans with Disabilities Act

5. Please describe the alleged discriminatory act(s). Please include the dates of the alleged discrimination, the names of persons involved and, if you are able, the names of any persons who witnessed the acts.

Attached

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6. Please explain why you believe the alleged discriminatory act(s) was committed on the basis (bases) you specified in question #4:

Attached

7. What is the most recent date you were discriminated against?
The last date of PIER observations was June 15, 1998. Parents report to PIER that the discrimination is continuing into the current school year.

8. If this date is more than 180 days ago, you may request a waiver of the filing requirement. Please do so here and explain why you waited until now to file your complaint.

9. Have you attempted to resolve the allegations contained in this complaint with the institution through an internal grievance procedure?

YES _____ NO X

If you answered yes, please describe the allegations in your grievance, identify the date you filed your grievance, and tell us the status of the grievance. If possible, please provide us with a copy of your grievance.

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10. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

AGENCY OR COURT: Virginia Department of Education

DATE FILED: June 3, 1998

CASE NUMBER OR REFERENCE: _____

RESULTS OF INVESTIGATION/FINDINGS BY AGENCY OR COURT: A complaint was submitted to the Virginia Department of Education on June 3, 1998. That complaint was specifically in regards to allegations of violations of State standards. On November 9, 1998 VDOE stated that VDOE "found no violations of state and federal laws and regulations in regard to the issues raised by PIER." VDOE's letter of findings also states, "With respect to the issue of transportation being provided differently for the disabled student, the Office of Civil Rights (OCR) is the agency with authority to address this matter."

11. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information is not required, but it will be helpful to us.

(Mr./Ms.) Higgins Malcolm BERNARD
(Last) (First) (Middle)

TELEPHONE #: 757-460-1368 (Home)

757-463-9000 (Work)

Page 6 - DISCRIMINATION COMPLAINT FORM

12. OCR has an expedited complaint resolution process called Resolution Between Parties (RBP). In this process, we attempt to help the complainant and the institution reach an agreement through mediation to settle the complaint. Both the complainant and the institution must want to take part in the mediation. The complainant, the institution, or OCR may end the RBP process at any time if it appears that an agreement cannot be reached. If this happens, we will use other approaches to resolve the complaint allegations. One of the primary benefits of RBP is that it may be possible to resolve your complaint quickly. More information about the RBP process is contained in "Information About OCR's Complaint Resolution Procedures."

If OCR feels that mediation of your complaint is appropriate, are you interested in having OCR mediate your complaint?

YES NO

If OCR determines RBP may be appropriate, we will contact you to discuss our RBP procedures in detail.

13. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

12/9/98
(Date)

Maureen Sue Hollowell
(Signature)

Please send us copies of any written materials or other documents which you think will help us understand your complaint.

Please mail the completed Discrimination Complaint Form to: The U.S. Department of Education, Office for Civil Rights, District of Columbia Office, P.O. Box 14620, Washington, D.C. 20044-4620, FAX # (202) 208-7797.

Also, please enclose your signed consent form(s) with the Discrimination Complaint Form. See "Information About OCR's Complaint Resolution Procedures" for information about the consent forms.

Item 5. Describe the alleged discriminatory act(s). Include the dates of alleged discrimination, the names of the persons involved, and, if you are able, the names of any persons who witnessed the acts.

Virginia Beach City Public Schools (VBCPS) has historically discriminated against students with disabilities by dismissing them before the dismissal of nondisabled students, and thus providing them less education and instruction. Consistent with state law, the VBCPS School Board acting through its Superintendent establishes school hours for students. By terminating the students with disabilities educational program and academics to a significant amount of time before nondisabled students, students with disabilities are provided less time and opportunity for instruction, other education-related services and social opportunities. Students with disabilities who are dismissed before nondisabled students, and while instruction continues after the students with disabilities are dismissed, are shortchanged and denied equal educational benefits afforded their nondisabled classmates who have the benefit of remaining in the school until the end of the school day. Students with disabilities who are dismissed before the end of the school day are given no meaningful opportunity to cover or makeup the instruction, knowledge or benefits they have been denied due to early dismissal. They are denied equal opportunity to learn in violation of their rights under Section 504. VBCPS asserts that students' disabilities who are dismissed before the end of the school day are provided instruction early in the morning. There is no evidence that these students' teachers are providing them the instruction lost due to early dismissal during the period from when school buses drop them off in the morning until the start of the instructional day.

Consistent with School Board policy, nondisabled students receive a minimum of 6.5 hours of instructional time per day. In violation of this same School Board policy, students with

disabilities are guaranteed on 5.5 hours. In fact, the administrative forms used by VBCPS to create an IEP for a child state that "All students should have the availability of receiving a full day (5.5 hours) program if determined appropriate by the IEP committee and included in the student's IEP."

Students with disabilities are dismissed earlier than nondisabled students as indicated by transportation schedules provided by VBCPS in response to the PIER June complaint.

To document the early departure of students from schools, members of the community conducted organized observations of school bus departures from school property at 39 randomly selected VBCPS schools. Documented observations by PIER and data provided by VBCPS revealed that at 35 of the 39 observed schools, school buses transporting only students with disabilities departed from schools before the ending time of the instructional day established by the VBCPS School Board and before buses transporting nondisabled students departed from the same schools.

The community conducted observations on: February 25, 1998; February 26, 1998; February 27, 1998; March 3, 1998; March 4, 1998; March 5, 1998; March 10, 1998; March 11, 1998; March 13, 1998; March 16, 1998; March 17, 1998; March 18, 1998; March 19, 1998; March 23, 1998; May 29, 1998; June 1, 1998; June 2, 1998; June 15, 1998.

A chart detailing the dismissal and bus departure time is enclosed in PIER's June 3, 1998 complaint to the SEA.

Throughout the observation period, PIER kept the VBCPS administration apprised of the fact that observations were being conducted. In late spring VBCPS was verbally reminded that PIER intended to file a complaint regarding the early dismissals. Final observations were

scheduled, and occurred on June 15, 1998.

The morning of June 15, PIER telephoned VBCPS to inform the school district that observations would be occurring that day. When PIER observers arrived at the schools on the afternoon of June 15, they observed buses being rerouted back to school parking lots by security guards and heard announcements on PA systems and bus radios that buses were not to leave school property until the general education students were dismissed. Students with disabilities were observed to be waiting outside of the school building or sitting on buses for up to thirty minutes until the end of the school day for nondisabled students. PIER faxed a handwritten note to VBCPS the next morning, after being unable to reach VBCPS Administration by telephone the afternoon before. The note informed VBCPS that PIER was halting observations because of the hardship placed on the students with disabilities the day before while waiting outside in the heat and on stifling hot buses. Apparently, instructions had been sent by VBCPS Administration to schools on June 15 informing the schools not to allow buses to leave the school property early. However this directive merely stopped buses from leaving early, not students with disabilities from being dismissed before their nondisabled peers.

Mr. Mitchell, Director of the Office of Programs for Exceptional Children, VBCPS informed PIER on June 16, 1998 that a memo had been faxed to school building administrators early that morning. The exact content of that June 16, 1998 memo is unknown to PIER. It is assumed to have been a directive to schools to not dismiss students with disabilities early. PIER only knows a memo was sent by fax to prevent the dangerous situation that some students encountered the previous day waiting in the heat.

PIER requests that OCR order VBCPS to produce the document sent by VBCPS

Administration to schools on June 16, 1998 that references dismissal of students.

VBCPS has a predetermined policy that students with IEPs will have a 5.5 hour program as evidenced by the VBCPS's current IEP form that states, "All students should have the availability of receiving a full (5.5 hours) program if determined appropriate by the IEP committee and included in the student's IEP." A copy of the pre formatted IEP form that includes this statement is enclosed. Parents are unaware of a single child's IEP that provides for instruction or other benefits until the school day ends among those children who are transported on segregated buses. On information and belief none of the affected children have medically fragile conditions that might necessitate their being dismissed early, from school. They are dismissed as a matter of policy.

Parents are not advised during IEP meetings or at any other point that their children with disabilities are entitled to a school day of 6.5 hours as provided to nondisabled students.

These discriminatory actions are documented by the following: observation charts submitted as Attachment E with PIER's June 3, 1998 complaint to the SEA, July 7, 1998 correspondence from VBCPS to the SEA which states that students with disabilities do in fact not only have different times for departing from school but that the school departure times are routinely and systematically earlier than the school departure times of nondisabled students. VBCPS's IEP forms indicate the need to reflect 5.5 hours of "program" on the IEP, yet VBCPS policy is to provide students with a 6.5 hour school day. Nondisabled students are provided a 6.5 hour school day. Yet the school day for students with disabilities is predetermined to be only 5.5 hours unless the IEP committee determines otherwise.

The November 9, 1998 SEA Letter of Findings references information provided by

VBCPS regarding several children. VBCPS reports that the individual students reported on all start their day early in order to reach the required 6.5 hours of instructional time. In these instances, the SEA Findings conclude that all of these randomly selected IEPs require instruction to begin before the beginning of the School Board's established instructional hours. References are made to various times that certain students' school days began. Depending on the shortfall of time, the students' day began before children were supervised or before services were provided. In these instances, the SEA Findings conclude that the child's school day begins prior to the time when teachers are present to supervise and teach. Even the summary information provided by the VBCPS's attorney on Students A - K provides documentation that students with disabilities were treated different from nondisabled students in not only the length of their educational day but in the quality of the length of the day. VBCPS reported that students with disabilities were considered to be receiving instructional time during the early part of the morning before teachers or other support personnel were contracted to provide services.

Students with disabilities who leave the school building before the end of the instructional day are denied the opportunity and quality afforded to nondisabled students. The mere fact that some students with disabilities arrive at school before the beginning of the instructional day does nothing to diminish the responsibility of VBCPS to provide for the same instruction and length of day provided to nondisabled students. Students with disabilities who are educated in general education classes are required to leave those general education classes prior to the end of teacher instruction and social opportunities afforded to nondisabled students. The parents who have submitted letters regarding their children's educational day represent the hundreds of similarly situated children who were routinely dismissed early merely because they

ride special transportation due to their disability. These parents, and others, can provide OCR with direct information regarding the shortening of their child's school day to accommodate school transportation services.

Copies of correspondence and documentation resulting from PIER's complaint to the SEA are attached. Included are the following:

- * June 3, 1998 PIER letter of complaint to SEA
- * June 10, 1998 SEA letter to PIER and VBCPS acknowledging receipt of complaint and informing of the opportunity for early resolution between parties
- * June 30, 1998 PIER letter to SEA describing attempts to resolve the complaint
- * July 1, 1998 VBCPS memo to SEA after attempts to resolve the complaint
- * July 7, 1998 VBCPS letter to SEA including information requested by SEA
- * July 23, 1998 PIER letter to SEA responding to the July 7 VBCPS letter
- * August 3, 1998 SEA request to VBCPS for additional information
- * August 19, 1998 VBCPS attorney's letter to SEA with requested information
- * October 9, 1998 PIER letter to SEA responding to the August 19 VBCPS's attorney letter and additional documentation
- * October 14, 1998 SEA letter to VBCPS and PIER
- * October 30, 1998 PIER letter to SEA clarifying documentation (letters from parents) submitted on October 9
- * November 9, 1998 SEA Letter of Findings to VBCPS and PIER

The Virginia Department of Education (SEA) may have additional documentation from their investigation of PIER's June 3, 1998 complaint. Contact Dr. Judith Douglas with the SEA

at 804-225-2881 for additional information.

Persons involved in these discriminatory acts include Timothy R. Jenney, Superintendent; David Pace, Director of Transportation Services; Robert L. Mitchell, Director of the Office for Exceptional Children; Special Education Administrative Coordinators; Principals, Assistant Principals, teachers and teacher assistants at the discriminating schools; and school bus drivers and bus assistants assigned to the buses providing discriminatory services.

Persons who witnessed the discriminatory acts include:

Brenda [REDACTED]
Helen [REDACTED]
Richard [REDACTED]
Jean [REDACTED]
Elizabeth [REDACTED]
Malcolm Higgins
Maureen Hollowell
Suzanne [REDACTED]
Nancy [REDACTED]
Lee Ann [REDACTED]
Mary [REDACTED]

Eleven others conducted observations and would prefer not to disclose their names, but will if needed.

Item 6. Please explain why you believe the alleged discriminatory act(s) was committed on the basis (bases) you specified in question #4:

104.4(b)(1)(i)

VBCPS denies students with disabilities the opportunity to participate in or benefit from end of the day school activities including announcements, final teacher directions and other aids, benefits and services that are provided to nondisabled students during the final 5 to 45 minutes of the school day.

104.4(b)(1)(ii)

VBCPS does not afford students with disabilities the opportunity to participate in and benefit from instruction and other education-related services that are equal to those provided to nondisabled students. Students with disabilities are routinely required to depart from school property a significant amount of time before nondisabled students, thereby preventing an equal amount of time for instruction, other education-related services, and social opportunities. Students with disabilities are not afforded equal opportunity to participate in school closing activities such as announcements, final teacher instructions and assignments. Students with disabilities who are dismissed before nondisabled students, and while instruction continues after the students with disabilities are dismissed, are not provided equal educational benefits that are afforded to nondisabled students who have the benefit of remaining in the school until the end of the school day. VBCPS provides students with disabilities a shorter school day than provided to nondisabled students. As indicated in correspondence dated August 19, 1998, from VBCPS attorneys, VBCPS identified only two incidences in which the IEP team determined that students with disabilities should be provided a school day unequal

in length to nondisabled students. In the correspondence to the SEA regarding PIER's June complaint VBCPS states that the school day provided to students with disabilities is shorter and unequal in length than the school day provided to nondisabled students. VBCPS provides transportation services that result in shorter school days for students with disabilities compared to the length of the school day provided to nondisabled students.

VBCPS insists that the school day for students with IEPs is 5.5 hours. However, VBCPS policy states that students will have instructional time of 6.5 hours. The statement on all VBCPS IEP forms indicates a practice that provides for different school day lengths between students with disabilities and nondisabled students. Shortened school days for students with disabilities are not based on educational or health reasons in most instances but rather by the VBCPS's defacto policy evidenced by its preprinted statement on all VBCPS IEP forms that students with disabilities can be provided a school day unequal to that afforded to nondisabled students. VBCPS has consciously decided that students with disabilities with IEPs will not be provided an equal opportunity to learn and to a school day equal in length to nondisabled students.

VBCPS denies students with disabilities an equal benefit to be obtained from a 6.5 hour school day. This denial is systemic and predetermined as indicated by the pre formatted IEP form and parent experiences.

104.4(b)(1)(iii)

VBCPS discriminates against students with disabilities by applying a more limited length of the school day for students with disabilities as compared to the length of the school day provided for nondisabled students. This limited day has the affect of providing an education that is not as effective as that provided to others. The majority of students with disabilities need intensive remediation and services in part due to prior miseducation and denial of equal educational opportunity. Their poor performance on large scale tests required by the Virginia Department of Education attest to the need for the majority of these students to receive a free and appropriate education consistent with the high standards adopted by the State. With this intensive need it is inappropriate to shorten the school day for students who perform poorly on State-based testing assessing the extent to which they meet State standards, thus further impeding the students' ability to attain outcomes expected for all others by being provided meaningful educational benefit from their education program. Indeed a strong argument can be made under Section 504 that these students are entitled to additional, supplemental services in order for them to attain outcomes expected for all students.

104.4(b)(1)(iv)

VBCPS provides different services to students with disabilities than those services provided to nondisabled students as indicated by the significant differences in dismissal times for students with disabilities than those for nondisabled students. Students with disabilities who may have arrive at school early, just the same as nondisabled students for breakfast or transportation reasons, are required to leave school before nondisabled

students leave. Students with disabilities are treated different from nondisabled students by leaving the classrooms and school buildings before nondisabled students leave these same classrooms and school buildings.

At the time of PIER's observations, none of the buses departing early transported nondisabled students. This fact was established by VBCPS in correspondence to the SEA. VBCPS has acknowledged that there is a difference in the length of the educational day for students with disabilities compared to the length of the educational day provided to nondisabled students.

104.4(b)(1)(vii)

VBCPS limits the enjoyment of students with disabilities to the same opportunities provided to nondisabled students including instruction, peer interactions, and routine school-day ending procedures. Students with disabilities must end their school day before nondisabled students as indicated by dismissal times. Instruction, socialization and non-academic activities for students with disabilities are shorter than the instruction, socialization and non-academic activities provided for nondisabled students.

104.4(b)(2)

Students with disabilities often require more instruction than that required by nondisabled students in order to afford disabled students with equal opportunity. Yet the students who traditionally struggle the most with learning (students with disabilities) are provided with a shortened school day compared to students who learn more easily (nondisabled students). This inequity in the length of the school day does not afford students with

disabilities equal opportunity to obtain the same result, gain the same benefit, or to reach the same level of achievement as afforded to nondisabled students.

104.10(a)

VBCPS's obligation to comply with Section 504 of the Rehabilitation Act is not alleviated by the existence of the Virginia Standards for Accrediting Schools which only require students to receive a 5.5 hour school day. VBCPS provides nondisabled students with a minimum of a 6.5 hour school day. Once VBCPS has adopted a standard of its students, it cannot provide a different standard through more limited school hours for students with disabilities and a different set of school hours for nondisabled students.

104.37(a)(1)

VBCPS does not provide transportation services in such a manner as to afford students with disabilities an equal opportunity for participation in transportation services provided to nondisabled students. Transportation services for students with disabilities in VBCPS are different from those transportation services provided to nondisabled students in the following ways: many buses transporting students with disabilities load and unload students with disabilities in areas separate from the loading areas used for nondisabled students; students with disabilities endure bus rides longer in duration than nondisabled students; most buses transporting students with disabilities are totally segregated from nondisabled students; and buses transporting students with disabilities are late arriving to school in the morning more often than buses transporting nondisabled students.

**VIRGINIA BEACH CITY PUBLIC SCHOOLS
INDIVIDUALIZED EDUCATION PROGRAM**

Student's Name: _____

9. A.	Special Education and Related Services	Sessions per week/day	Length of Sessions	Date Started	Anticipated Completion Date	Environment	Provider
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

B. Does the child qualify for extended school year (ESY)? Yes No Review at a later date

NOTE: All students should have the availability of receiving a full day (5.5 hours) program if determined appropriate by the IEP committee and included in the student's IEP.

10. A. Transportation:
 1. None ()
 2. General ()
 3. Special ()

B. Equipment Required (describe): _____

11. Federal Child Count

Instructional Services:	Primary	First Additional	Second Additional
Service Code	_____	_____	_____
Percent of Day	_____	_____	_____
Teacher	_____	_____	_____

12. Participation with nondisabled students/instruction by general education personnel

	ACTIVITIES	AMOUNT OF TIME PER WEEK
A. Academic	_____	_____
	_____	_____
	_____	_____
B. Non-Academic	_____	_____
	_____	_____
	_____	_____
C. Extracurricular	_____	_____
	_____	_____

P.I.E.K.

Protecting Individuals with disabilities Education Rights

P.O. Box 12951
Norfolk, VA 23502
(757) 461-8007

April 30, 1999

Janice Alexander
Office of Civil Rights
U.S. Department of Education
P.O. Box 14620
Washington, D.C. 20044-4620

RE: Complaint # 11-99-1039

Dear Ms. Alexander:

At the request of the Office of Civil Rights, PIER conducted observations in April 1999 at randomly selected VBCPS schools. An observation chart is attached. These observations show a continuation of practices that routinely and systematically shorten the length of the school day for students with disabilities.

Students with disabilities were routinely observed to be waiting outside of schools to load buses before school dismissal of nondisabled students. Special Education buses routinely left the schools before other buses. Observations revealed that general education buses departed from schools a considerable time after the earlier departure of special education buses.

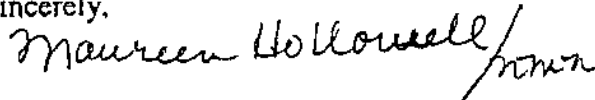
Observers were instructed to stay off school premises. This limited some observers from viewing and documenting some students who departed before dismissal.

While conducting the April 1999 observations, PIER saw that separate loading and unloading areas are used for many students with disabilities. The use of separate areas continues the segregation alleged in PIER's December 9, 1998 complaint to OCR.

Services for students with disabilities in VBCPS continue to be different and unequal from those services provided to nondisabled students. The VBCPS form states "All students should have the availability of receiving a full (5.5 hours) program if determined appropriate by the IEP committee and included in the students' IEP."; yet the VBCPS School Board has established that students will have a 6.5 hour instructional day. Further, more buses transporting students with disabilities remain totally segregated from nondisabled students.

Please call me if you need clarification of this documentation.

Sincerely,



Maureen Hollowell

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U.S. DEPARTMENT OF EDUCATION
1100 PENNSYLVANIA AVENUE, NW, ROOM 316
P.O. BOX 14620
WASHINGTON, DC 20044-4620
www.ed.gov/offices/OCR

OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

NOV 3 1999

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, Virginia

RETURN RECEIPT REQUESTED

Ms. Maureen Sue Hollowell
 Protecting Individuals with
 disabilities Education Rights (PIER)
 Post Office Box 12951
 Norfolk, Virginia 23502

RE: OCR Complaint #11-99-1039

Dear Ms. Hollowell:

The purpose of this letter is to inform you of the disposition of the above-referenced complaint that was filed on December 14, 1998, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department), by you on behalf of students with disabilities attending the Virginia Beach City Public Schools (the District). You alleged that the District's transportation policies and practices treat disabled students differently on the basis of disability by shortening their school day; denying them the minimum instructional time required by State law; and denying them benefits and services available to nondisabled students. Also, you alleged that the District does not provide transportation services in a manner that affords students with disabilities an equal opportunity for participation in transportation services provided to nondisabled students.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public elementary and secondary education systems. The District is a public education system that receives financial assistance from the Department. Therefore, the District must comply with the laws enforced by OCR.

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Page 2 - Ms. Maureen Sue Hollowell
OCR Complaint #11-99-1039

As part of its investigation, OCR reviewed data submitted by you and by the District and made an on-site visit during which we conducted school observations and interviews with District staff and members of PIER and reviewed individual education programs at various schools. As transportation for students with disabilities is considered a related service under the Section 504 regulation and can affect the ability of students with disabilities to participate in and benefit from the educational program, OCR was concerned that parents might not have been provided a formal opportunity to have input on the provision of these services. As a result, the District has entered into an agreement with OCR to address the above-referenced allegations. The Commitment to Resolve (CTR) was signed by Dr. Timothy Jenney, Superintendent, on November 2, 1999. A copy of the CTR is enclosed. Therefore, this complaint is being closed effective the date of this letter. OCR will monitor the District's implementation of the CTR. If the District fails to carry out its commitment, OCR will immediately reopen the complaint and resume the investigation.

We have informed the District that it may not may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. If any individual is harassed or intimidated because of filing a complaint or participating in an OCR investigation, the individual may file a complaint with OCR alleging such harassment or intimidation.

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

If there are any questions, please contact Janice Alexander, at (202) 208-7670.

Sincerely,



Sheralyn Goldbecker
Team Leader

Enclosure
As Stated

**RESOLUTION AGREEMENT
SUBMITTED BY THE
VIRGINIA BEACH CITY PUBLIC SCHOOL SYSTEM
TO
THE OFFICE OF CIVIL RIGHTS**

In December 1998, a complaint was filed with the Office for Civil Rights charging that the division's transportation policies and practices treat disabled students differently on the basis of disability by shortening school days; denying them the minimum instructional time required by state law; and denying benefits and services available to nondisabled students. The complaint further alleged that the division does not provide transportation services in a manner that affords students with disabilities an equal opportunity for participation in transportation services provided to nondisabled students. Maureen Hollowell of Protecting Individuals with Disabilities Education Rights (PIER), an advocacy group for students with disabilities filed this complaint.

Virginia Beach provides students with disabilities with transportation services that afford them benefits and services equivalent to those for nondisabled students, and will continue to provide these services to students with disabilities. In reaching a resolution of this complaint, the division in no way acknowledges any wrongdoing.

1. The division currently notifies parents of students with special transportation needs that transportation can be arranged from a regular bus stop in the neighborhood for those children attending their neighborhood school by means of a special needs transportation brochure. The division will continue to notify parents of students with special transportation needs of the possibility of integrating their children into the regular bus system by means of this brochure. Additionally, the division will provide notification to parents during the school year by means of a transportation corner in the division's Parent Resource Newsletter, the Dialogue. The transportation corner will include a statement that parents can address transportation issues through the IEP process.
2. As necessary at an IEP meeting, special circumstances will be discussed and documented when appropriate for the student or to address parental concerns. The division has revised its IEP form to include an additional area within the transportation section to include parental concerns. Examples of issues which may be addressed during an IEP meeting include, but are not limited to, special transportation, shortened school and/or instructional day, separate bus loading or unloading areas, and impact of bus ride.
3. Special Education teachers employed by the division as of the date of this agreement will be surveyed to ensure that they have had coursework or staff development addressing the issue of the impact of the bus ride on special needs students. Any special education teacher certifying that he/she has not had coursework or staff development will be provided with staff development addressing this issue by September 5, 2000.

Reporting Requirements


4. By November 15, 1999, the division will submit to OCR a copy of the special needs transportation brochure referred to in item #1. The division will also submit evidence of requests from parents of special needs students for integration into the regular bus system and/or a list of names of parents who have requested such integration between July 1, 1998 through November 1, 1999.

5. Within three (3) weeks of publication, the division will submit to OCR a copy of the newsletter distributed to parents and referred to in item #1.

6. By December 31, 1999, the division will submit to OCR a list of students who have special transportation needs, by school and program, who have IEP meetings between the date of this agreement and December 1, 1999. OCR may request up to ten percent of the IEPs on the list to review. By June 31, ~~1999~~²⁰⁰⁰, the division will submit to OCR a list of students who have special transportation needs, by school and program, who have IEP meetings between the January 1, 2000, and June 1, 2000. OCR may request up to ten percent of the IEPs on the list to review.

7. By November 15, 1999, the division will submit to OCR a copy of the revised IEP form being used by the Virginia Beach City Public Schools during the 1999-00 school year.

8. By December 15, 1999, the division will provide OCR with the results of the survey of special education teacher regarding coursework or staff development on the issue of the impact of the bus ride. By October 1, 2000, the division will provide OCR with evidence of citywide staff development on the impact of the bus ride (i.e. attendance rosters), which will include the names of the people receiving such staff development, the names of the people giving such staff development and a copy of the agenda for the staff development.


SUPERINTENDENT

November 2, 1999
DATE

Press Release re. Va Beach Schools and OCR

[[Follow Ups](#)] [[Post Followup](#)] [[The Endependence Forum](#)] [[FAQ](#)]

Posted by [PIER](#) on November 08, 1999 at 17:10:00:

VIRGINIA BEACH SCHOOLS AGREE TO RESOLVE ALLEGATIONS OF DISCRIMINATION November 5, 1999

Virginia Beach City Public Schools (VBCPS) has entered into an agreement with the federal Office for Civil Rights (OCR) to address allegations of discrimination of students with disabilities. Protecting Individuals with disabilities Education Rights (PIER), a local community group, filed a complaint with OCR in December alleging VBCPS systemically discriminated against students with disabilities who required transportation services.

Students with disabilities were routinely dismissed from school before the end of the instructional day, required to use separate bus loading and unloading areas, arrived to school late in the morning, rode segregated buses, and endured unreasonably lengthy bus rides.

In 1996 and 1997 VBCPS surveyed its transportation system and reported that schools were dismissing students with disabilities before the end of the school day and that students with disabilities were often using separate bus loading and unloading areas. In 1998 PIER conducted observations at 39 randomly selected schools: ninety percent of these schools dismissed students with disabilities before the end of the instructional day. PIER observed 347 incidents of buses leaving school before the end of the instructional day. VBCPS provided documentation indicating that all of these buses were used to transport students with disabilities.

Earlier this year VBCPS began to address some of the problems stated in the PIER complaint. Incidents of early dismissal have been reduced since the filing of the complaint. The school district also responded favorably to criticism by parents, and some parents of children who use wheelchairs were sent letters informing them their children would be permitted to change their transportation and ride buses with nondisabled students. These were positive actions taken in response to the complaint.

VBCPS has agreed to take additional steps to resolve the complaint. The agreement with OCR requires VBCPS to modify the school district's individualized education program procedures to include a particular written plan to address transportation issues, to provide transportation information to parents through a newsletter, and to develop a brochure to notify families of transportation requirements. Further, all special education teachers will be required to have course work or staff development that addresses the impact of transportation. In addition, VBCPS is required to provide detailed documentation and specific reports to OCR routinely through October 2000.

The agreement by VBCPS to resolve the complaint closes this phase of the OCR investigation initiated in February that included a four day on-site investigation by OCR staff in May. OCR will monitor implementation of the agreement. OCR has told VBCPS that if the district fails to carry out its commitment to resolve the PIER complaint, "OCR will immediately reopen the complaint and resume the investigation."

Some students with disabilities may need separate transportation services, a shortened school day or other special transportation services. PIER fully supports the right of parents to have these needs met through the IEP (individualized education program) process.

Brenda Bondurant, President of the Spina Bifida Association of Tidewater, stated that the agreement should "help to ensure that students with disabilities are able to benefit from a full day of instruction and be integrated on buses with the student's nondisabled peers and siblings."

Jean Drudge, mother of two children who are deaf and attend Virginia Beach schools said, "For years my children were required to leave school before the end of the day and they missed assignments and valuable information. I am excited that our children will be provided equal access to the same instructional day and be treated the same as everyone else."

The resolution agreement between OCR and VBCPS will advance the civil rights of students with disabilities. PIER is pleased that VBCPS has agreed to resolve the complaint rather than continue with an even more lengthy and expensive OCR investigation. Cooperation by VBCPS with parents will result in more dollars being spent on education and fewer dollars being used for administrative and legal fees. Children with disabilities have won a significant battle to receive equal educational benefits.

Parents of children with disabilities who continue to experience discrimination can contact PIER at 461-8007 or OCR at 202-208-7670.

Follow Ups:

Post a Followup

Name: _____

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Comments: